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Do neighborhood cell towers impact property values?

July 29, 2014



Diana Dietz

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A recent survey by the National Institute for Science, Law & Public Policy (NISLAPP) found that 94 percent of homebuyers are “less interested and would pay less” for a property located near a cell tower or antenna.

Neighborhood Cell Towers & Antennas—Do They Impact a Property’s Desirability? also found that properties where a cell tower or group of antennas are placed on top of or attached to a building is problematic for buyers.

Of the 1,000 people who responded to the survey, 79 percent said that under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or antennas, and almost 90 percent said they were concerned about the increasing number of cell towers in their residential neighborhood.

Jim Turner, Esq., Chairman of the NISLAPP, said in a statement, "The results of the 2014 NISLAPP survey suggest there is now a high awareness about potential risks from cell towers and antennas, including among people who have never experienced cognitive or physical effects from the radiation."

He added, "A study of real estate sales prices would be beneficial at this time in the United States to determine what discounts homebuyers are currently placing on properties near cell towers and antennas."

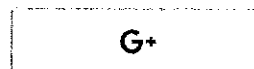
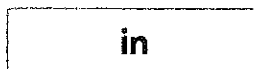
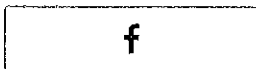
The NISLAPP survey reinforced the findings of a study by Sandy Bond, Ph.D. of the New Zealand Property Institute, and Past President of the Pacific Rim Real Estate Society (PRRES), published in *The Appraisal Journal* in 2006.

The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods study found that buyers would pay as much as 20 percent less, as determined at that time by an opinion survey in addition to a sales price analysis.

NAR hosts a field guide to cell phone towers on its website. eBooks, field guides, and research reports are available to NAR members.

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antenna cell phone homebuyers housing NISLAPP real estate
tower



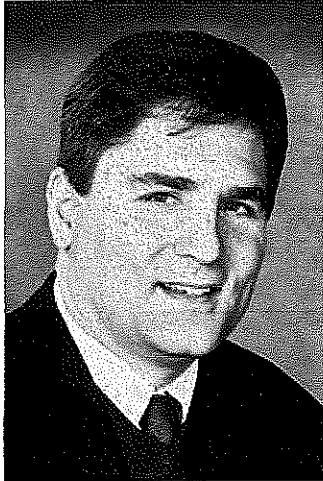


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Local control of telecom equipment placement must be preserved

Posted on ~~March 15, 2018~~ March 29, 2018



Senator Patrick Colbeck

Rushing of SB 637 jeopardizes health

LANSING, Mich. — State Sen. Patrick Colbeck spoke on Thursday against Senate Bill 637, legislation that would largely remove local governments from being able to determine where "small cell" telecommunications equipment would be placed.

Colbeck said local communities should have the ability to weigh in on where the devices are placed, and that it was inappropriate for the state to step in and deprive the ability of local governments and the people therein from having a safe haven from potentially harmful effects of wireless radiation.

"As we start to roll out new technology and the 'internet of things,' we are increasingly seeing an erosion of both property rights and local control," said Colbeck, R-Canton. "When the smart meter rollout began, many local residents sought redress from their local elected bodies. While many local officials were in favor of a smart meter moratorium, they quickly discovered that the state had sole control in that area.

"Now that we are looking at where 'small cell' equipment will be placed, industry is again taking steps to ensure local government's voice will be silenced. Considering estimates say one transmitter will be needed for every two to 10 homes, this will be a tremendous number of new transmitters being placed into our residential areas and near schools."

Colbeck said his office has received many calls from Michigan residents who are concerned with a growing body of evidence that transmissions from new "small cell" transmitters can cause significant health concerns for many people, especially for young children and those in the womb.

State control of the placement of the new transmitters would allow for a fast and efficient rollout of the equipment, but the bill takes power away from people to weigh in on those placement decisions with their local officials and puts it into the hands of industry. Colbeck said that such a large-scale rollout calls for methodical and thoughtful analysis.

"Even the FCC has not fully studied all of the health effects of such widespread implementation of this new technology," Colbeck said. "The telecom industry is indemnified against any liabilities for adverse health impacts if their emissions stay within FCC guidelines. We need to ensure that the FCC guidelines are defined at thresholds that protect against adverse health impacts. There is a growing body of evidence to suggest that this is not currently the case."

The legislation was voted out of the Senate and now heads to the House, where Colbeck said he would talk to his colleagues to make sure the bill received further vetting, especially on health-related issues. Colbeck noted California just recently vetoed a similar law.

###

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WHAT 5g would mean for Telecom AND what it would mean to US

Despite the convenience and the enormous economic growth potential associated with the Internet of things, our primary concern as legislators is not convenience nor economic growth. As much as I love technology, per our California Constitution, the public health and general welfare of the people of the state are supposed to be our primary concerns. Michigan State Senator Patrick Colbeck, testifying in opposition to their ALEC small-cell Bill on 3/15 2018

TELECOM- 5G is Coming to the Community!

THE REST OF US- We already have WIFI in our homes and can use fixed wired safe, fast, reliable, cyber secure and energy efficient FIBER (And we've already paid for it in our rates!!)

5G refers to the "5th generation" wireless technology. Its intended purpose is to provide faster and higher capacity transmissions to carry the massive amount of data that will be generated from the Internet of Things (IoT), driverless cars, and for faster video streaming. No one is yet clear about how 5G will be achieved, so at present, it is being used more as a marketing term, although in Dec. 2017, industry announced that it has finally settled on specs or standards for 5G. What is clear is that 5G will include the higher millimeter wave frequencies never before used for Internet and communications technology. These waves do not travel easily through buildings so 5G will require millions of new cell towers. The wireless telecom industry is aggressively seeking to outfit nearly every lamppost and utility pole around the country with a wireless "small cell" antenna beaming hazardous radiation next to, or into our homes, 24/7. In light of the robust and ever growing independent science showing adverse health effects from radio frequency/microwave radiation, the densification of our neighborhoods with 5G-infrastructure may prove to be a very ill-conceived idea.

TELECOM - 5G will bring millions of jobs!

THE REST OF US- The future will have automated workers that will replace millions of jobs, The Economist

TELECOM- 5g Cells are no larger than a small pizza box

THE REAT OF US- Small cells measure 3 to 6 ft and there may be multiple boxes up to 28 cubic ft. with batteries, cooling fans, and more accompanys many sites. Small cells also can require a smart meter and Remote Radio Units.

TELECOM- Small cells are within FCC guidelines so there could be no harm

THE REST OF US- The EPA, FDA, NIOSH and OSHA all criticized the FCC radiofrequency guidelines when they were first adopted in 1996. In 2014, the Minister of the Interior wrote that the FCC standards "...continue to be based on thermal heating, a criterion now nearly 30 years out of date and inapplicable today."

TELECOM- Non-ionizing radiation is safe according to the FCC

THE REST OF US- A 28 Million Dollar National Toxicology program study concluded NON- ionizing radiation breaks DNA and CAUSES CANCER

TELECOM- This new network has the potential to unlock up to 12.3 trillion in revenue according to the technology review.

THE REST OF US- Referring to 5gs business case, Bloomsburg Technology writes, 5G "may not be worth it...using wireless connectivity to let machines on the factory floor talk to each other, and for autonomous cars on the freeway to talk to light signals may take years to materialize and may not pay that much. After all, many of these applications can be handled by WIFI networks."

TELECOM- 5g will even help in schools! Technology integration in education inspires positive changes in teaching methods!!

THE REST OF US- Due to smart phones et al. "Young people are on the brink of the worst mental health Crisis in decades." Professor Jean Twenge. Is it wise to increase tech immersion with 5G?

TELECOM- 5g will be great for disaster recovery

THE REST OF US- Cell towers don't hold up under disaster conditions. 17 days after hurricane Maria 86% percent of cell towers were still not working, and 5g boxes have exploded in fires.

TELECOM- "...your whole world could become synced. For example, your smart flooring connected to 5g could communicate with your smart vacuum, also connected to 5g, that it is in need of cleaning.

THE REST OF US- YOU ARE KIDDING ME...A CELL TOWER IN MY YARD so I can know when to CLEAN MY FLOOR

TELECOM- 5g will bridge the digital divide and bring internet to the undeserved communities.

THE REST OF US- Nice try but Telecom will have to Lay out billions for fiber, an expenditure they are Not likely to make in the foreseeable future. So 5g in the time being will nor be slated for cities

TELECOM- The data generated will bring in trillions!! "The value of data goes up every day AI advances." "Data will become a currency." Fortune Magazine.

THE REST OF US- Big data will potentially generate trillions. But, the tradeoff "The protection of PRIVACY is a fundamental human right, and in the 21st century, it may become one of the most critical human rights of all." Marc Rotenberg EPIC President.

TELECOM- 5g can bring fixed wireless to your home with speeds almost as fast as fiber!

THE REST OF US- Again we want safe, fast reliable, cyber secure, and energy efficient fiber to our homes. Not WIRELESS! If someone DOES want wireless, they can use a WIFI network. NO NEED FOR 5G.

What are the Dangers of Living Near Cell Phone Towers?

by www.SixWise.com

Over 190 million cell phones are in use in the United States, with users often scrambling to another room, building or street to get better reception. As consumers, it is frustrating when your cell phone reception gets dropped or is too garbled to hear. But beyond "Can you hear me now?" is another considerably more important question:

Are the cell towers and antennas popping up all over the country - -the very ones that we depend on for clear reception and a wide coverage area -- safe?

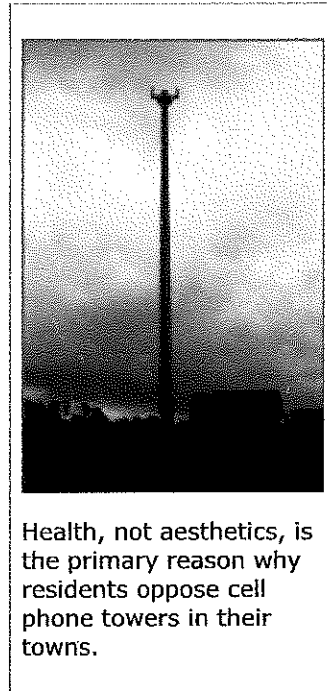
This may have been a moot issue in the past when the towers were sparse and limited to obscure cornfields and hilltops. But the number of these cell "sites," as they're called, has increased tenfold since 1994. Among the more than 175,000 cell sites in the United States are antennas on schools, churches, firehouses, cemeteries and national parks. There's even a cell tower near Old Faithful in Yellowstone.

"Don't Put That Tower Here"

"Our companies are always running into this conundrum, which is, 'We want cell phone service, but don't put that tower here.' When you're dealing with communications through the air, you have to have antennas and towers," said Joe Farren, a spokesman for CTIA-The Wireless Association, the industry's trade group.

Aesthetics aside, the primary reason most people don't want cell sites near their homes and communities is because they're afraid of the potential health effects.

Already, more than 500 cases have sprung up across the country in which people have tried to stop cell phone sites from being constructed, according to Washington attorney Ed Donohue, who represents several cell phone companies.



Health, not aesthetics, is the primary reason why residents oppose cell phone towers in their towns.

Most of the time, the cell phone companies win because, as it stands, federal law does not allow rejection of a tower based on health risks.

Cell Phone Towers: Risky or Not?

If you ask the government, no studies have shown conclusive evidence that radio-frequency emissions, a form of electromagnetic radiation (EMR), from cell towers are harmful.

According to the Food and Drug Administration:

"RF [Radio frequency] exposure on the ground is much less than exposure very close to the antenna and in the path of the transmitted radio signal. In fact, ground-level exposure from such antennas is typically thousands of times less than the exposure levels recommended as safe by expert organizations. So exposure to nearby residents would be well within safety margins."

Cell phone companies also maintain that no risks exist from the towers. "There are no health risks posed by the towers. Independent scientific panels around the world have reached this conclusion," said Russ Stromberg, senior manager of development at T-Mobile.

But other studies seem to tell a different story, with findings such as:

- A study by Dr. Bruce Hocking in Australia found that children living near three TV and FM broadcast towers (similar to cell towers) in Sydney had more than twice the rate of leukemia than children living more than seven miles away.

- Says Dr. Neil Cherry, a biophysicist at Lincoln University in New Zealand:
 - "Public health surveys of people living in the vicinity of cell site base stations should be being carried out now, and continue progressively over the next two decades. This is because prompt effects such as miscarriage, cardiac disruption, sleep disturbance and chronic fatigue could well be early indicators of the adverse health effects. Symptoms of reduced immune system competence, cardiac problems, especially of the arrhythmic type, and cancers, especially brain tumor and leukemia, are probable."



The government and cell phone companies maintain cell towers (and phones) are safe.

- Biomedical engineer Mariana Alves-Pereira says exposure to cell phone towers can lead to vibroacoustic disease. "From what I understand, some of the complaints are similar in what is seen in vibroacoustic disease patients, which are people who develop a disease caused by low frequency noise exposure," she said. Symptoms can include mood swings, indigestion, ulcers and joint pain.
- Dr. Gerard Hyland, a physicist who was nominated twice for the Nobel Prize in medicine, says, "Existing safety guidelines for cell phone towers are completely inadequate ... Quite justifiably, the public remains skeptical of attempts by governments and industry to reassure them that all is well, particularly given the unethical way in which they often operate symbiotically so as to promote their own vested interests."
- According to the Mount Shasta Bioregional Ecology Center, "Studies have shown that even at low levels of this radiation, there is evidence of damage to cell tissue and DNA, and it has been linked to brain tumors, cancer, suppressed immune function, depression, miscarriage, Alzheimer's disease, and numerous other serious illnesses."
- According to Dr. W. Löscher of the Institute of Pharmacology, Toxicology and Pharmacy of the Veterinary School of Hannover in Germany, dairy cows that were kept in close proximity to a TV and cell phone tower for two years had a reduction in milk production along with increased health problems and behavioral abnormalities. In an experiment, one cow with abnormal behavior was taken away from the antenna and the behavior subsided within five days. When the cow was brought back near the antenna, the symptoms returned.

Incentives for Cell Phone Towers

Why would a church, school or other private property allow a cell phone antenna to be placed on the grounds? Cell phone companies pay "rent" for their placement that can range anywhere from \$800 to \$2,000 a month. This can mean all the difference for an under-funded school district or church.

Still, many people are wary that the incentives do not come close to matching the potential risk involved. This includes the International Association of Fire Fighters who, in 2004,

came out against the use of firehouses for cell antennas "until a study with the highest scientific merit" can prove they are safe.

These sentiments are echoed by residents of St. Louis where T-Mobile plans to put a cell site on an 89-year-old church. "That revenue is in exchange for our potential well-being, our peace of mind and our property values," said resident David O'Brien. "None of us are willing to take that risk."

Recommended Reading

[Noise Pollution: How Bad is it, How Bad Could it Get, What are the Effects?](#)

[Bottled Water: Which City's Tap Water System is Making a Flood of Cash off of You?](#)

Sources

[Food and Drug Administration: Cell Phone Facts](#)

[Health Effects Associated With Mobile Base Stations in Communities](#)

[Are Cell Phone Towers Making You Sick?](#)

[Mount Shasta Bioregional Ecology Center](#)

[Wired News: Cell Phone Tower Debate Grows](#)

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Cell Towers Are Attracting Lawsuits



by [Smart City Memphis \(RSS\)](#) | June 30th, 2005 1:18am CDT

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It's a battle of goliaths: Can you hear me now vs. Not in my backyard.

More than 500 cell tower disputes have already ended up in court across the U.S. and as the towers become as ubiquitous as the phones themselves, look for the number to climb, especially now that they are showing up in parks and on church property.

Some cities, worried that towers reduce property values, oppose new towers within their borders. They have been surprised to learn that federal law allows cell phone companies to set aside local zoning decisions if those decisions would prevent seamless cell phone service. Also, the Federal Communications Commission says that cities can't cite health hazards as grounds for lawsuits.

In other word, fighting cell towers rivals fighting City Hall as the ultimate uphill battle.

Public outcries have given rise to mutated 150 foot tall fir trees and cacti and giant flagpoles. To those who prefer form to follow function, the disguises only make them more visually intrusive. Apparently cell towers like the mammoth fir in East Memphis are supposed to show environmental sensitivity. The argument would be more convincing if the base of the cell tower wasn't full of trees felled for it. (We didn't even know Rusty Flynneman was involved in cell towers.)

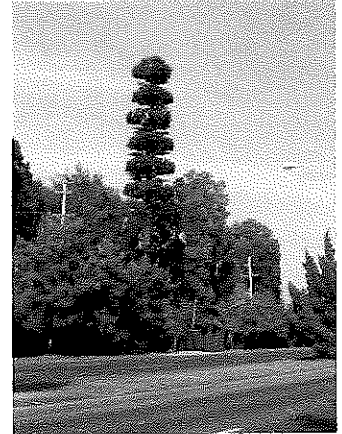
With 171 million cell phones already in the hands of Americans today – 58 percent of the public – technology marches on. So will more and more lawsuits, conjuring up images of people in their cars on their cell phones calling their lawyers to complain about cell phone towers.

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The Guardian

Phone masts blight house sales

Health fears are alarming buyers as masts spread across Britain to meet rising demand for mobiles

Paul Harris

Sat 24 May 2003 20.26 EDT

Once it was the nightmare of a new motorway being built on their doorsteps that haunted homeowners anxious to preserve the value of their houses. But now a new threat is wiping tens of thousands of pounds off the value of properties across Britain: mobile phone masts.

They are scores of feet tall and critics say they are a health risk to anyone who lives near them. They are being built in every corner of Britain.

Over the past decade Britain has embraced mobile phone technology with almost religious fervour. There are now more than 50 million mobiles in use, and to cope with the demand a network of 35,000 masts has been erected. By 2007 there will be 48,000.

Anti-mast campaigners have warned that radiation emitted by them is potentially dangerous to humans, especially children. Though phone companies and government experts insist the technology is safe, fear of the masts has become a real issue in buying and selling houses. It mirrors the health fears - and the resultant impact on property prices - that surrounded Britain's network of electricity pylons when they were built.

'It can be a bit like dealing with negative equity. Some houses just become very, very difficult to sell and if you need to move quickly for your job or family reasons, then you are going to have a real problem,' said Alasdair Philips, founder of Powerwatch, an anti-phone mast lobby group.

The consequence of having a phone mast near you can be tragic. Nancy Watts suffers from multiple sclerosis and has been forced to retire from her job as an international business consultant. Her husband is now working part-time to be able to help care for her.

With such restricted employment, the value of their bungalow in the Shropshire countryside was a vital part of their retirement plans. But now that value has been almost halved by the phone mast outside their home. 'We tried to sell and everyone who came around would see what a lovely home we had and then see the mast so close to us and just leave,' Mrs Watts said.

Their estate agent told them the mast would prevent them from selling their house at anything like the £189,000 it had been valued at. 'She said that if we wanted a quick sale, we would have to take our asking price down by £70,000-£80,000. That was just heartbreaking,' Mrs Watts said.

With their reduced earnings and Mrs Watts's condition worsening and confining her to a wheelchair, such a loss was unacceptable. She also believes the radiation from the mast has led to

a sudden deterioration in her health. 'I feel we are trapped here next to this mast. We can't move away from it because no one will buy our house,' she said.

It is a problem replicated across the country as more masts are built and awareness of the health warnings from anti-mast campaigners becomes more widespread. 'We are getting a lot of inquiries about this from people asking us if they should buy a house or not. It is something that people are becoming very concerned about,' said Lisa Oldham, spokeswoman for campaign group Mast Sanity.

Estimates of the effect on property prices vary and no academic research has been carried out. However, Mast Sanity believes anecdotal evidence from its hotline indicates a mast will knock between 15 and 25 per cent off the value of a house, depending on how close it is and the size of the structure.

Melfyn Williams, chairman of the National Association of Estate Agents, said in some cases a mast could see a home reduce in value by between 5 and 10 per cent. 'It is not scaremongering. It is more about a growing fear of the unknown of what the health risks are, especially among those with young children,' he said.

Campaigners are considering legal action to seek compensation for the loss in value of their properties or to get the masts removed. Last week, seven householders in Swindon won sums of between £10,000 and £20,000 each from their local council after it mistakenly allowed a mast to be erected in the middle of their residential street, causing their properties to crash in value.

Campaigners have hailed this as a landmark judgment: it was the first time a government ombudsman had accepted masts could hurt house prices. A flood of similar claims is expected.

'It was a huge decision and we will see many more claims like this,' said Frankie Evans, spokeswoman for Mast Action UK. Several other cases are being prepared. One home owner in Gloucestershire, who wished to remain anonymous as legal proceedings had already begun, said building a mast had wiped £250,000 from the value of his house. 'Losing that amount through something beyond our control does leave one feeling more than a little browned off,' he said.

However, phone companies insist the masts have not been shown to bring house prices down. 'The reasons why people buy or don't buy houses are very diverse and it is impossible to identify one factor as having such an effect,' said a spokeswoman for the Mobile Operators Association, the industry body representing British mobile phone firms.

That does not convince Nancy Watts. She said many of the people who came to view her house blamed the mast as the reason for not making an offer. Some did not even view it once they saw the mast. 'It was terrible to see some people drive up, take one look at the mast and then drive off again without even stopping,' she said.

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The Journal Gazette

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Wednesday, March 16, 2016 8:55 am

Zanesville sued over cell tower

Rebecca S. Green The Journal Gazette

ZANESVILLE – There's been some disagreement in the small Allen County border town of Zanesville.

And with the discovery of a federal lawsuit filed against the town for the side it took, Town Council President John Schuhmacher believes it is going to get worse.

On Monday, Skyway Towers LLC sued the town, asking a federal judge to overturn a recent vote of the town's three-member board.

That vote, taken March 19, prohibited Skyway Towers from putting a new cellphone tower, at the behest of Verizon, in a small area near the town's Lions Club park.

A similar vote went the same way late last year.

"We've told them no twice already. I feel like it's a big corporation trying to muscle a little town into doing what they want," Schuhmacher said, adding that the only entities that would benefit would be the cellular service provider and the Lions Club.

But the lawsuit alleges that the small town, population about 600 according to census data, has no choice but to allow the construction of the cell tower because the federal Communications Act requires that nothing be allowed to prohibit "the provision of personal wireless services."

According to the lawsuit, sometime in the recent past, radio frequency engineers with Verizon identified a "significant gap" in the company's ability to provide reliable service in the area of the Allen and Wells county lines, near the town of Zanesville, which straddles the border.

Verizon hired Skyway to develop a wireless communications facility in that area.

Four potential properties were identified, and Skyway officials went about trying to negotiate a lease that would allow them to build their tower. At the end of the process, it was the Zanesville Lions Club that agreed to let the company lease an 80-foot by 80-foot square piece of property.

The trouble, though, is that the property is zoned as residential, which does not permit the construction of such a tower. The Wells County zoning code governs the town, and under that code, only agricultural-residential, agricultural-intensive or industrial zones would allow the project, according to court documents.

Skyway went before the Wells County Plan Commission to ask for a recommendation to the town to rezone the property.

Skyway obtained a favorable recommendation in November. The town denied the request later that month.

Again Skyway went back to the Plan Commission, this time in early March. The company again received a recommendation, but with a bit more hesitation this time, according to Michael Lautzenheiser Jr., Wells County's area plan director.

This time, the Plan Commission did not take a position one way or another, Lautzenheiser said.

The town denied the request again.

"(Skyway) had several prospective sites, and I asked them at the public meeting why these other sites didn't get chosen," Schuhmacher said.

Schuhmacher said Skyway told him they'd had trouble getting commitments, which he attributed to a lease price set too low, at \$800 a month.

"Verizon is going to make that in a few minutes," he said.

The Town Council took great issue with the company wanting to declare this small square of land, nestled up against batting cages and a kids' play area, a piece of agricultural ground.

A petition circulated throughout the community drew an overwhelmingly strong response opposing the project, Schuhmacher said.

"It's just not the right thing to do," he said. "They are coming in and saying, 'The law doesn't apply to us. We're going to take a square peg and drive it into a round hole.'

"With a sledge hammer," Schuhmacher added.

In the lawsuit, Skyway alleges that the town violated the Communications Act by effective prohibition, by allowing no wireless communications facility within the town by way of its zoning ordinances.

The company is asking a federal judge to review the complaint, order the town to grant the application, and issue a judgment that the town's actions are in violation of the federal Communications Act.

"When they hear about the lawsuit, the town's going to go spastic," Schuhmacher said.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

LOS ANGELES SMSA LIMITED
PARTNERSHIP, a California limited
partnership d/b/a/ VERIZON
WIRELESS,

Plaintiff,

v.

COUNTY OF LOS ANGELES,
CALIFORNIA,

Defendant.

CASE NO. 2:16-CV-01412-JAK-AGR

**DEFENDANT COUNTY OF
LOS ANGELES' OPENING TRIAL
BRIEF**

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II. INTRODUCTION

Defendant County of Los Angeles ("County") did not violate the Telecommunications Act of 1996 (the "Act") when it denied the application of Plaintiff Los Angeles SMSA Limited Partnership, doing business as Verizon Wireless ("Verizon") for a conditional use permit ("CUP") to install and operate a wireless telecommunications facility (the "Project") in the community of Charter Oak. The facts at trial will show that the County's denial of the Project is authorized by the County's zoning code and is supported by substantial evidence.

Verizon's argument that it urgently needs this Project to close an alleged significant gap in service, and that it has fully explored all alternatives, is belied by Verizon's representation to the County on January 29, 2016 that it wanted a sixmonth tolling agreement in order to provide it time to "further evaluate both the need for the site (i.e., the existence of a significant gap) and possible alternatives." (Administrative Record ("AR")-010250).¹ This is an admission that as of January 29, 2016, Verizon had not fully evaluated the need for the site and whether there was a significant gap. This is also an admission that as of January 29, 2016, Verizon had not fully evaluated possible alternatives. Verizon's authorized representative testified under oath at the County Planning Commission public hearing that the proposed Project "is not a coverage site" (AR-006118:20) and that there is "not [a] coverage gap[.]" (AR-006115: 1-2). Verizon's representative further testified that there is a "map on the Verizon website that indicates that there is some pretty substantial network coverage in the area[.]" (AR-006115: 6-7). Additionally, Verizon's representative further testified under oath to the County Planning Commission that the Project was "a capacity site" (AR-006118:20) that is "aiming to draw network stress off of other facilities" (AR-006113: 21-22).

Following its January 29, 2016 request for six months to "further evaluate both the need for the site (i.e., the existence of a significant gap) and possible alternatives" (AR-010250), Verizon never submitted any further statement or evidence into the administrative record regarding the need for the site or possible alternatives. At its March 29, 2016 public meeting, the Board of Supervisors ("Board") considered and adopted "Findings of the Board of Supervisors and Order" ("Board Findings and Order"), which includes written findings and an order denying Verizon's appeal. (AR-010085-97).

The evidence considered by this Court at trial should be limited to the administrative record that was before the County. Verizon will proffer declarations that could have been submitted to the County during the administrative review process. There is simply no reason why Verizon could not have included the extra record evidence it now proffers two years ago during the administrative proceeding before the Board made its decision. If the Court were to consider this extra record evidence, it would turn the doctrine of exhaustion of administrative remedies on its head and incentivize telecommunications companies to sandbag local governments

by not having to put forth all of their arguments and evidence in the administrative proceeding. Furthermore, considering this extra-record evidence rewards Verizon for telling the County one thing during the administrative process and then changing its position years later during this litigation. For these reasons, the County's factual statement and the evidence it relies on in this brief will be limited to the administrative record. To the extent that Verizon proffers extra-record declarations or deposition testimony, the County reserves its rights to file evidentiary objections and, in the alternative, responsive arguments.

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III. STATEMENT OF FACTS

A. Verizon Submits its Application for the Project to the County.

On August 28, 2014, Verizon Wireless submitted an application to the County for a CUP to install and operate a wireless telecommunications facility at 4337 North Sunflower Avenue, in the unincorporated community of Charter Oak. (AR000274-305; First Amended Complaint, ¶ 16). The site plan for the Project depicts 12 panel antennas, each eight feet in height, mounted on three arms (four on each arm) of a 46-foot-high tower; 12 remote radio units (four on each arm) mounted behind the antennas; and two parabolic antenna dishes, and other equipment mounted on the steel frame. (AR-000230-31). The antenna array and equipment would be camouflaged within a 46-foot-high steel trellis triangular frame with a cross design mounted on three posts at the top of the frame. (AR-010086; AR-000185-88).

B. The County Planning Commission Holds a Public Hearing on Verizon's Permit Application.

Following an appeal from a hearing officer's decision (AR-2865-66), the County Planning Commission ("Commission") conducted a de novo public hearing on September 2 and October 28, 2015. (AR-8136-8141). The Commission was presented with a petition signed by over 700 residents opposing Verizon's proposed Project and received 229 letters from the surrounding community opposing Verizon's Project. (AR-005771-5798; AR-02138-2171; AR-002907-003206; AR005025-005202 (letters)). At the Commission public hearing, 26 community residents provided testimony opposing Verizon's Project. (AR6044-6112; 8168-8171). Those testifying at the Commission hearing in opposition to the Project raised aesthetic concerns regarding visibility of the proposed wireless tower from nearby hiking trails, negative impacts to views of nearby mountains, the height of the tower compared to other structures in the area which are limited to 35 feet in height, and its towering presence over nearby and adjacent residences, contending that it "destroy[ed] the look of the neighborhood." (AR-006066:12 – AR-006070:12). Residents living near the proposed Project site stated under oath that it

did "not match our community," it "destroys the look of the neighborhood," would be a "large eye sore," and reflected "encroaching commercialism into [the] neighborhood." (AR-006066-69). An immediate neighbor testified that the proposed tower would "loom over" his backyard. (AR006071). It was pointed out that the tower would be "taller than the trees, light poles, and even the church." (AR-006075). One individual testified that none of eight other local churches have a separate bell tower. (AR-0060078). At the Commission hearing, the manager for homeowners associations testified that a cell tower adversely affects property values, specifically residential homes, decreasing values from 2 to 20 percent. (AR-006093-04).

C. Verizon's Representative Testifies Under Oath that there is Not a Coverage Gap and that Verizon's Website Indicates that it Has Pretty Substantial Network Coverage in the Area.

Verizon's representative testified under oath at the September 2, 2015 public hearing before the Commission that the proposed Project "is not a coverage site." (AR-006118:20). Verizon's representative further testified that there is a capacity gap, but "not [a] coverage gap" (AR-006115: 1-2). Rather, this is "a capacity site" (AR-006118:20) that is "aiming to draw network stress off of other facilities" (AR-006113: 21-22) and to improve "capacity for residents 5, 10, even 15 years into the future" (AR-006118:20-23). Verizon's representative further testified under oath that the main basis of the appeal to the Planning Commission is "that there is no significant gap in coverage in this particular neighborhood, which may be true." (AR-006118:13-16). Verizon's representative further testified that there is a "map on the Verizon website that indicates that there is some pretty substantial network coverage in the area[.]" (AR006115: 6-7).

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D. The County Planning Commission Adopts Findings and Denies Verizon's Project Application.

On October 28, 2015, the Commission took action to deny the Verizon Project and adopted findings in support of its denial of Verizon's permit application. (AR-8136-811; AR-8171). The Commission adopted findings in support of its denial of Verizon's Project that included: (1) a finding that opponents have provided sufficient written and oral testimony to substantiate that the project would have negative visual and aesthetic impacts on adjacent properties; and (2) a finding that opponents have provided sufficient written and oral testimony to substantiate that the Project would have negative impacts on property values and the ability of existing residents to sell their homes. (AR-008140). Based on the public hearing testimony and record before it, the Commission concluded that the Verizon Project would adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, will be materially detrimental to the use,

enjoyment or valuation of property of other persons located in the vicinity of the site, and will jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare. (AR-008141).

E. Verizon Appeals to the Board and the Board Holds a Public Hearing and then Instructs County Counsel to Prepare Proposed Findings and Bring Them Back to the Board for Consideration.

On November 12, 2015, Verizon appealed the Commission's denial of its permit application to the Board. (AR-008257-59). On January 26, 2016, the Board held a public hearing on Verizon's appeal. (AR-008924-009080; AR010086). Several residents opposed Verizon's proposed wireless facility Project. *Id.* At the Board hearing, the manager for homeowners association adjacent to the proposed site testified that a cell tower adversely affects property values, specifically residential homes, decreasing values from 2 to 20 percent. (AR009019). During the January 26, 2016 Board meeting, Verizon's lawyer asked the Board to refer the matter back to the County Department of Regional Planning and to hire an independent third party expert. (AR-009001). At the conclusion of the January 26, 2016 public hearing on Verizon's appeal, the Board instructed County Counsel to prepare for the Board's consideration, the necessary findings to affirm the Commission's denial of the Project. (AR-009809-10).

F. On January 29, 2016, Verizon Requested that the County Enter Into a Six-Month Tolling Agreement to Allow Verizon Time to Further Evaluate The Need For the Wireless Facility and Possible Alternatives.

On January 29, 2016, Verizon's attorney emailed the County proposing a sixmonth extension of the statute of limitations in order to provide time for Verizon Wireless to "further evaluate both the need for the site (i.e., the existence of a significant gap) and possible alternatives." (AR-010250). This is an admission that as of January 29, 2016, Verizon had not fully evaluated the need for the site and whether there was a significant gap. This is also an admission that as of January 29, 2016, Verizon had not fully evaluated possible alternatives.

County Counsel responded to Verizon's email that same day and in an email on January 29, 2016, informed him that:

"The statute of limitations has not begun to run. My office needs to prepare findings for denial. Those findings then go back to the Board of Supervisors ("Board") for its consideration. The proposed findings will be listed on the agenda as a consent item, which means no public testimony is held unless a member of the public signs up to speak on the matter. The Board's decision on the application is not final until the Board approves findings for denial. So, there is no need for a tolling

agreement at this point. In fact, if Verizon were to file suit now, it would be premature." (AR-010251).

Later that same day, January 29, 2016, Verizon's attorney responded with an email to County Counsel that simply stated, "OK, thank you[.]" (AR-010251). There was no further communication from any representative of Verizon to the County about the tolling agreement, or the appeal, until the County was served with Verizon's lawsuit on March 7, 2016.

G. Without Further Communication with the County and With the Knowledge that the Board Had Not Taken Final Action on its Appeal, Verizon Prematurely Files This Lawsuit.

Despite being informed by the County that the Board had not taken final action and therefore the statute of limitations had not even begun to run, Verizon filed this lawsuit on February 29, 2016 and served it on the County on March 7, 2016. (Dkt. 1, 11).

H. On March 29, 2016 the Board Took Final Action on Verizon's Appeal When it Considered and Adopted Findings and an Order Denying Verizon's Appeal and CUP Application.

At its March 29, 2016 public meeting, the Board adopted the Board Findings and Order, thereby taking final action to deny Verizon's appeal and CUP application. (AR-100081;AR-10085-10097). The Board Findings and Order includes a finding by the Board that "until approval of findings, the Board retains the authority to approve or deny a project, or change its terms of approval." (AR010095).

In the Board Findings and Order, the Board made the following findings:

- "Approval of the Project would not maintain the character of the neighborhood, nor maintain nor enhance the quality of the existing neighborhood. To the contrary, the Project would detract from the neighborhood's character.
- Opponents have provided sufficient written and oral testimony, including photo simulations, to substantiate that the Project will have negative visual and aesthetic impacts on adjacent and nearby properties and to views from properties in the area.
- The Project is an incompatible use in this low density residential area and that the proposed tower is different from other church towers or steeples in the area because it is not connected to the church building.
- The proposed wireless telecommunication facility is not integrated into the existing church building and would be placed in a separate steel trellis frame. In addition, the 46-foot-high steel trellis frame

exceeds the height of the existing church building and other surrounding buildings, which are subject to a 35-foot height limit in the A-1 and residential zones. Pursuant to FCC regulations, the height of the WTF could be increased by ten percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, which would exacerbate the negative impacts from the height differential.

- The existing water tanks in the vicinity of the Project Site have negative visual and aesthetic impacts on adjacent properties and that the addition of the Project would exacerbate these impacts.
- The proposed wireless telecommunication facility will adversely affect the comfort or welfare of people residing in the surrounding area and will be materially detrimental to the use, enjoyment, and valuation of property located in the vicinity of the site.
- Testimony was provided that prospective buyers of homes have terminated purchase agreements when they become aware of a wireless telecommunication facility in the immediate vicinity and that property values can decrease from 2 to 20 percent with at least some of that decrease due to aesthetic impacts. Thus, the Board finds that the appellant and other opponents have provided sufficient written and oral testimony to substantiate that the Project will have negative impacts on property values and the ability of existing residents to sell their homes. Therefore, the Board finds that the Project will be materially detrimental to the valuation of property in the area.
- The Board finds that Verizon failed to fully explore and have the County consider small cell sites as an alternative to the Project Site. The Board finds that, depending on the design and siting of such much smaller facilities, they could be less intrusive aesthetically than a 46-foot-high tower, however disguised, standing alone in a church parking lot and towering over neighboring properties and negatively impacting views of immediate and nearby residents. The evidence submitted by Verizon did not show that Verizon considered all available nearby co-location facilities on other towers or macro-sites suggested by Project opponents or otherwise available, in particular at a site on La Cienega Boulevard. Accordingly, the Board finds that Verizon failed to show that, even assuming for purposes of argument that there was a significant gap in Verizon's coverage, that the Project was the least intrusive means for closing such a gap."

(AR-010095-96).

IV. ARGUMENT

A. Verizon's First Cause of Action Fails Because the County's Denial of Verizon's CUP Application is Supported by Substantial Evidence.

The Act preserves "the traditional authority of state and local governments to regulate the location, construction, and modification" of wireless communications facilities. *T-Mobile South, LLC v. City of Roswell*, 135 S. Ct. 808, 817 (2015). The standard of review is whether there was substantial evidence in the record supporting the decision and if there is substantial evidence the decision must be upheld. *Smith Communications LLC v. Washington Cty., Ark.*, 785 F.3d 1253, 1257, 1259 (8th Cir. 2015). The substantial evidence inquiry does not incorporate the substantive federal standards imposed by the Act, but rather requires a Court to determine "whether the zoning decision at issue is supported by substantial evidence in the context of applicable state and local law." *See MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 723-25 (9th Cir. 2004) ("*Metro PCS*"). The substantial evidence inquiry is deferential to the local agency and a court "may not overturn the [County's] decision on 'substantial evidence' grounds if that decision is authorized by applicable local regulations and [is] supported by a reasonable amount of evidence (i.e., more than a 'scintilla' but not necessarily a preponderance)." *Id.* at 725. Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* Review "under this standard is essentially 'deferential,' such that courts may 'neither engage in their own factfinding nor supplant the [local agency's] reasonable determinations.'" *Id.*, citing *Cellular Telephone Co. v. Town of Oyster Bay*, 166 F.3d 490, 494 (2nd Cir. 1999). Verizon bears the burden of showing that the Board's decision was not supported by substantial evidence. *Voice Stream PCS, I, LLC v. City of Hillsboro*, 301 F.Supp.2d 1251, 1256 (D. Or. 2004); *AT&T Wireless Services of California LLC v. City of Carlsbad*, 308 F.Supp.2d 1148, 1158-59 (S.D. Cal. 2003).

Here, the County's denial of the Project was based on traditional land use criteria and the County Code, and supported by substantial evidence in the record. Under the County Code, a conditional use permit was required for the Project. To obtain a conditional use permit, information must be presented at public hearings to substantiate, first, that the proposed use will be consistent with the County's applicable General Plan and information must be presented at hearings that show: (a) the requested use will not adversely affect the peace, comfort, or welfare of persons residing or working in the surrounding area; (b) the requested use will not be materially detrimental to the use, enjoyment, or valuation of property located in the vicinity of the Project Site; and (c) that the proposed site is adequate in size and shape to accommodate parking and loading facilities required by the County or as is otherwise required to integrate the use with uses in the surrounding area. (AR-010088). An application for a conditional use permit is required to be denied if those findings cannot be made.

Photographic representations of proposed tower and testimony of neighbors concerned about views and aesthetics constitutes substantial evidence supporting the denial of an application under the Act. *Helcher v. Dearborn County*, 595 F.3d 710, 724 (7th Cir. 2010). Here, the record contains photographic representations of the proposed tower and testimony from residents under oath that the tower would have negative aesthetic impacts to their views and their neighborhood. (AR-002889-2893; 2905-2906 (photo simulations); AR-002907-3260 (letters from community); AR-006044-6112; AR008168-8171; AR-006066-69 (tower would impact views; be an eyesore; and destroy the look of the neighborhood); AR-009866 (negative visual impact)). The Board found that Project opponents have provided sufficient written and oral testimony, including photo simulations, to substantiate that the Project will have negative visual and aesthetic impacts on adjacent and nearby properties and to views from properties in the area. (AR-010095). The Board further found that the Project's 46-foot-high steel trellis

frame exceeds the height of the existing church building and other surrounding buildings, which are subject to a 35-foot height limit in the A-1 and residential zones. (AR-010095). The Board found that the Project would detract from the neighborhood's character and would adversely affect the comfort or welfare of people residing in the surrounding area and will be materially detrimental to the use, enjoyment, and valuation of property located in the vicinity of the Project Site. (AR-010095).

Testimony in the record demonstrated that prospective buyers of homes have terminated purchase agreements when they become aware of a wireless telecommunication facility in the immediate vicinity and that property values can decrease from 2 to 20 percent with at least some of that decrease due to aesthetic impacts. (AR-006093-04; AR-005763; AR-004488-91). The Board found that the appellant and other opponents have provided sufficient written and oral testimony to substantiate that the Project will have negative impacts on property values and the ability of existing residents to sell their homes. (AR-010096). On that basis, the Board found that the Project will be materially detrimental to the valuation of property in the area. (AR-010096).

Courts may not overturn a decision on substantial evidence grounds if that decision is supported by a reasonable amount of evidence (i.e., more than a scintilla but not necessarily a preponderance). *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1053 (9th Cir. 2014), citing *MetroPCS, supra*, 400 F.3d at 725. For the reasons stated herein and based on substantial evidence in the administrative record, the First Cause of Action fails and, following trial, judgment should be entered in favor of the County.

B. The Second Cause of Action Should Be Rejected Because Verizon Fails to Meet its Burden to Demonstrate a Significant Gap in Service.

The Act precludes local governments from prohibiting, or effectively prohibiting, a wireless provider from closing a significant gap in its coverage. *Metro PCS, supra*, at 731, 733. Significant gap determinations are extremely fact-specific inquiries that defy any bright-line legal rule. *Sprint PCS v. City of Palos Verdes Estates* 583 F.3d 716, 727 (9th Cir. 2009) ("*City of Palos Verdes*

Estates") citing to *MetroPCS, supra*, 400 F.3d 715, 733. Not all gaps in service are legally significant. In *City of Palos Verdes Estates, supra*, 583 F.3d at 727, the Ninth Circuit criticized the district court for assuming that a "gap" in Sprint's coverage was legally significant. Citing *Voice Stream PCS I, LLC v. City of Hillsboro* 301 F.Supp.2d 1251, 1261 (D.Or.2004), the Ninth Circuit distinguished between facilities needed to improve weak signals or to fill a complete void in coverage. *City of Palos Verdes Estates, supra*, 583 F.3d at 727. Only gaps that are "tantamount to a prohibition on telecommunications service" are legally significant. *Id.* In *MetroPCS, supra*, 400 F.3d 715, 734, n. 10 (9th Cir. 2005), the Ninth Circuit explained that the Act "does not guarantee wireless service providers coverage free of small 'dead spots,'" and that "the relevant service gap must be truly 'significant'" and "not merely individual 'dead spots' within a greater service area." Marketing representations the wireless carrier makes to the public regarding its coverage are relevant to the existence of a significant gap in service. *MetroPCS, supra*, 400 F.3d at 733.

1. Verizon's Representative Admitted Under Oath that There is No Service Gap During the Public Hearing Before the Commission.

Verizon's authorized representative testified under oath to the Commission at the public hearing on Verizon's CUP application that the proposed wireless facility Project "is not a coverage site." (AR-006118:20). Verizon's representative further testified that there is a capacity gap, but "not [a] coverage gap" (AR-006115: 1-2). Rather, this is "a capacity site" (AR-006118:20) that is "aiming to draw network stress off of other facilities" (AR006113: 21-22). A capacity gap is not a service gap. Verizon cannot ignore that its representative testified under oath to the County Planning Commission that there is a "map on the Verizon website that indicates that there is some pretty substantial network coverage in the area[.]" (AR006115: 6-7). Verizon should be bound by its representations to the County that this is not a coverage site and that it has substantial network coverage in the area.

2. Verizon's Representative Admitted To the Commission that Verizon's Website Indicated Substantial Network Coverage in the Charter Oak Area.

Marketing representations the wireless carrier makes to the public regarding its coverage are relevant to the existence of a significant gap in service.

MetroPCS, supra, 400 F.3d at 733. Evidence in the record demonstrated that Verizon's website indicated that the Charter Oak area reflected excellent coverage. (AR-006046:10-15; AR-006047: 11 – 6048:3; AR-002873-76; AR-008764-78). Verizon's representative acknowledged under oath to the Commission that Verizon's website indicates that there is "pretty substantial network coverage in the area[.]" (AR006115). Verizon's representative further testified under oath that the main basis of the appeal to the Planning Commission is "that there is no significant gap in coverage in this particular neighborhood, which may be true." (AR-006118:13-16).

3. Verizon's Lawyer Admitted to the County on January 29, 2016 that Further Evaluation of Whether A Significant Gap Existed Was Needed.

On January 29, 2016, Verizon's lawyer wrote to the County stating that Verizon wanted a sixmonth tolling agreement in order to provide it time to "further evaluate both the need for the site (i.e., the existence of a significant gap) and possible alternatives." (AR-010250). This is an admission that as of January 29, 2016, Verizon had not fully evaluated the need for the site and whether there was a significant gap.

C. Verizon Failed to Meet its Heavy Burden to Show that the County's Denial-Constitutes a Prohibition of Service.

To establish effective prohibition of service, the wireless provider also must prove that "the manner in which it proposes to fill the significant gap in services is the *least intrusive on the values that the denial sought to serve.*" *T-Mobile USA, Inc. v. City of Anacortes* 572 F.3 987, 995 (9th Cir. 2009) ("*Anacortes*"). The Ninth Circuit added that the Least Intrusive Means test "allows for a meaningful comparison of alternative sites before the siting application process is needlessly repeated" and gives applicants "incentive to choose the least intrusive site in their

first siting applications, and it promises to ultimately identify the best solution for the community, not merely the last one remaining after a series of application denials." *Anacortes, supra*, 572 F.3d at 995. Initially, the wireless provider "has the burden of showing the lack of available and technologically feasible alternatives." *Anacortes, supra*, 572 F.3d at 995. To meet that burden, the provider must submit a comprehensive application, which includes consideration of alternatives, showing that the proposed wireless communications facility is the least intrusive means of filling a significant gap. *Anacortes*, 572 F.3d at 998. The government may then rebut the prima facie showing by offering "potentially available and technologically feasible alternatives." *Id.* The provider has an opportunity "to dispute the availability and feasibility of the alternatives favored by the locality." *Id.*

There is no prohibition of wireless services within the meaning of the Act if the carrier's request is denied but the carrier may turn to alternative sites, even if those sites may be less than optimal. *Airtouch Cellular v. City of El Cajon*, 83 F.Supp.2d 1158, (S.D.Cal. 2000) (hereinafter "*City of El Cajon*"), citing *Sprint Spectrum v. Board of County Commissioners of Jefferson County*, 59 F.Supp.2d 1101, 1109-10 (D. Colo. 1999) (forcing the carrier to use lesser alternatives does not constitute prohibition). The carrier has a "'heavy' burden to show prohibition" and must do so by showing that "further reasonable efforts are so likely to be fruitless that it is a waste of time even to try." *City of El Cajon, supra*, 83 F.Supp.2d 1158, 1167-68, citing *Amherst N.H. v. Omnipoint Communications Enterprises Inc.*, 173 F.3d 9, 14-15 (1st Cir. 1999).

1. Verizon Admitted to the County Just Weeks Before it Filed this Lawsuit that it Needed Six Months to Consider Possible Alternatives.

Verizon's attorney stated in an email to the County on January 29, 2016 that Verizon wanted a sixmonth tolling agreement in order to provide it time to "further evaluate both the need for the site (i.e., the existence of a significant gap) and possible alternatives." (AR-010250). This is an admission that as of January 29, 2016, Verizon had not fully evaluated possible alternatives.

2. Verizon Did Not Fully Analyze the Viability of the Small Cells Alternative or the Glen Oaks Elementary School Alternative.

In its alternative analysis, Verizon failed to give serious consideration to small cells and failed to demonstrate that they are not a feasible alternative. In its one paragraph discussion of small cells, Verizon stated that its "experience is that each small cell in the right-of-way adjacent to homes raises concerns with adjacent neighbors. The individual aesthetic and environmental impact of each of the five small cells would need to be individually considered. Given the potential increased impacts due to multiple locations, this cannot be considered to be less intrusive than the Proposed Facility." (AR-008742).

There is no evidence in the administrative record that Verizon prepared any photo simulations of the small cells alternative. Nor is there any evidence that Verizon actually investigated whether the community would support small cells as an alternative. In fact, the evidence in the record demonstrated that the community did support the small cells alternative. (AR-002884) Nor did Verizon explore the alternative location of Glen Oaks Elementary School based on its own policy, not on any technical feasibility analysis. (AR-005738).

Here, as with the applicant in *City of El Cajon*, Verizon has failed to demonstrate that the small cells alternative or the Glen Oaks Elementary School are entirely unfeasible. *City of El Cajon, supra*, 83 F.Supp.2d 1158, 1168. Instead, Verizon rejected the small cells and Glen Oaks Elementary School alternatives without giving them serious consideration. *See USCOC of Greater Iowa, Inc. v. Zoning Board of Adjustment of the City of Des Moines*, 465 F.3d 817, 825 (8th Cir. 2006) (applicant did not adequately investigate all feasible alternatives and rejected alternatives without giving them serious consideration). Verizon simply has not demonstrated that exploring these alternatives are "so likely to be fruitless that it is a waste of time even to try." *City of El Cajon, supra*, 83 F.Supp.2d 1158, 1167-68, The Board's finding that Verizon failed to fully explore alternatives (AR010096) is thus supported by substantial evidence and should be upheld by this Court.

V. CONCLUSION

For the reasons set forth herein, the County respectfully requests that at the trial the Court will find that the County's decision is supported by substantial evidence and that Verizon's claims fail.

DATED: March 19, 2018

Respectfully submitted,

MARY C. WICKHAM

County Counsel

By

SCOTT KUHN

Principal Deputy County Counsel

Attorneys for COUNTY OF LOS ANGELES
DEFENDANTS

CERTIFICATE OF SERVICE

I certify that counsel of record who are deemed to have consented to electronic service are being served on March 19, 2018 with a copy of this document via the Court's CM/ECF system pursuant to Local Rule 5-3.3.

/s/ Scott Kuhn
Scott Kuhn

TABLE OF AUTHORITIES

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<i>Airtouch Cellular v. City of El Cajon</i> , 83 F.Supp.2d 1158 (S.D.Cal. 2000)	15, 16
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FEDERAL STATUTES

Telecommunications Act of 1996, 47 USC section 332(c)(7)(B)(v)	passim
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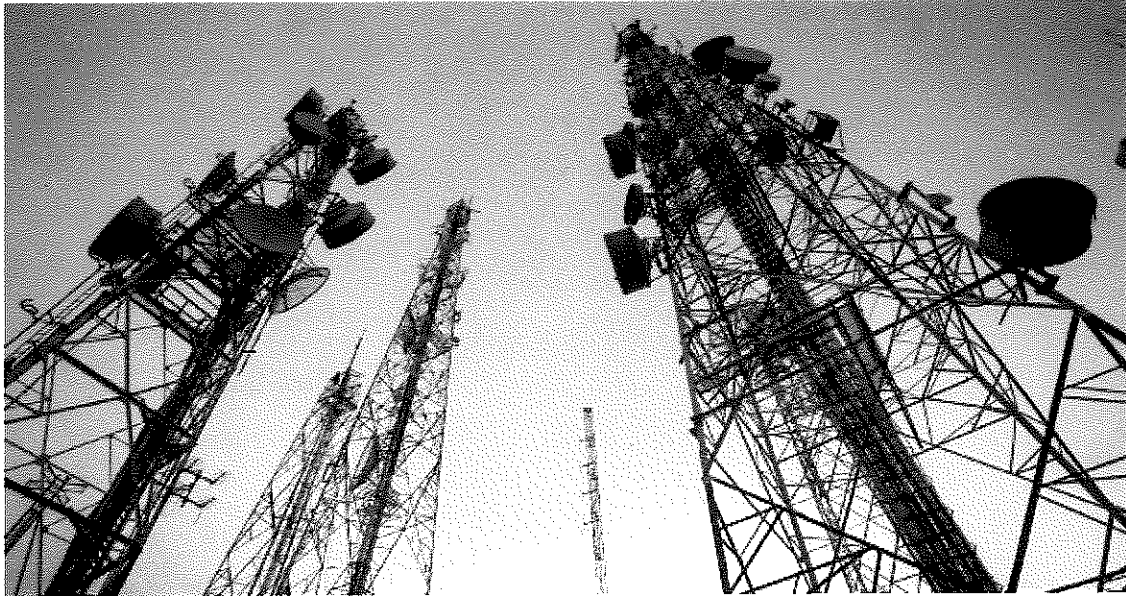


Posted on: Tuesday, March 27th 2018 at 1:15 pm

Written By: Lloyd Burrell (/gmi-blogs/lloydelectricsense)

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City council chambers and local officials in the US are facing the outcry of residents frightened by the next generation 5G **wireless communications (/disease/electromagnetic-radiation)** which by all accounts, will be taking over neighborhoods soon.

A resident in Montgomery County, Maryland raised her voice to ask local officials *"Why can't we do a real health assessment here and find out what the real health risks are — to our children?"* at a public meeting held at the county [9].

What are the risks? More to the point what is 5G?

What is 5G?

The 5th generation wireless systems (5G) are new network technologies designed to make your cell phone and similar wireless devices become super-duper powerful and fast.

Scheduled to be deployed from 2018 and made commercially available in 2020 [2] we are told 5G is expected to support at least 100 billion devices and up to 100 times faster than current 4G technology. (4G is already about 10 times faster than 3G).

The 5G tech will employ low-(0.6 GHz - 3.7 GHz), mid-(3.7 - 24 GHz), and high-band frequencies (24 GHz and higher). The "high-band" frequencies largely consist of millimeter waves (MMWs), a type of electromagnetic radiation with wavelengths within 1- 10 millimeters and frequencies ranging from 30 to 300 GHz.

Health Hazards from Cell Phone Technology "Beyond Measure"

Cell phones operate essentially by sending and receiving radiofrequency radiation from their antennas to a nearby cell tower.

Thousands of independent studies link Radiofrequency radiation exposures from cell phones to a number of very serious diseases such as; **Cancer (/disease/cancers-all)** [3], **Infertility (/disease/infertility)** [4], **Cardiovascular Diseases (/disease/cardiovascular-diseases)** [5], **Birth defects (/disease/birth-defects)** [6], **Memory Problems (/disease/memory-disorders)** [7], **Sleep Disorders (/disease/sleep-disorders)** [7] and so on.

5G Technology Comes With Increased RF Radiation Exposure

These millimeter waves (MMWs) as used by the 5G network can transmit large amounts of data within a short period of time. But over short distances and also, the other big issue is that the signal is poorly transmitted through solid materials.

This means massive transmission of MMW will be needed.

Many new antennas will be needed. We are told full-scale implementation may require at least one antenna for every 10 to 12 houses in urban areas.

Also, the MIMO (multiple-input multiple-output) technology is expected to be used massively. The MIMO technology is a wireless system that uses multiple transmitters hence, it is able to send and receive multiple/more data at once. Some 4G base stations already use MIMO technology. Standard MIMO involves four to eight antennae. MIMO for 5G may involve approximately 100 antennas per cell tower – that's a lot of antennas!

Increased transmission leads to increased capacity, so electromagnetic radiation levels can only increase. The concern is that, given what we know about radio frequency radiation, this **mandatory environmental increase in exposure to EM radiation** will lead to increased health risks.

A number of studies have demonstrated the detrimental health effects of the MMW frequencies used in 5G technology.

Damaging Effects on the Human Skin

One Israeli study [8] lead by Dr. Yuri D Feldman found that human sweat ducts act as an array of tiny, helix-shaped antennas when exposed to MMWs. Their findings suggest that human skin not only absorbs but also amplifies the radiation from MMW networks.

A study carried [9]out to evaluate the interactions and implications of MMWs (60GHz) with the human body discovered that *"more than 90% of the transmitted (MMWs) power is absorbed in the epidermis and dermis layer."*

The effect of MMWs on the skin is arguably the greatest concern of these new wavelengths utilized by 5G technology.

We might well be looking at the possibility of increased incidences of many skin diseases and cancer in the coming years in areas where the 5G technology is deployed.

Profound Effect On Immune System

A 2002 Russian study [10] carried out to examine the effects of high-frequency **electromagnetic radiation (/anti-therapeutic-action/electromagnetic-fields)** (42HGz) exposure on the blood of healthy mice found that, the activity of cells involved in immunity such as the neutrophils reduced drastically (about 50% decrease in activity).

It was concluded that *"the whole-body exposure of healthy mice to low-intensity EHF EMR has a profound effect on the indices of nonspecific immunity."*

Damaging Effects on The Heart

A 1992 study [11] found that frequencies in the range 53-78GHz impacted the heart rate variability (an indicator of stress) in rats. A Russian study [12] on frogs whose skin was exposed to MMWs discovered abnormal heart rate changes (**arrhythmias (/disease/cardiac-arrhythmias)**).

Hazardous Effects on the Eyes

In 1994, a study [12] carried out in Poland to evaluate the influence of millimeter radiation on light transmission through the lens of the eyes. It was discovered that low-level MMW radiation produced lens opacity in rats, which is associated the production of cataracts.

A Japanese experiment [13] carried out to examine the potential for 60-GHz millimeter-wave exposure to cause acute ocular injuries found that 60GHz *"...millimeter-wave antennas can cause thermal injuries of varying types of levels. The thermal effects induced by millimeter waves can apparently penetrate below the surface of the eye."*

180 Scientist and Doctors Call For A Moratorium

Scientists are concerned as well. More than 180 scientists and doctors from 35 countries [14], have recommended a temporary ban on the roll-out of 5G technology until its potential hazards on human health and the environment have been fully evaluated by scientists independent of the telecommunication industry.

What Are The Real Dangers Of 5G Technology?

The short answer is: we don't fully know yet! But the **studies** (<https://www.electricsense.com/12399/5g-radiation-dangers/>) we have on this are a cause for concern.

The health hazard of the most studied 3G CDMA technology (shown to cause an array of detrimental health effects) have not been fully revealed, yet, here we are, at the verge of adopting a potentially more dangerous technology.

Don't you think we should fully evaluate the health effects of 5G before rolling out the technology?

Let's not forget, alternatives to wireless mobile technology are available. Fiber Optic Broadband Technology is a feasible and safer alternative. I firmly believe that technological improvement can be attained without jeopardizing the health of the general public.

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(/gmi-blogs/lloydelectricsense)

Since falling prey to a violent reaction to his cell phone in 2002 Lloyd Burrell has spent the last 10 years researching the effects of electromagnetic fields (EMFs) on health.

You can download his free EMF Protection Health Report and subscribe to his newsletter by visiting his website <http://www.electricsense.com>. (<http://www.electricsense.com>.)

He is also the author of an eBook entitled "How To Beat Electrical Sensitivity", which offers a solution to the growing number of people whose health is being compromised by exposure to wireless and similar technologies, also available through his website.

Disclaimer: This article is not intended to provide medical advice, diagnosis or treatment. Views expressed here do not necessarily reflect those of GreenMedInfo or its staff.

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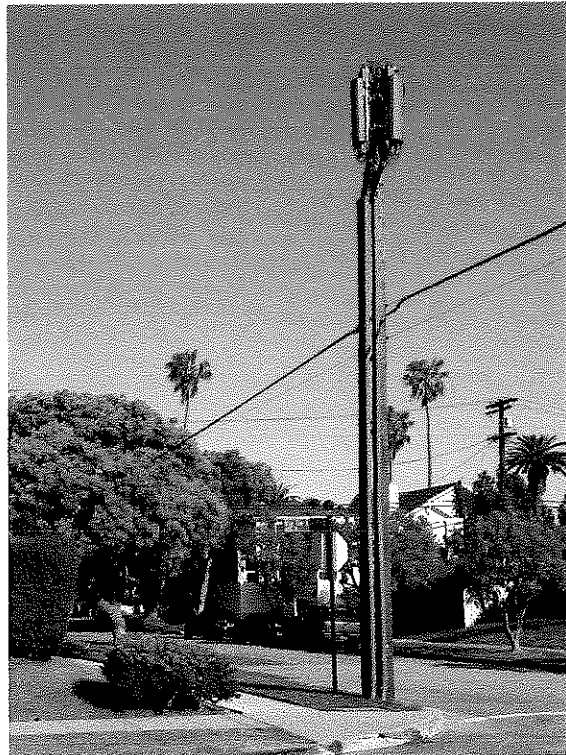
Burbank ACTION (Against Cell Towers In Our Neighborhood)

[Home](#) >

DECREASED REAL ESTATE VALUE

Note: This page is best viewed using [Mozilla Firefox](#) internet browser.

For residents in other communities opposing proposed wireless facilities in your neighborhood: in addition to the real estate studies you send and share with your local officials, talk to your local real estate professionals and inform and educate them about the negative effects on local property values that cell towers have, and ask them to submit letters of support to city officials, or have them sign a petition that will be forwarded onto your city officials. See examples below. It's very important to have your local real estate professionals back up what the experts report in their studies to make your arguments real and relative to your specific community. You can also educate your local homeowners associations and neighborhood councils about the negative property value effects and have them submit letters and sign



How would you like one of these ugly monsters installed on the sidewalk next to your home? This one was installed in a public right of way (PROW, aka sidewalk) on Via De La Paz in beautiful Pacific Palisades, because the City of Los Angeles currently lacks rigorous regulations concerning proposed PROW wireless installations. Why isn't the Los Angeles City Council and Attorney updating the city's ordinance like residents are asking? Photo courtesy Pacific Palisades Residents Association, <http://pprainc.org/>

Menu

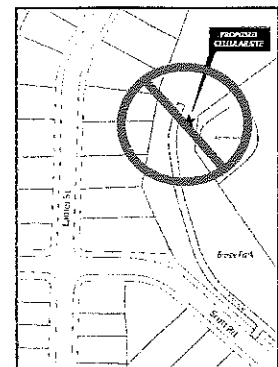
Burbank residents: Sign our Petition now, "Burbank Residents Oppose Smart Meters":
<http://burbankaction.wordpress.com>

Visit our Burbank ACTION blog:
<http://burbankaction.wordpress.com>

Calendar - upcoming events:
<http://burbankaction.wordpress.com>

Go to our "Smart Meter Concerns" Section:
<https://sites.google.com/site/smart-meter-concerns>

Join our facebook page - network, share and post info that's going on in your community, inform and help other communities



Click below for more info:

Burbank UPDATES:

petitions, too. Check out the other pages on this website (click links in right column) for other helpful information.

Residents are justifiably concerned about proposed cell towers reducing the value of their homes and properties. Who would want to live right next to one, or under one? And imagine what it's like for people who purchase or build their dream home or neighborhood, only to later have an unwanted cell tower installed just outside their window?

This negative effect can also contribute to urban blight, and a deterioration of neighborhoods and school districts when residents want to move out or pull their children out because they don't want to live or have their children attend schools next to a cell tower.

People don't want to live next to one not just because of health concerns, but also due to aesthetics and public safety reasons, i.e., cell towers become eyesores, obstructing or tarnishing cherished views, and also can attract crime, are potential noise nuisances, and fire and fall hazards.

These points underscore why wireless facilities are commercial facilities that don't belong in residential areas, parks and schools, and find out why they should be placed in alternative, less obtrusive locations. In addition, your city officials have the power to regulate the placement and appearance of cell towers, as long as such discrimination is not unreasonable, and especially if you show them that you already have coverage in your area.

As mentioned on our Home Page, putting cell towers near residential properties is just bad business. For residential owners, it means decreased property values. For local businesses (realtors and brokers) representing and listing these properties, it will create decreased income. And for city governments, it results in decreased revenue (property taxes).

Read this New York Times news story, "A Pushback Against Cell Towers," published in the paper's Real Estate section, on August 27, 2010:

http://www.nytimes.com/2010/08/29/realestate/29Lizo.html?_r=1&ref=realestate.

A number of organizations and studies have documented the detrimental effects of cell towers on property values.

1. The Appraisal Institute, the largest global professional membership organization for appraisers with 91 chapters throughout the world, spotlighted the issue of cell towers and the

- **June 3-17, 2011:** City of Burbank Planning & Transportation Division issues its draft updated wireless facility ordinance -- it fails to protect our residential areas -- go here to read how you can help: <https://sites.google.com/17-2011-resident-respons-comments-to-proposed-wtf-ordinance-update>
- Read Burbank ACTION resident response to proposed Draft Update of our Wireless Telecommunications Facility Ordinance [here](#).
- Please go [here](#) for our list of "Top 20" Resident Recommendations -- thanks to residents who have e-mailed these to our city officials. To read about the Dec. 1, 2010 Community Meeting, click the item under "Burbank UPDATES" in the column to your right.
- Dec. 1, 2010: [Community Meeting](#)
- August 31, 2010: [City Council Meeting - Interim Regulations Approved](#)
- July 26, 2010: [Planning Board Meeting - Interim Regulations Approved](#)
- June 14, 2010 [Study Session and Upcoming TBD Community Meeting](#)
- Dec. 8, 2009 [Study Session & City Hall Meetings](#)
- Nov. 16, 2009 [Planning Board and](#)

fair market value of a home and educated its members that a cell tower should, in fact, cause a decrease in home value.

The definitive work on this subject was done by Dr. Sandy Bond, who concluded that "media attention to the potential health hazards of [cellular phone towers and antennas] has spread concerns among the public, resulting in increased resistance" to sites near those towers. Percentage decreases mentioned in the study range from 2 to 20% with the percentage moving toward the higher range the closer the property. These are a few of her studies:

a. "The effect of distance to cell phone towers on house prices" by Sandy Bond, Appraisal Journal, Fall 2007, see attached. Source, Appraisal Journal, found on the Entrepreneur website,

<http://www.entrepreneur.com/tradejournals/article/1718>
or

http://www.prrs.net/papers/Bond_Squires_Using_GIS

b. Sandy Bond, Ph.D., Ko-Kang Wang, "The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods," The Appraisal Journal, Summer 2005; see attached. Source: Goliath business content website, http://goliath.ecnext.com/coms2/gi_0199-5011857/The-impact-of-cell-phone.html

c. Sandy Bond also co-authored, "Cellular Phone Towers: Perceived impact on residents and property values" University of Auckland, paper presented at the Ninth Pacific-Rim Real Estate Society Conference, Brisbane, Australia, January 19-22, 2003; see attached. Source: Pacific Rim Real Estate Society website, http://www.prrs.net/Papers/Bond_The_Impact_Of_Ce

2. Industry Canada (Canadian government department promoting Canadian economy), "Report On the National Antenna Tower Policy Review, Section D – The Six Policy Questions, Question 6. What evidence exists that property values are impacted by the placement of antenna towers?"; see attached. Source: Industry Canada <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08353.html> website,

3. New Zealand Ministry for the Environment, "Appendix 5: The Impact of Cellphone Towers on Property Values"; see attached. Source: New Zealand Ministry for the Environment website, <http://www.mfe.govt.nz/publications/rma/nes->

[Nov. 17 City Hall Meetings](#)

- [November 12, 2009 Public Meeting](#)

[City of Burbank website: Wireless ordinance updates](#)

[Burbank Leader Newspaper Stories and Editorials](#)

Tools: Reasons To Deny A Proposed Cell Tower and/or push for stronger regulations:

- [Reasonable Discrimination Allowed](#)
- [Decrease In Property Value](#)
- [We Already Have Good Coverage: Significant Gap and 911](#)
- [Alternative Locations and Supplemental Application forms](#)
- [Aesthetics and Public Safety](#)
- [Public Right of Way Developments](#)
- [Noise and Nuisance and notes about Clearwire](#)

telecommunications-section32-aug08/html/page12.html

On a local level, residents and real estate professionals have also informed city officials about the detrimental effects of cell towers on home property values.

1. **Glendale, CA:** During the January 7, 2009 Glendale City Council public hearing about a proposed T-mobile cell tower in a residential neighborhood, local real estate professional Addora Beall described how a Spanish home in the Verdugo Woodlands, listed for 1 million dollars, sold \$25,000 less because of a power pole across the street. "Perception is everything," said Ms. Beall stated. "If the public perceives it to be a problem, then it is a problem. It really does affect property values." See Glendale City Council meeting, January 7, 2009, video of Addora Beall comments @ 2:35:24:

http://glendale.granicus.com/MediaPlayer.php?view_id=12&clip_id=1227

2. **Windsor Hills/View Park, CA:** residents who were fighting off a T-Mobile antenna in their neighborhood received letters from real estate companies, homeowner associations and resident organizations in their community confirming that real estate values would decrease with a cell phone antenna in their neighborhood. To see copies of their letters to city officials, look at the . Report from Los Angeles County Regional Planning Commission regarding CUP Case No. 200700020-(2), from L.A. County Board of Supervisors September 16, 2009, Meeting documents, Los Angeles County website, here at:

<http://file.lacounty.gov/bos/supdocs/48444.pdf>

a. See page 295, August 31, 2008 Letter from Donna Bohanna, President/Realtor of Solstice International Realty and resident of Baldwin Hills to Los Angeles Board of Supervisors explaining negative effect of cell tower on property values of surrounding properties. "As a realtor, I must disclose to potential buyers where there are any cell towers nearby. I have found in my own experience that there is a very real stigma and cellular facilities near homes are perceived as undesirable."

b. See page 296, March 26, 2008 Letter from real estate professional Beverly Clark, "Those who would otherwise purchase a home, now considered desirable, can be deterred by a facility like the one proposed and this significantly reduces sales prices and does so immediately...I believe a facility such as the one proposed

- [Health Effects: Science & Research](#)
- [Watch these videos - Glendale and other residents protest cell towers and ask for new ordinances - great examples: read, watch and learn how these residents and other local groups organized their effective presentations before their elected reps. What they did will inspire and may help you.](#)

DVDs and Books:
you can view and read

Take Action:

[Read and Sign the Petition](#)

[Write and Call Our City Leaders](#)

Other Links:

- [Actions Taken](#)
- [Other Communities Saying "No"](#)
- [Important Organizations](#)

will diminish the buyer pool, significantly reduce homes sales prices, alter the character of the surrounding area and impair the use of the residential properties for their primary uses.”

c. See Page 298, The Appraiser Squad Comment Addendum, about the reduced value of a home of resident directly behind the proposed installation after the city had approved the CUP for a wireless facility there: “The property owner has listed the property...and has had a potential buyer back out of the deal once this particular information of the satellite communication center was announced....there has been a canceled potential sale therefore it is relevant and determined that this new planning decision can have some negative effect on the subject property.”

d. See Page 301, PowerPower presentation by residents about real estate values: “The California Association of Realtors maintains that ‘sellers and licensees must disclose material facts that affect the value or desirability of the property,’ including ‘known conditions outside of and surrounding’ it. This includes ‘nuisances’ and zoning changes that allow for commercial uses.”

e. See Pages 302-305 from the Baldwin Hills Estates Homeowners Association, the United Homeowners Association, and the Windsor Hills Block Club, opposing the proposed cell tower and addressing the effects on homes there: “Many residents are prepared to sell in an already depressed market or, in the case of one new resident with little to no equity, simply walk away if these antennas are installed.

f. See Pages 362-363, September 17, 2008, Letter from resident Sally Hampton, of the Windsor Hills Homeowner’s Assoc., Item K, addressing effects of the proposed facility on real estate values.

3. **Santa Cruz, CA:** Also attached is a story about how a preschool closed up because of a cell tower installed on its grounds; “Santa Cruz Preschool Closes Citing Cell Tower Radiation,” Santa Cruz Sentinel, May 17, 2006; Source, EMFacts website: <http://www.emfacts.com/weblog/?p=466>.

4. **Merrick, NY:** For a graphic illustration of what we don't want happening here in Burbank, just look at Merrick, NY, where NextG wireless facilities are being installed, resulting in declining

- [Burbank Neighborhoods & Districts](#)

[Search for Antennae in Your Area](#)

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home real estate values. Look at this Best Buyers Brokers Realty website ad from this area, "Residents of Merrick, Seaford and Wantaugh Complain Over Perceived Declining Property Values: <http://www.bestbuyerbroker.com/blog/?p=86>."

5. **Burbank, CA:** As for Burbank, at a City Council public hearing on December 8, 2009, hillside resident and a California licensed real estate professional Alex Safarian informed city officials that local real estate professionals he spoke with agree about the adverse effects the proposed cell tower would have on property values:

"I've done research on the subject and as well as spoken to many real estate professionals in the area, and they all agree that there's no doubt that cell towers negatively affect real estate values. Steve Hovakimian, a resident near Brace park, and a California real estate broker, and the publisher of "Home by Design" monthly real estate magazine, stated that he has seen properties near cell towers lose up to 10% of their value due to proximity of the cell tower...So even if they try to disguise them as tacky fake metal pine trees, as a real estate professional you're required by the California Association of Realtors: that sellers and licensees must disclose material facts that affect the value or desirability of a property including conditions that are known outside and surrounding areas."

(See City of Burbank Website, Video, Alex Safarian comments @ 6:24:28, http://burbank.granicus.com/MediaPlayer.php?view_id=6&clip_id=848)

Indeed, 27 Burbank real estate professionals in December 2009, signed a petition/statement offering their professional opinion that the proposed T-Mobile cell tower at Brace Canyon Park would negatively impact the surrounding homes, stating:

"It is our professional opinion that cell towers decrease the value of homes in the area tremendously. Peer reviewed research also concurs that cell sites do indeed cause a decrease in home value. We encourage you to respect the wishes of the residents and deny the proposed T-Mobile lease at this location. We also request that you strengthen your zoning ordinance regarding wireless facilities like the neighboring city of Glendale has done, to create preferred and non preferred zones that will protect the welfare of our residents and their properties as well as Burbank's real estate business professionals and the City of Burbank. Higher

property values mean more tax revenue for the city, which helps improve our city." (Submitted to City Council, Planning Board, City Manager, City Clerk and other city officials via e-mail on June 18, 2010. To see a copy of this, scroll down to bottom of page and click "Subpages" or go here:

<http://sites.google.com/site/nocelltowerinourneighborhood/home/real-estate-value/burbank-real-estate-professionals-statement>)

Here is a list of additional articles on how cell towers negatively affect the property values of homes near them:

- The Observer (U.K.), "Phone masts blight house sales: Health fears are alarming buyers as masts spread across Britain to meet rising demand for mobiles," Sunday May 25, 2003 or go here:
<http://www.guardian.co.uk/money/2003/may/25/houseprice>
- "Cell Towers Are Sprouting in Unlikely Places," The New York Times, January 9, 2000 (fears that property values could drop between 5 and 40 percent because of neighboring cell towers)
- "Quarrel over Phone Tower Now Court's Call," Chicago Tribune, January 18, 2000 (fear of lowered property values due to cell tower)
- "The Future is Here, and It's Ugly: a Spreading of Technobligh of Wires, Cables and Towers Sparks a Revolt," New York Times, September 7, 2000
- "Tower Opponents Ring Up a Victory," by Phil Brozynski, in the *Barrington [Illinois] Courier-Review*, February 15, 1999, 5, reporting how the Cuba Township assessor reduced the value of twelve homes following the construction of a cell tower in Lake County, IL. See attached story:
<http://spot.colorado.edu/~maziara/appeal&attachments/New43-LoweredPropertyValuation/>
- In another case, a Houston jury awarded 1.2 million to a couple because a 100-foot-tall cell tower was determined to have lessened the value of their property and caused them mental anguish: Nissimov, R., "GTE Wireless Loses Lawsuit over Cell-Phone Tower," Houston Chronicle, February 23, 1999, Section A, page 11. (Property values depreciate by about 10 percent because of the tower.)

Read about other "Tools" on our website that may help you and your fellow residents oppose a cell tower in your neighborhood in the column to the right. These include:

- [Reasonable Discrimination Allowed](#)
- [We Already Have Good Coverage: Significant Gap and 911](#)
- [Alternative Locations and Supplemental Application forms](#)
- [Aesthetics and Safety](#)
- [Noise and Nuisance and notes about Clearwire](#)
- [Health Effects: Science & Research](#)

Also print out this helpful article on court decisions from the communications law firm of Miller & Van Eaton (with offices in D.C. and San Francisco) that you can pull and read to realize what rights you may or may not have in opposing a wireless facility in your neighborhood:

http://www.millervaneaton.com/content.agent?page_name=HT%3A++IMLA+Article+Tower+Siting+Nov+2008
(click the link once you get to this page).

Other important decisions and actions taken by courts and local governments can be found in our [Actions Taken](#) page.

Watch how other resident groups organized effective presentations at their public hearings so you can pick up their techniques and methods.

You can read and find additional organizations and resident groups that have organized opposition efforts against cell towers and wireless facilities, on our [Other Communities Saying "No"](#) and [Important Organizations](#) pages.

Subpages (1): [Burbank Real Estate Professionals Statement](#)

Comments

You do not have permission to add comments.