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September 26, 2000

Mr. James Purcell, Town Administrator
Town of Leicester
3 Washburn Square
Leicester, MA 01524

RE: Southwestern Bell Mobile Systems
Vs. Laurence M. Todd, et al
Civil Action 98CV11959RCL

Dear Jim:

The Cellular One Appeal will be argued October 5, 2000 at 9:30 a.m. in the Federal Appeals Court in Boston. The matter has been postponed from September 15, 2000.

Very truly yours,

Joseph C. Cove

JCC/amc
Cc: Leicester Zoning Board of Appeals

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December 7, 1999

Board of Selectmen
Town of Leicester
3 Washburn Square
Leicester, MA 01524

RE: Cellular One
Vs. Laurence M. Todd, et al
Civil Action 98CV11959RCL

Dear Members:

I enclose herewith copy of Notice of Appeal taken by Cellular One to the First Circuit Court of Appeals. The Town will be expected to file a Brief on this Appeal and to defend the Appeal. Accordingly, I have adjusted my diary according to the appeal schedule and will prepare to defend the Town on this Appeal.

Very truly yours,

Joseph C. Cove

JCC/amc

Encl.

Cc: Laurence Todd ✓
8850-1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 98 CV 11959RCL

SOUTHWESTERN BELL MOBILE
SYSTEMS, INC. d/b/a CELLULAR ONE,
Plaintiff


VS.

LAURENCE M. TODD, VAUGHN N.
HATHAWAY, JR., JAMES T. BUCKLEY,
LINDA G. FINAN, DENNIS E. HENNESSY,
As They Are the Members of and Constitute
the Board of Appeals of the Town of
Leicester, Worcester County, Massachusetts,
Defendants

NOTICE OF APPEAL

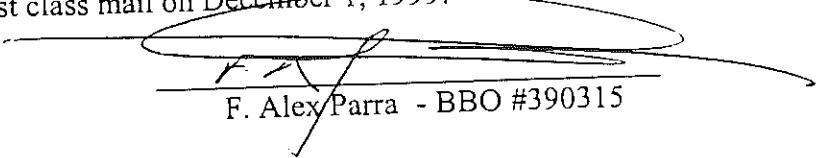
Notice is hereby given that Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One, Plaintiff in the above-named case, hereby appeals to the United States Court of Appeals for the First Circuit, from the final judgment entered in this action on the 23rd day of November 1999.

Respectfully submitted,


Louis N. Levine - BBO #296880
F. Alex Parra - BBO #390315
D'AGOSTINE, LEVINE, PARRA & NETBURN P. C.
Attorneys for Plaintiff
SOUTHWESTERN BELL MOBILE SYSTEMS,
INC. d/b/a CELLULAR ONE,
268 Main Street,
Acton, Massachusetts 01720
(978)263-7777
December 1, 1999

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by first class mail on December 1, 1999.


F. Alex Parra - BBO #390315

United States Court of Appeals

For the First Circuit

No. 00-1164

SOUTHWESTERN BELL MOBILE SYSTEMS, INC.,

D/B/A CELLULAR ONE,

Plaintiff, Appellant,

v.

LAURENCE M. TODD, AS HE IS A MEMBER OF AND CONSTITUTE THE BOARD OF APPEALS OF THE TOWN OF
LEICESTER, WORCESTER COUNTY, MASSACHUSETTS;

VAUGHN N. HATHAWAY, AS HE IS A MEMBER OF AND CONSTITUTE THE BOARD OF APPEALS OF THE TOWN OF
LEICESTER, WORCESTER COUNTY, MASSACHUSETTS;

JAMES T. BUCKLEY, AS HE IS A MEMBER OF AND CONSTITUTE THE BOARD OF APPEALS OF THE TOWN OF
LEICESTER, WORCESTER COUNTY, MASSACHUSETTS;

LINDA G. FINAN, AS SHE IS A MEMBER OF AND CONSTITUTE THE BOARD OF APPEALS OF THE TOWN OF
LEICESTER, WORCESTER COUNTY, MASSACHUSETTS;

DENNIS E. HENNESSEY, AS HE IS A MEMBER OF AND CONSTITUTE THE BOARD OF APPEALS OF THE TOWN OF
LEICESTER, WORCESTER COUNTY, MASSACHUSETTS,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Reginald C. Lindsay, U.S. District Judge]

Before

Lipez, Circuit Judge, and
Woodlock* and Saris,* District Judges.

*Of the District of Massachusetts, sitting by designation.

F. Alex Parra, with whom Louis N. Levine and D'Agostine, Levine, Parra & Netburn, P.C. were on brief, for appellant.

Joseph C. Cove for appellees.

March 30, 2001

LIPEZ, Circuit Judge. On September 10, 1998, the Zoning Board of Appeals for the Town of Leicester, Massachusetts (the Board), voted unanimously to deny Southwestern Bell Mobile Systems, Inc.'s application for a special permit to construct a 150-foot high lattice telecommunications tower. Shortly after this denial, Southwestern Bell filed the present action in the district court, claiming, among other things, that the Board's decision was not supported by "substantial evidence contained in a written record," as required by the Telecommunications Act of 1996 (the TCA or the Act), and asking the district court to order the Board to issue the special permit. See 47 U.S.C. § 332(c)(7)(B)(iii). The district court disagreed and granted the defendants' motion for summary judgment. Southwestern Bell appeals from that judgment. Because we conclude that the record contains substantial evidentiary support for the Board's denial of the permit application, we affirm.

I. Background

We briefly recite the facts as gleaned from the record before the Board, leaving a more extended recitation for our analysis of whether the Board's denial of Southwestern Bell's application was supported by substantial evidence. Section 5.4 of the Leicester Zoning Bylaws sets forth regulations applicable to wireless telecommunications facilities proposed within the Town. This Bylaw regulates such facilities in order to "minimiz[e] adverse impacts of wireless communication facilities upon adjacent properties, historic areas and residential neighborhoods, minimize the overall number and height of such facilities to only what is essential, to encourage co-location on a single structure, and avoid

damage to adjacent properties from facility failure through engineering and careful siting of facilities." Under the Bylaw, wireless communication facilities may be allowed in numerous zoning districts, but only "upon the issuance of a special permit" by the Board. In April of 1998, Southwestern Bell filed an application for a special permit to allow it to construct a 150-foot tall telecommunications tower on a property offered to it by the Leicester Water Supply District approximately six months before Southwestern Bell filed its application. Southwestern Bell wished to use this tower to provide cellular coverage for the northern and central parts of Leicester, including Routes 9 and 56, the two major roads running through the Town.

The water district property is located on Route 56, which is named Paxton Street at that location, in a suburban-agricultural zone. Geographically, the site is at the approximate center of the town, atop a fifty-foot hill in an open field. The property already has two forty-foot high water towers. The surrounding locale is a low-density residential area, with high-tension electrical wires running through it approximately 1000 feet from the water district property. Two subdivisions in various states of completion are located in the immediate vicinity of the proposed tower. The closest, Carey Hill Estates, was relatively new at the time of the application, containing 57 units adjacent to the Water District property. At least some of the Carey Hill Estates homes would be no more than 200 to 300 feet away from the tower. The second subdivision, Leicester Woods, is slightly older and slightly farther away, with residences approximately 750 feet from the tower. It is also shielded somewhat from the water district property by a line of trees. Although the record is unclear about the precise stage of completion of these two developments, both pre-dated Southwestern Bell's application and both had rapid pre-sales of homes, indicating a relatively high degree of desirability. In addition, the tower was 360 feet from an elementary school, 700 feet from a high school, and 1350 feet from a middle school.

The facility that Southwestern Bell proposed consisted of the tower, an equipment shed, a propane tank for emergency operation, and a utility pole to bring electricity and telephone lines to the property. The entire structure would be surrounded by an eight-foot high fence, painted green, topped with three rows of barbed wire. In order to camouflage the shed and fence, ten-foot high plantings would ring the security fencing. The tower would be 350 feet from Paxton Street and 130 feet from the two water tanks. Because of the proximity of the site to the Worcester Airport, Southwestern Bell had applied for a permit from the Federal Aviation Administration. Though this permit had not been obtained at the time of the hearings, Southwestern Bell's consultant indicated that the FAA would likely require that the tower be painted in contrasting sections of red and white and be topped by at least one beacon to light the tower at night. The facility would run automatically with remote monitoring and would only require occasional maintenance visits.

Following its receipt of Southwestern Bell's application, the Board held a series of public meetings, during which it accepted Southwestern Bell's written materials and heard comment from the public and from Southwestern Bell's representatives and experts. Though the police, fire, and emergency medical services departments were all in favor of the tower, there was significant public opposition to its proposed location. (1) At the conclusion of the last meeting on September 8, 1998, a member of the Board moved to deny the application. After a brief discussion that revisited several concerns raised during the course of the hearings, the Board voted unanimously to deny the application. Two days later, the Board filed with the Town Clerk a written denial of the application. In this written decision, the Board listed three areas in which it had concluded that the application did not comply with the Bylaw:

It doesn't satisfy criteria of Minimum Visual Impact. Any tower that will be red and white with a beacon, that needs to be seen by a plan [sic]

traveling over 100 mph, cannot have minimum visual impact, when there are no trees to hide it. Roads go 360 [degrees] around the site. The criteria [sic] for granting a Special Permit cannot be satisfied. It would be an attractive nuisance being located next to schools. This does demonstrate that there is an adverse effect on property values.

This language mirrored the oral motion to deny from the last public hearing, albeit in a somewhat edited form as many of the facts offered orally in support of the three legal conclusions were not reproduced in the written denial. Indeed, the factual underpinnings of these conclusions, as reflected by the Board's discussion of the motion, were far broader than this paragraph indicates.

In response to this denial, Southwestern Bell filed the present complaint in the district court, naming the members of the Board as defendants and contending that the court should order the Board to issue the permit because the permit denial was not supported by "substantial evidence and contained in a written record" as required under the TCA. Both sides moved for summary judgment. Following a hearing, the district court granted the defendants' motion and denied Southwestern Bell's, reasoning that while there was not sufficient evidence to support a conclusion that the tower would affect property values or be an attractive nuisance to schoolchildren, there was sufficient evidence to conclude that the tower would have more than a minimal visual impact. Southwestern Bell appeals from that judgment. **II. The Telecommunications Act of 1996**

Personal wireless services of the type at issue here are dependent upon "low-power, high-frequency radio signals" that are transmitted from "relay towers . . . and switching stations." Roberts v. Southwestern Bell Mobile Sys., Inc., 709 N.E.2d 798, 801 (Mass. 1999). In order "to provide consumers with mobile telephone service over a broad geographic area," that area is divided into cells, each transmitting and receiving signals on a specified frequency. Federal Communications Commission, Wireless Telecommunications Bureau, Fact Sheet #2, National Wireless Facilities Siting Policies at 27 (Sept. 17, 1996) (FCC Fact Sheet). Frequencies are assigned to multiple non-adjacent cells. See id. "When a cellular subscriber makes or receives a call, the call is connected to the nearest cell site. As a subscriber travels within a cellular provider's service area, the cellular telephone call in progress is transferred, or 'handed off,' from one cell site to another without noticeable interruption." Id.

Coverage within a cell is maintained by arranging antennae in a honeycomb grid. See Roberts, 709 N.E.2d at 801. Because the technology is low powered and operates only within line-of-sight of a tower, multiple towers are often required to ensure that any particular geographic area has sufficient coverage. When a coverage gap occurs, customers cannot "receiv[e] and send[] signals, and when customers pass through a coverage gap their calls are disconnected." Id. Furthermore, personal wireless service providers have an incentive to increase the number of cells and correspondingly decrease the geographic coverage of each cell because the "smaller and more numerous a provider's cells are, the more often it can reuse frequencies and the more users it can accommodate." FCC Fact Sheet at 27.

A provider's need for more transmitters to offer adequate service to a particular area creates a conflict with the desire of many communities to limit the proliferation of these facilities within their borders. The topography and existing developments in any given community often exacerbate this tension. See Roberts, 709 N.E.2d at 801. For line-of-sight technologies to work, they must be tall enough to be above sources

of interference, which often means that they must be on hills or otherwise located in prominent locations. See *id.* Local radio transmitters can create interference for cellular signals, while the proximity of a location to airports can place absolute restrictions upon the height of any tower.⁽²⁾ Moreover, as Congress found, "siting and zoning decisions by non-federal units of government[] have created an inconsistent and, at times, conflicting patchwork of requirements which will inhibit the deployment of Personal Communications Services as well as the rebuilding of a digital technology-based cellular telecommunications network." *Omnipoint Corp. v. Zoning Hearing Bd. of Pine Grove Township*, 181 F.3d 403, 407 (3d Cir. 1999) (quoting H.R. Rep. 104-204, at 94 (1995), *reprinted in* 1996 U.S.C.A.N. 10, 61). Even seemingly innocuous regulations, such as a requirement that towers be located on sites large enough to prevent damage to adjacent properties, can cause significant problems for wireless service providers, particularly if the municipality is primarily subdivided into smaller lots.

Enacted against this backdrop, the TCA reflects Congress's intent to expand wireless services and increase competition among those providers. See *Sprint Spectrum L.P. v. Town of Easton*, 982 F. Supp. 47, 49 (D. Mass. 1997). Congress sought to accomplish this goal by reducing the regulation and bureaucracy that stood in the way of a steady and rapid expansion of personal wireless services. See *Nextel Communications of the Mid-Atlantic, Inc. v. Manchester-by-the-Sea*, 115 F. Supp. 2d 65, 67 (D. Mass. 2000). In addition to facilitating the quick resolution of any disputes with localities, the TCA also provides protections from irrational or substandard decisions by local authorities. See *Roberts*, 709 N.E.2d at 806. Nonetheless, though Congress sought to encourage the expansion of personal wireless services and the TCA does not federalize telecommunications land use law. See *id.* at 802. Instead, Congress struck a balance between localities and personal wireless service providers. See *Nextel*, 115 F. Supp. 2d at 67. Under the TCA, local governments retain control "over decisions regarding the placement, construction, and modification of personal wireless service facilities." 47 U.S.C. § 332(c)(7)(A). Nonetheless, this control is now subject to several substantive and procedural limitations that "subject [local governments] to an outer limit" upon their ability to regulate personal wireless services land use issues. *Town of Amherst v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9, 15 (1st Cir. 1999); see also 47 U.S.C. § 332(c)(7)(B).

Thus, in regulating "the placement, construction, and modification of personal wireless service facilities," local authorities may not "unreasonably discriminate among providers of functionally equivalent services; [or] . . . prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. § 332(c)(7)(B)(i). They must act upon "any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time." *Id.* § 332(c)(7)(B)(ii). If they choose to deny an application, that denial must "be in writing and supported by substantial evidence contained in a written record." *Id.* § 332(c)(7)(B)(iii). The denial, however, may not be based on "the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." *Id.* § 332(c)(7)(B)(iv). Finally, "[a]ny person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof" may "commence an action in any court of competent jurisdiction." *Id.* § 332(c)(7)(B)(v).

As a result of these provisions, the TCA expands the scope of review by federal courts of local zoning decisions beyond the traditional deferential review which "limit[ed] the scope of inquiry to the constitutionality of the zoning decision under a standard of rational review." *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 493 (2d Cir. 1999). Indeed, in some cases, where there is an allegation that a local authority "has discriminated among carriers or created a general ban" on personal wireless services, a federal court may undertake an extensive review of the local authority's decision because the anti-discrimination and anti-prohibition provisions of the TCA "involve[]

federal limitations on state authority, presenting issues that the district court would resolve de novo and for which outside evidence may be essential." Town of Amherst, 173 F.3d at 16 n.7.

Southwestern Bell makes a passing reference in its brief to the mandate in the TCA against the prohibition of personal wireless services. See 47 U.S.C. § 332(c)(7)(B)(i)(II). We have held that a single denial of an application can run afoul of the TCA if that denial is "shown to reflect, or represent, an effective prohibition on personal wireless service." Town of Amherst, 173 F.3d at 14. But see AT&T Wireless PCS, Inc. v. City Council of Virginia Beach, 155 F.3d 423, 428 (4th Cir. 1998) (holding that the "prohibits" clause applies to general blanket bans on services and not to individual zoning decisions). Nonetheless, Southwestern Bell does not seriously pursue an argument in its brief that the denial of its application was "an effective prohibition," and it specifically abandoned such a contention at oral argument.

Southwestern Bell does contend that the Board's written denial is unsupported by substantial evidence in the record. See 47 U.S.C. § 332(c)(7)(B)(iii). "Substantial evidence" review under the TCA does not create a substantive federal limitation upon local land use regulatory power, but is instead "centrally directed to those rulings that the Board is expected to make under state law and local ordinance in deciding on variances, special exceptions and the like." Town of Amherst, 173 F.3d at 16; Cellular Tel. Co. v. Zoning Bd. of Adjustment of the Borough of Ho-Ho-Kus, 197 F.3d 64, 72 (3d Cir. 1999). The "substantial evidence" standard of review is the same as that traditionally applicable to a review of an administrative agency's findings of fact. See Sprint Spectrum L.P. v. Town of North Stonington, 12 F. Supp. 2d 247, 252 (D. Conn. 1998). Judicial review under this standard, "even at the summary judgment stage, is narrow." Associated Fisheries of Maine, Inc. v. Daley, 127 F.3d 104, 109 (1st Cir. 1997). We review the written record

considered as a whole. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The reviewing court must take into account contradictory evidence in the record. But the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Penobscot Air Servs., Ltd. v. Fed. Aviation Admin., 164 F.3d 713, 718 (1st Cir. 1999) (citations omitted). This review, though highly deferential, "is not a rubber stamp." Id. at 718 n.2. An agency, and by extension the Board, "is not free to prescribe what inferences from the evidence it will accept and reject, but must draw all those inferences that the evidence fairly demands." Id. at 718 (quoting Allentown Mack Sales & Serv., Inc. v. N.L.R.B., 522 U.S. 359, 378 (1998)). When the record "clearly precludes the . . . decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both," that decision must be set aside. Id. (quoting Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 490 (1951)). In reviewing the record on appeal, "we [also] apply the same legal standards that pertain in the district court and afford no special deference to that court's decision." Associated Fisheries of Maine, Inc., 127 F.3d at 109; see also Baystate Alternative Staffing, Inc. v. Herman, 163 F.3d 668, 674 (1st Cir. 1998).

III. The Written Decision

Before examining the evidentiary support for the Board's decision, we must first determine whether the scope of our review is limited by the

first requirement in section 332(c)(7)(B)(iii) that denials of permits be in writing. Southwestern Bell contends that this requirement mandates that the Board make written findings of fact and conclusions of law, and that a review of the record under the TCA is limited to only those facts the Board specifically cited in support of its conclusion that the application failed to meet the criteria of the Bylaw. We disagree.

Courts evaluating what constitutes a proper written denial under the Act have been unable to settle upon a uniform standard to guide local authorities. See APT Pittsburgh Ltd. Partnership v. Penn Township, Butler County of Pennsylvania, 196 F.3d 469, 474 n.4 (3d Cir. 1999) (noting lack of uniformity on the issue). Some courts have required that local authorities issue formal findings of fact and conclusions of law. See Smart SMR of New York, Inc. v. The Zoning Commission of the Town of Strafford, 995 F. Supp. 52, 56 (D. Conn. 1998) (citing AT&T Wireless Servs. of Florida, Inc. v. Orange County, 982 F. Supp. 856, 859 (M.D. Fla. 1997)); Illinois RSA No. 3, Inc. v. County of Peoria, 963 F. Supp. 732, 743 (C.D. Ill. 1997). Others have found that the writing requirement is satisfied by the written record of the meeting in which the application was denied and by the word "DENIED" and date of decision stamped upon a letter describing the application. See AT&T Wireless PCS, Inc. v. City Council of Virginia Beach, 155 F.3d 423, 429 (4th Cir. 1998); AT&T Wireless PCS, Inc. v. Winston-Salem Zoning Bd. of Adjustment, 172 F.3d 307, 312-13 (4th Cir. 1999) (holding word "denied" written on first page of application sufficient). Both of these approaches seem flawed.

The requirement of formal findings of fact and conclusions of law has no basis in the language of the Act. Section 332(c)(7)(B)(iii) merely requires a written decision, in contrast to the Administrative Procedures Act and other sections of the TCA that explicitly require formal findings of fact and conclusions of law. See City Council of Virginia Beach, 155 F.3d at 429-30 (citing statutes). Furthermore, strong policy reasons counsel against reading congressional silence on this matter as permission to impose such a requirement. Passage of the TCA did not alter the reality that the local boards that administer the zoning laws are primarily staffed by laypeople. Though their decisions are now subject to review under the TCA, it is not realistic to expect highly detailed findings of fact and conclusions of law. In the absence of an express congressional directive, therefore, we find no basis for inflating "[t]he simple requirement of a 'decision ... in writing' ... into a requirement of a 'statement of ... findings and conclusions, and the reasons or basis thereof.'" Id. at 430.

On the other hand, permitting local boards to issue written denials that give no reasons for a decision would frustrate meaningful judicial review, even where the written record may offer some guidance as to the board's rationale. A written record can create difficulties in determining the rationale behind a board's decision, particularly when that record reflects arguments put forth by individual members rather than a statement of the reasons that commanded the support of a majority of the board. See, e.g., Town of North Stonington, 12 F. Supp. 2d at 252. Even where the record reflects unmistakably the Board's reasons for denying a permit, allowing the written record to serve as the writing would contradict the language of the Act. See, e.g., Orange County, 982 F. Supp. at 859. The TCA distinguishes between a written denial and a written record, thus indicating that the record cannot be a substitute for a separate denial. See 47 U.S.C. § 332(c)(7)(B)(iii).

We conclude, therefore, that the TCA requires local boards to issue a written denial separate from the written record. That written denial must contain a sufficient explanation of the reasons for the permit denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons. See Town of North Stonington, 12 F. Supp. 2d at 252. We stress, however, that a meaningful review of the decision is not limited, as Southwestern Bell would have it, only to the facts specifically offered in the written decision. Again, such a requirement would place an unjustified premium on the ability of a lay board to write a decision.

Here, shortly after the Board concluded its deliberations and voted to deny the permit, it issued a short written decision. The decision offers little explanation and few facts. Yet the Board states the reasons for its decision with sufficient clarity to permit an assessment of the evidence in the record supporting its reasons. We turn now to that task.

IV. Substantial Evidence Review

Though the Board listed three reasons for its written denial of Southwestern Bell's permit application, the district court only found substantial evidentiary support for the Board's conclusion that the tower would have more than a minimal visual impact.⁽³⁾ According to the Bylaw,

[t]he applicant shall successfully demonstrate to the satisfaction of the Board that the proposed facility will have minimal visual impact and constructed so it is reasonably capable of accommodating other users including other wireless communication companies and local police, fire and ambulance companies unless it is determined to be technically infeasible based on the Board's evaluation of information submitted.

(emphasis added). Southwestern Bell raises two objections to the Board's visual impact conclusion, arguing that there was no competent evidence in the record to support it, and that the Board could not deny the permit based upon the visual impact of the tower when there was no evidence of "available alternative sites with a lesser visual impact." We deal with each of these arguments in turn.

A. The aesthetic judgment.

According to Southwestern Bell, the only evidence in the record about visual impact reflects "generalized concerns" about aesthetics. Southwestern Bell argues that expressions of distaste for the aesthetics of a tower cannot support a finding that the applicant failed to demonstrate that the tower had a minimal visual impact. Instead, it says, there must be a quantifiable examination of the issue demonstrating, for example, the economic impact associated with the tower's appearance. We disagree.

The five limitations upon local authority in the TCA do not state or imply that the TCA prevents municipalities from exercising their traditional prerogative to restrict and control development based upon aesthetic considerations, so long as those judgments do not mask, for example, a de facto prohibition of personal wireless services. See Aegerter v. City of Delafield, 174 F.3d 886, 891 (7th Cir. 1999) (holding that the TCA does not prohibit local authorities "from applying general and nondiscriminatory standards derived from their zoning codes"); Nextel, 115 F. Supp. 2d at 67. In assessing the visual impact of the proposed tower, the Board was entitled to make an aesthetic judgment about whether that impact was minimal, without justifying that judgment by reference to an economic or other quantifiable impact.

Nonetheless, that aesthetic judgment must be grounded in the specifics of the case. Few people would argue that telecommunication towers are aesthetically pleasing. Some of the disapproving comments in the cases about generalized aesthetic concerns refer to negative comments that are applicable to any tower, regardless of location. See Oyster Bay, 166 F.3d at 495 (resident comments suggested misunderstanding of "what the proposed cell sites would actually look like," where residents objected to "a mass of spaghetti wires" and suggested that "antennae

would project from the top of the water tank like 'a small birthday cake with candles'). In other cases, the aesthetic objections were demonstrably without substance because of evidence that the towers and transmitters were either difficult to see or were aesthetically compatible with the character of the area. See Pine Grove Township, 181 F.3d at 406 (noting that 114-foot tower was surrounded by 80 to 90-foot tall trees and would only be visible to neighbors 600 feet away); Oyster Bay, 166 F.3d at 495 (noting that transmitters were located on catwalk of water towers and painted the same color as the background, thus preventing most residents from seeing them); Nextel, 115 F. Supp. 2d at 72 (describing evidence indicating that tower was designed to blend with the masts of vessels in area).

Although some of the evidence before the Board did consist of general statements that the tower was an eyesore, these statements did not dominate the debate. The majority of the objections to the visual impact of the tower specifically addressed whether this 150-foot tower was appropriate for this particular location, on the top of a fifty-foot hill in the middle of a cleared field. The location has no trees, was in the geographic center of town, would be visible at all seasons of the year, and would be seen daily by approximately 25% of the Town's population. It was also located in close proximity to three schools and two residential subdivisions. The closest of these two subdivisions, the Carey Hill Estates, had houses that were located only 200 feet away. Indeed, this subdivision was in such close proximity to the tower that Southwestern Bell used Carey Hill Estates construction plans as a reference map when drawing up the proposed plans for the tower.

Purchasers who had placed deposits on houses that were to be built in this subdivision indicated that the tower would be plainly visible from their land. One of those purchasers had placed his deposit unaware that a tower was proposed in such close proximity. Concerned about this situation, two members of the Board visited other towers that had been described as comparable by Southwestern Bell's real estate appraiser. (4) The members concluded that these towers were not in a location as exposed as Southwestern Bell's tower and the houses were not as close. The School Committee, though voicing no formal opposition, was "concerned about the aesthetics of placing a cell tower with its associated dishes and arrays in proximity to school buildings." Several witnesses, pointing to the Bylaw's requirement that the "tower shall be of monopole or similarly unimposing design," argued that the lattice design of the tower was not an "unimposing design."

In response, Southwestern Bell argued that a lattice tower would be less visually intrusive than a monopole because it was a see-through rather than a solid structure. (5) Southwestern Bell also pointed to the ten-foot high plantings that it would place around the base of the equipment compound, thereby effectively hiding the equipment shed, propane tank, and fencing from view. These plantings, it argued, combined with the forty-foot high water towers on the Water District property and the high tension electric wires that cross in the vicinity of the tower, supported its argument that the tower would be compatible with the general character of the area. Nonetheless, "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Penobscot Air Servs., 164 F.3d at 718 (quoting American Textile Mfrs. Inst. v. Donovan, 452 U.S. 490, 523 (1981)). Nothing about the water towers and high tension wires "clearly precludes the . . . decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both." Id. (quoting Universal Camera, 340 U.S. at 490). The water towers were only forty feet tall and the electric wires were over 1000 feet away from the tower location. Southwestern Bell's tower would soar to almost four times the height of the water towers. Indeed, the evidence supports a conclusion that the proposed tower was of a different magnitude than anything else in the vicinity. When combined with the other evidence demonstrating that the tower was out of keeping with the residential uses in close proximity to it, we conclude that reasonable minds would find adequate evidentiary support for the denial of Southwestern Bell's permit application.

Finally, we note that the Board also based its minimal visual impact conclusion upon the fact that the tower would be painted in alternating red and white sections and would have a night beacon. The tower would only have these features because the FAA requires them. Though the Leicester Wireless Bylaw prohibits bright coloration and night lighting, it allows deviations from that prohibition when required by the FAA.

To the extent that the Board's objection was based upon the failure to paint the tower a neutral color, the Board improperly relied upon this evidence to justify its decision. Because we conclude that there was substantial evidence to support the denial without the inclusion of this factor, it does not affect the outcome of this case.

B. Alternative sites.

Southwestern Bell argues that even if the evidence showed a more than minimal visual impact, that evidence could not support a denial unless there was evidence of alternative sites that would have a lesser visual impact. According to Southwestern Bell, the Board had the burden to provide substantial evidence to show the availability of these alternative sites and thus support the denial of the permit. In the absence of such proof, Southwestern Bell contends that we must reverse the district court and order the Board to issue the permit.

We see nothing in the TCA that would support placing a burden upon the Board to present evidence that there were other sites available to Southwestern Bell with a lesser minimal visual impact. The "substantial evidence" requirement does nothing more than allow applicants to overturn denials if they can prove that the denial lacks adequate evidentiary support in the record. Although that substantial evidence requirement is complemented by the provision in the TCA that prevents a locality from prohibiting personal wireless services, see Town of Amherst, 173 F.3d at 16, the burden would be on Southwestern Bell, and not the Board, to provide evidence demonstrating that "further reasonable efforts [to secure a special permit to build a wireless facility] are so likely to be fruitless that it is a waste of time even to try." Id. at 14. As Southwestern Bell conceded at oral argument, the record does not permit such a conclusion.

We note that under the Bylaw, each application for a special permit must be accompanied by both "[a]n evaluation of the feasibility of attaching the proposed facility to existing buildings or utilizing existing facilities for the proposed facility," and a "Site Justification Statement including a description of the narrowing process that eliminated other potential sites." Leicester, MA., Zoning By-laws § 5.4. Southwestern Bell complied with the first requirement, but it did not undertake to eliminate any other potential sites until prompted by the Board. At that point, Southwestern Bell only considered the two sites not involving preexisting structures that the Board had suggested.⁽⁶⁾

For a telecommunications provider to argue that a permit denial is impermissible because there are no alternative sites, it must develop a record demonstrating that it has made a full effort to evaluate the other available alternatives and that the alternatives are not feasible to serve its customers. Such a showing may be sufficient to support an allegation that the zoning board's permit denial effectively prohibits personal wireless services in the area. Southwestern Bell understandably concedes that it has not demonstrated that the denial here constituted such a prohibition. We conclude, therefore, that the district court properly granted summary judgment to the Town.

Affirmed.

1. One of the conditions the Leicester Planning Board imposed upon Southwestern Bell as part of its site plan review was that "Town of

Leicester public safety communication systems will be allowed access to co-locate on this wireless communication tower if they deem necessary. " Town public safety officials took the position that co-location on this tower would significantly improve coverage for their communication systems.

2. Both of these problems exist in Leicester, which has an AM radio transmitter within its borders and is near to both the Worcester and Spencer Airports. Southwestern Bell indicated during the public hearings on its application that these problems placed effective limitations upon its flexibility in siting its proposed tower.
3. Because we conclude that the district court correctly evaluated the evidentiary support for the minimal visual impact requirement, we do not express any opinion as to its conclusion that there was not substantial support for the Board's other reasons for denying the application. Moreover, in defending the district court's decision, the Town focuses its argument solely on the issue of the tower's visual impact.
4. These towers were mentioned in a report given to the Board that concluded, based in part upon a comparative analysis with homes in the vicinity of these other towers, that Southwestern Bell's facility would have no effect on property values.
5. According to Southwestern Bell, the requirement that towers accommodate other users mandates a larger tower and also limits the desirability of a monopole, which is less flexible than lattice towers for co-location. Nonetheless, the Board could properly consider the height and lattice structure in making its aesthetic judgment. Moreover, to the extent that the minimal visual impact and co-location requirements conflicted, the Board had the discretion to "modify any provision of the forgoing standards and conditions when in the Zoning Board's discretion . . . the strict adherence to the standards and conditions impedes the legitimate purposes of this Bylaw." We see no reason to interfere with the refusal to exercise that discretion absent some allegation that this failure to act violated the TCA by, for example, effectively prohibiting service.
6. The topic of alternate sites for this tower arose at the first public hearing on Southwestern Bell's application. The Board and members of the public were concerned that the tower was not an appropriate use of the Water District property because of its proximity to the schools and the two subdivisions. Suggestions were made about two other properties that were less developed and that consequently did not raise the same concerns. Southwestern Bell investigated these properties but did not choose to develop them because it concluded that neither would completely eliminate the gap in coverage along Routes 9 and 56.

File

JOSEPH C. COVE
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September 20, 1999

Mr. James Purcell, Town Administrator
Town of Leicester
3 Washburn Square
Leicester, MA 01524

RE: Cellular One
Vs Lawrence Todd, et al
Civil Action 98-11959-RCL

Dear Jim:

The hearing for Summary Judgment will be held in the Federal District Court for the above matter on November 22, 1999.

Very truly yours,

Joseph C. Cove

JCC/amc

Encl.

Cc: Lawrence Todd ✓

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action
No: 98-11959-RCL

SOUTHWESTERN BELL
Plaintiff

v.

LAWRENCE TODD
Defendant

NOTICE OF HEARING

LINDSAY, D.J.

TAKE NOTICE that the above-entitled case has been set for Argument on the motions for summary judgment and defendant's motion to remand at **3:30PM**, on **November 22, 1999**, in Courtroom No. 11, 5th floor, United States Courthouse. Be advised, however, that this hearing date is subject to cancellation on forty-eight hours' notice if the court determines for any reason that the hearing will be unnecessary.

By the Court,


Deputy Clerk

September 14, 1999

To: All Counsel



JOSEPH C. COVE
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June 2, 1999

Leicester Zoning Board of Appeals
Town of Leicester
3 Washburn Square
Leicester, MA 01524

RE: Southwestern Bell Mobile Systems, Inc. b/d/a Cellular One
Vs. Zoning Board of Appeals for the Town of Leicester
Civil Action 98CV 11959RCL

Dear Members:

In this letter, I confirm that the Plaintiff's Offer of Settlement to reduce the height of the proposed tower from one hundred fifty (150') feet to one hundred (100') feet has been rejected by your Board. Mr. Todd conveyed this information to my office on May 25, 1999 and I have relayed this information to Plaintiff's counsel and to the Court. There has been some discussion regarding an alternate site – however, Cell One has not clearly identified their alternate site nor have they committed to filing for this new site and therefore I do not think it is appropriate to further explore an alternative site at the present time. If Cell One loses their appeal, they will then appear before the Board for a new site.

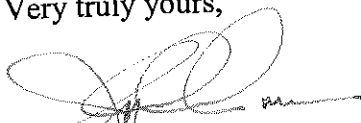
This entire matter now stands before the Federal District Court Judge, Judge Lindsay, and will be determined without a jury in a hearing on Cross Motions for Summary Judgement. The Plaintiff has moved that the Court grant Plaintiff judgement on the basis that there is no substantial evidence before the Zoning Board to refuse the permit. The Town has filed a Motion to uphold the denial of the permit on the basis that the Zoning Board had substantial evidence to deny the permit – namely, the visual impact, decrease in property value and nuisance. Please read the Brief that I have prepared on behalf of the Town which outlines and details the evidence before you in support of your conclusions. The critical questions that the Court must decide is whether, as a matter of law, the Zoning Board had acceptable reason for denial. If the Court finds that there was no good reason as outlined in your minutes, the Court will then order the cellular tower to be issued at the height and in the dimensional sphere as original presented to the Board.

Page 2
Leicester Zoning Board of Appeals
June 2, 1999

In the course of acceptable legal practice, I cannot predict an outcome in this matter nor can I anticipate a likely outcome. One of two things will certainly happen: either the Court will uphold the Zoning Board or the Court will order the permit to be issued.

Should you have any questions in these matters, please do not hesitate to call me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Joseph C. Cove", with a long horizontal flourish extending to the right.

Joseph C. Cove
8850-1
JCC/amc
Cc: James Purcell

JOSEPH C. COVE
ATTORNEY AT LAW
ONE NORTH MAIN
P.O. BOX 390
UXBRIDGE, MASSACHUSETTS 01569-0390

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May 18, 1999

Mr. Laurence M. Todd
National Envelope Corp.
207 Greenwood Street
Worcester, MA 01607

RE: Cellular One
Vs. Laurence M. Todd, et al

Dear Mr. Todd:

Enclosed herewith please find Offer In Settlement from Cellular One. Please review this with your Board.

The settlement offer is essentially that they will reduce the height of the tower from 150 feet to 100 feet. Please review this and contact me prior to May 26, 1999 as to the Boards intentions. Please also advise me if the Board is willing to consider an alternate site on other real estate owned by the Water Company somewhere on Paxton Street.

For your review, I enclose copy of my Memorandum filed on behalf of your Board.

Very truly yours,

Joseph Cove (amc)

Joseph C. Cove
8850-1
JCC/amc
Enclosure
Cc: James Purcell

*5/25 Left msg -
no to settlement*

D'Agostine, Levine, Parra & Netburn, P.C.

ATTORNEYS AT LAW
268 MAIN STREET
POST OFFICE BOX 2223
ACTON, MASSACHUSETTS 01720-2223

Julian J. D'Agostine
Louis N. Levine
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Cathy S. Netburn

(978) 263-7777

Facsimile (978) 264-4868

May 11, 1999

Of Counsel
Charles G. Kadison, Jr.

Joseph C. Cove, Esquire
1 North Main Street
P.O. Box 390
Uxbridge, Massachusetts 01569

OFFER IN SETTLEMENT

RE: Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One vs. Laurence M. Todd, Vaughn N. Hathaway, Jr., James T. Buckley, Linda G. Finan, Dennis E. Hennessy, As They Are the Members of and Constitute the Board of Appeals of the Town of Leicester, Worcester County, Massachusetts
United States District Court Case Number 98cv11959RCL

Dear Mr. Cove:

Pursuant to the Notice of Scheduling Conference dated April 1, 1999, in the above matter and L.R. 16.1, the following constitutes the Plaintiff's written offer of settlement. The following offer is made without prejudice, for the purposes of settlement only, shall not constitute an admission and shall not be admissible against the Plaintiff in any proceeding.

Subject to the foregoing, the Plaintiff hereby offers to settle all of the Plaintiff's claims in the above matter upon the entry of judgment in United States District Court Case Number 98cv11959RCL as follows:

It is ORDERED and ADJUDGED that the Defendant Board of Appeals of the Town of Leicester shall forthwith issue to the Plaintiff, Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One a special permit pursuant to all applicable provisions of the Zoning By-Laws of the Town of Leicester to construct and install a personal wireless service facility ("Facility") at 180 Paxton Street, Leicester, Massachusetts, in the location shown on the plans previously submitted to the Defendant Board, which special permit shall be subject to the following conditions:

- (1) The Facility shall conform to the plans and specifications previously submitted to the Defendant Board, as amended as of September 18, 1998, except that the height of the proposed tower shall be reduced from 150 feet to 100 feet;

12 panel antennae / 4 dish antennae

provided, however, that any antennae to be used by the Town of Leicester fire, police and emergency medical services may be mounted on top of the tower and exceed the height of the tower; and provided further that the Plaintiff shall be permitted to install up to four dish antennae and to reconfigure its antennae on the reduced height tower without further approval of the Board. }

(2) In light of the reduced capability for co-location resulting from the reduction in height of the tower, the Plaintiff, at its option, shall be permitted to reduce the size of the fenced-in compound around the base of the tower so as to accommodate only the Plaintiff's requirements for enclosure of its equipment and that of the aforesaid Town of Leicester's emergency and communications services.

(3) Prior to issuance of a building permit for the facility, the Plaintiff shall post a bond with the Town of Leicester to secure removal of the facility within one year of cessation of use or condemnation by the building inspector. The amount of the bond shall be certified by a structural engineer as adequate to cover the cost of such removal.

(4) The Plaintiff shall comply with all of the conditions of the Planning Board's site plan approval of the facility.

(5) The Plaintiff shall provide at no charge space on the tower and in its equipment shed adequate to serve the reasonable needs of the Town of Leicester public safety departments and communication networks. The Plaintiff shall grant the Town of Leicester written permission to install and maintain communications equipment at the Facility and to use its equipment shed for that purpose and to use the Plaintiff's emergency power generator in case of power failure. The Plaintiff will arrange for reasonable access by Town personnel as may reasonably be required for the foregoing purposes.

(6) The Plaintiff's use of the Facility shall not interfere with existing licensed television, cable television or radio signals. Should such interference occur, the Plaintiff shall immediately remedy same.

(7) The tower will be painted contrasting colors and lit only if required by either the Federal Communications Commission or the Federal Aviation Association.

(8) Prior to Cellular One's use of the Facility and again within ninety (90) days after commencement of Cellular One's use of the Facility, Cellular One shall cause an independent testing company to take measurements of radio frequency

Joseph C. Cove, Esquire
May 11, 1999
Page 3

emissions at the Leicester Elementary School. Such measurements shall be taken both inside and outside the school in such locations as the Facilities Manager of the Leicester Public Schools shall reasonably determine. Cellular One shall submit those measurements to the Board which shall demonstrate that the Facility is in compliance with applicable safety limits of the Federal Communications Commission and the State Board of Health Radiation Control Unit.

The foregoing offer in settlement shall remain open to and including the Scheduling Conference in the United States District Court in the above-captioned matter on May 26, 1999, but shall not be binding until such time, if as and when the Board shall have accepted same in writing and judgment shall have entered accordingly, all rights of appeal having been waived.

Lastly, in accordance with the Notice of Scheduling Conference issued in the above matter, I enclose a draft Joint Scheduling Conference Memorandum for your review. We are required to file a joint statement on or before May 18, 1999. Therefore, after you have had an opportunity to review the foregoing and enclosed, please contact me no later than May 14, 1999, so that we can confer as required by the Notice of Scheduling Conference.

Thanking you for your anticipated cooperation in this matter, I remain

Very truly yours,

D'AGOSTINE, LEVINE, PARRA & NETBURN, P.C.

By: F. Alex Parra /ps
F. Alex Parra

FAP/ses

letter\cove5-11-99

cc: David Huntley, Esquire
Tony Miller
Ralph Colorusso

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION: 98 CV 11959RCL

SOUTHWESTERN BELL MOBILE)
SYSTEMS, INC. d/b/a CELLULAR ONE)
Plaintiff)

VS.)

LAURENCE TODD et Al as they are)
members of the ZONING BOARD OF)
APPEALS FOR THE TOWN OF)
LEICESTER)
Defendants)

MEMORANDAM OF THE DEFENDANT, THE BOARD OF APPEALS FOR THE
TOWN OF LEICESTER, IN OPPOSITION TO THE PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AS TO COUNT I OF THE COMPLAINT
and

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT IN FAVOR OF TOWN OF LEICESTER

RESPONSE TO CONCISE STATEMENT PURSUANT TO LR56.1

The Defendant concedes the allegations contained in paragraph one, two, three, four and five of the Plaintiff's concise statement as set forth in its Motion for Summary Judgement.

The Defendant denies the allegation contained in paragraph six of Plaintiff's concise statement and further the Defendants, as they constitute the Zoning Board of Appeals, (herein the Defendant) say that as a matter of law, the Defendant is entitled to summary judgement on the record.

NATURE OF JUDICIAL REVIEW UNDER THE TELECOMMUNICATION ACT

The Plaintiff's action is based upon the provisions of 47 U.S.C. section 332 (c) (7)

(B) (v) (the Telecommunications Act is hereinafter referred to as "TCA"). The reviewing

Court is guided by the language of the statute:

(7) *Preservation of Local Zoning Authority-*

(A) General Authority - Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction and modification of personal wireless service facilities.

(B) Limitations-

(I) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof --

1. Shall not unreasonably discriminate among providers of functionally equivalent services; and

2. Shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

42 U.S.C. 332 (c)

....

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

TCA 47 U.S.C. 332 (c) 7 (II)

The primacy of local control over placement of wireless towers is affirmed in the statute while prohibiting blanket proscriptions against the placement of wireless facilities.

It has thus been said that the TCA is a "deliberate compromise between two competing aims -- to facilitate nationally the growth of wireless telephone service and to maintain substantial local control over siting of towers." OmniPoint vs. Amherst, ____ F

3rd ____ (1st Cir. 1999). As such, the statute is a "refreshing experiment" in

Federalism. OmniPoint. Ibid. The Town retains the right to control siting of the tower while deferring to the right of the wireless provider to site the tower somewhere in the Town.

The nature of judicial review of an administrative agency's decision under this statute is an inquiry into whether the agency had "substantial evidence" on which to base its denial of a zoning permit for the construction of, as here, a cellular tower. Substantial evidence is "more than a mere scintilla, it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera vs. NLRB, 340 US 474, 488 (1951) cited with approval in A T & T Wireless vs. the City of Virginia Beach, 155 F3rd 423 (4th cir. 1998) Substantial evidence is not a preponderance of the evidence. NLRB vs. Grand Canyon Mining Company 116F 3rd 1039, 1044 (4th cir. 1997).

A Court is not free to substitute its judgment for the agency's – it must uphold a decision that has substantial support in the record as a whole even if it might have decided differently as an original matter. NLRB vs. Grand Canyon Mining Company (Supra at 1044). The fact that two inconsistent conclusions may be drawn from the same body of evidence does not prevent the administrative agency's finding from being supported by substantial evidence. American Textile Manufacturing Institute vs. Donovan 452 US 490, 522 (1981).

It has been said that the reviewing Court must find that the administrative agency has "articulate{d} a satisfactory explanation for its action including a 'rational

connection' between that facts found and the choice made." Motor Vehicle Mfrs. Association vs. State Farm Mutual Auto Ins. Co., 463 U.S. 29,43 (1983).

THE REQUIREMENT OF A DECISION IN WRITING

The question arises: what is an adequate articulation of the decision to deny the Plaintiff's zoning permit? Must the Board express in writing findings of fact and conclusions therefrom as the statute provides:

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

TCA 47 U.S.C. 332 (c) 7 (II)

The above language is substantially different from the Federal Administrative Procedures Act which states that:

"All decisions {in adjudications or formal rulemaking} shall include a statement of .. findings and conclusions, and the reasons or the basis therefor..."
5 U.S.C. 557 (c)

Even the TCA as it speaks to other aspects of the administrative scheme not related to the section under discussion - i.e. regulation of providers; technical deficiencies, etc. - requires written findings as to such deficiencies. 47 U.S.C. sec 252(e)(1); 47 U.S.C. sec. 271 (d)(3). So it is clear that Congress was aware of the demand for written findings and conclusions and chose not to impose this requirement on a local government; opting instead for a decision in writing. Recognizing this distinction, the

Fourth Circuit Court of Appeals opined that the TCA does not impose a requirement that the Town issue written findings of fact:

“The simple requirement of a ‘decision in writing’ cannot reasonably be inflated into a requirement of a ‘statement of .. findings and conclusions and the reasons or basis therefor.’”

ATT Wireless vs. Virginia Beach, 155 F 3rd 423 (4th Cir. 1998)

ISSUE STATED

The issue at hand for review is whether the Town has a rational explanation for denying a permit to construct a tower at the precise location identified in the Plaintiff’s application, viz., 180 Paxton St, Leicester. If there is a rational explanation for the denial (even though a contrary conclusion could be drawn from the same evidence), then, as a matter of law, the Court must deny summary judgment for the Plaintiff and grant summary judgment to the Defendant.

ARGUMENT

SUMMARY JUDGMENT IS APPROPRIATELY RENDERED IN FAVOR OF THE DEFENDANT ZONING BOARD AND SUMMARY JUDGMENT DENIED TO THE PLAINTIFF WHEN AS HERE THERE IS SUBSTANTIAL EVIDENCE THAT THE PROPOSED TOWER WOULD HAVE AN ADVERSE IMPACT ON ADJACENT PROPERTIES AND RESIDENTIAL NEIGHBORHOODS.

RESIDENTIAL NEIGHBORHOOD

The proposed site of the Plaintiff’s tower at 180 Paxton Street, Leicester is the top of a treeless hill overlooking the City of Worcester, the City Airport and the

Town of Leicester. The site is adjacent to a fifty-seven lot residential subdivision approved in June 1997 and presently under construction. See Exhibit 1 (Certificate of Approval for Subdivision at Carey Hill) The public high school is adjacent to the site and around the school on the same road is a residential neighborhood of older homes. See Exhibit 2 (Assessor's Map of area).¹ The site was not independently chosen by the Plaintiff; rather, the Plaintiff was solicited by the owner of the land, Leicester Water Supply District and after receiving permission from it, the Plaintiff commenced this application.

During three separate public hearings which were attended by neighbors and abutters, the Board received extensive testimony from the Plaintiff focusing on the nature of cellular technology, the design of the tower and the alleged minimal impact on the surrounding property values. At each of these meetings, there were abutters in attendance who voiced strident opposition to the placement of the Plaintiff's tower. Their comments were extensive, although at times inartful, and focused on the visual impact of the tower given the high visibility of the site. Please see the comments recorded in the minutes of the Board: *Record tab 9 pp. 6-12; Record tab 10 pp. 7-10; Record Tab 11 pp. 3-6.*

The Board further considered the argument that the tower would pose an attractive nuisance to public school students at the schools which abut the locus. This concern was

¹ It is regrettable that the Plaintiff in its Memorandum has chosen to state that the "Locus is in the immediate vicinity of several nonresidential and nonagricultural uses." Plaintiff's memo Page 3. Such

not as great as the concerns regarding the impact on the residential neighborhood but nevertheless was not marginalized. As Mr. Hathaway, a board member stated in his concluding remarks:

I think the point has been made that this would be an attractive nuisance, being located next to the schools. The petitioners did give us information on schools that have towers near them. The thing I noted from that was, only one school has a tower that's even as close to the furthest school we have located here from a tower. There were 10 other names of which were either colleges or universities or they were pending decisions on whether or not they would be allowed. We were only able to find one that was close to that. Record Tab 11, p. 8.

It is obvious from the record that the concerns of the Board as to the close proximity to the public schools were addressed with noncomparable building sites (towers next to colleges when the Leicester site was adjacent to the public elementary and high schools). The attractive nuisance claim remained a concern at the end of three months of hearings.

The overwhelming concern of those participating at these three hearings and those providing commentary to the board was the visual impact of the tower and the attendant decline in property values. A fair representation of the testimony before the Board was as follows:

Record: Tab 9 page 5-6 (23 June 1998 Hearing)

Mr. Pike It would be a visual eyesore for the people living around it.

Mr. Robert Hyland I think his statement is true, that it will decrease property values.

an unfortunate characterization unfairly skews the accuracy of description. The locus is in a heavily residential neighborhood.

Mrs. Joseph Hyland ... Mr. Blair has had 59 subdivisions. He never once didn't finish one. He has 14 houses sold. The first house in that field directly behind that is \$210,000. If you build this tower, it will cost the town money. He is going to build a \$120,000 house, because the people who paid \$210,000 aren't going to buy it with a tower in their backyard....

Record Tab 9 p.10

Mr. Rocky Hyland ...In all the sites where these towers are near residential homes, the value of the houses went down.

Record Tab 9 p. 11

Mr. Robert Hyland I also spoke with the developer, [Blair 57 lot subdivision] and they are against this tower. But, they also need the support of the water department. It would be a conflict of interest.

Record Tab 10 p. 7 18 August 1998

Mr. Paul Bottis In the bylaw it states, minimizing adverse impacts of wireless communication facilities on adjacent properties. You can't tell me there isn't going to be an adverse impact on property values.

Record Tab 10 p. 10

Ms. Sonya Radzik I'm a potential resident of the subdivision near the tower. On minimal visual impact, speaking for the 51 units that are going to be potentially built, we are talking 200 to 300 feet away from these residences in an open field. I would think that addresses the minimal visual impact. To me personally, it is directly 200 feet behind my backyard. With night lights on going every night, directly in my bedroom window. To me, minimal visual impact is not being addressed.

Record Tab 11 p. 6

Mr. Jos. Hyland *In the bylaw it says minimal visual impact. I can't think of anything else in this town, that would bring 25% of the town's population to see this every single day.*

The Board acknowledged this tide of citizen concern and at the close of the August hearing, Mr. Todd summarized:

...It's certainly demonstrated through the concern of people here that, its a matter of impact. There have been all kinds of expressions of some impacts that are most unlikely, and some, the visual impact, being one, that for better or worse is going to be there. Our bylaw addresses that... Record Tab 10 p. 12

The Plaintiff argues that it allayed the fears of economic property loss by preparing and delivering on 18 August 1998 an appraisal report concluding that there is no difference between residential property sales near towers and sales not near towers. Record Tab 6. The appraisal report and testimony from the appraiser were duly received by the Defendant and thereafter two members, Mr. Todd and Mr. Hathaway, visited the three sites relied upon by the appraiser and found them not comparable.

Mr. Todd:

I also visited the three towers in that report regarding the property values [Haskell Report] and visual impacts. One of the towers had been there for 30 years, I don't think that is a fair comparison. There is another tower in Northboro, there are no houses around. The nearest house I saw, was on the other side of the road that ran into Northboro Center. Then the other in Shrewsbury, there must be some property near that you could see the tower from. ... My point is that these were towers we were given information about. I didn't see anything out in an open field, I didn't see anything next to a house or a school, within 200 feet . I have to assume that an effort was put in to find sites

that are within this kind of area. .. Frankly what I see is an inappropriate site to put it. ...
Record Tab 11 p. 4-5

The Plaintiff relies on the Haskell Report as conclusive evidence that any visual impact will have no economic impact on the surrounding property value but fails to understand that the report is based on noncomparable properties built around pre-existing towers or built in nonresidential areas. The comparison between two subdivisions in Leicester: Carey Hill (the 57 lot subdivision next to the site) and Leicester Woods (not near the site) loses its persuasiveness when one considers that the appraiser is comparing sales from both subdivisions in the absence of any tower. The more logical comparison would be made from sales occurring after the construction of the tower. The Board also considered this:

Mr. Hathaway
I didn't find the data where it was talking about comparing Carey Hill to the Leicester Hill site. Talking about pre-sales being equivalent in both of them. I didn't see any break down on what number of those presales happen before news of a tower came out, vs. after... Record Tab 11 p. 8

By preserving local control over zoning permits, Congress anticipated local input, comment and, as here, opposition to the placement of towers at the specific locations described in the permit application - to reason otherwise would be to say that Congress has given a blanket pre-emption over local zoning decisions and we know that there is no such pre-emption. See OmniPoint vs. Amherst, ___ F3rd ___ (1st Cir. 1999) at fn.3.

It similarly follows that Congress intended the comment and vocal opposition of local residents to be “evidence” before the local zoning board and in Leicester the Defendant zoning board had an obligation to listen and consider the objections of the residents with as much credence as was given to the Plaintiff’s agents at the three hearings. As stated by the Fourth Circuit Court of Appeals in a case reviewing ‘substantial evidence’ under the TCA:

It is not only proper but also expected that a legislature and its members will consider the views of their constituents to be particularly compelling forms of evidence in zoning as in all other legislative matters.
AT&T Wireless vs. City of Virginia Beach, 155 F3rd 423 (4th Cir. 1998).

The Plaintiff argues that the Defendant should disregard the testimony from the public and consider only the materials and testimony presented by the Plaintiff - to the extent that the Plaintiff suggests that the Board placed no evidence on the record, a statement which denies the presence of citizen testimony over the course of three months and the further denies the active review and investigation of the site and materials by the board members. The Plaintiff’s position today is the same as the position taken unsuccessfully by AT&T in AT&T Wireless vs. City of Virginia Beach , Ibid:

In all cases of this sort, those seeking to build will come armed with exhibits, experts, and evaluations. Appellees, by urging us to hold that such a predictable barrage mandates that local governments approve applications, effectively demand that we interpret the Act [TCA] so as always to thwart average, non-expert citizens; that is, to thwart democracy. The District Court dismissed citizen opposition as “generalized concerns”. 979 F. Supp at 430. Congress, in refusing to abolish local authority over zoning of personal wireless services, categorically rejected this scornful approach.

Accordingly, as a matter of law, the Defendant had substantial evidence of adverse visual impact upon which to deny the Plaintiff's application when, as here:

- the proposed tower would be on a treeless hill;
- the proposed tower would be allegedly visible to 25% of the community;
- the proposed tower would be adjacent to a 57 lot residential subdivision under construction;
- the proposed tower would be adjacent to the public schools;
- the proposed tower would be in two colors: red and white and bear flashing lights;
- the proposed tower would be adjacent to an established residential community of older homes;
- citizen opposition was voiced at all three public hearings together with letters in opposition sent to the Board;
- appraisal evidence regarding real estate values was not comparable to the site under discussion..

Based upon the above substantial evidence, the Defendant is entitled, as a matter of law, to Summary Judgment and Plaintiff must be denied judgment.

NO BLANKET PROHIBITION

Plaintiff has argued that the 180 Paxton Road site is the only site available to Plaintiff. See Plaintiff's brief, page 10. This is factually askew. The Plaintiff responded to a request for proposals from the Water District after having searched for buildings on which to place cellular receivers. See Plaintiff's brief, p.9. See Record Tab 11 p. 5 [Mr. Parra: 10 existing structures and 2 additional that were looked at for placement.] The record is unclear and confused regarding Plaintiff's attempts to locate a parcel of land on which to locate its tower. There was never a clear answer from Plaintiff as to other sites investigated, e.g.:

Mr. Parra: The preliminary evaluation, with respect, your bylaw requires us to look at existing structures. We have done that with a number of structures. We have looked at other sites but you can't do an in depth study of 50 sites in the Town of Leicester. It doesn't serve the purpose.

*Mr. Hathaway
.... How diligently you looked at other sites is something that puts a concern to everybody.*

*Mr. Parra: The process starts with identifying a geographic area that requires service.
Record Tab 10 pp11-12.*

In fairness to the Defendant, it must be said that by the time the second hearing was held there was sufficient opposition to the location at 180 Paxton Road to warrant the suggestion that the Board might consider other locations. The Board was not obligated to require the Plaintiff to abandon its application but it certainly indicated that it was open to consider alternate locations.

CONCLUSION

The Defendant is entitled to summary judgment as a matter of law when it has based its denial of a zoning permit on substantial evidence. In the presence of substantial evidence, the Plaintiff is denied summary judgment.

TOWN OF LEICESTER

By its Attorney



JOSEPH C. COVE

One North Main Street

Post Office Box 390

Uxbridge, MA 01569

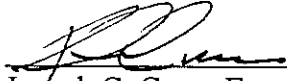
Telephone (508) 278-6711

BBO #102640

CERTIFICATE OF SERVICE

I, Joseph C. Cove, hereby certify that on this 14 th day of May ,1999, I have served a copy of the foregoing document by mailing a copy of same by first-class mail, postage prepaid to:

F. Alex Parra, Esquire
D'Agostine, Levine & Parra, P.C.
268 Main Street
Acton, MA 01720



Joseph C. Cove, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION: 98 CV 11959RCL

SOUTHWESTERN BELL MOBILE)
SYSTEMS, INC. d/b/a CELLULAR ONE)
Plaintiff)
)
VS.)
)
LAURENCE TODD et Al as they are)
members of the ZONING BOARD OF)
APPEALS FOR THE TOWN OF)
LEICESTER)
Defendants)

MOTION OF THE DEFENDANT, TOWN OF LEICESTER
FOR SUMMARY JUDGMENT

Now comes the Defendant and moves this Court for Summary Judgment in favor of the Defendant on Count I of the Plaintiff's complaint all pursuant to F.R. C. P. 56 and further states:

CONCISE STATEMENT PURSUANT TO L.R. 56.1

The Defendant joins in the concise statement of material facts provided to the Court in the Plaintiff's motion for Summary Judgment as to paragraphs 1,2,3,4,and 5; the Defendant however states that there exists substantial evidence on the record to support the Defendant's decision .

CERTIFICATION PURSUANT TO L.R.7.1A(2)

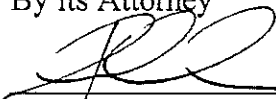
Counsel certifies that he has conferred with opposing counsel and in good faith attempted to resolve or narrow the issue.

REQUEST FOR ORAL ARGUMENT

The Defendant requests oral argument on the foregoing motion for summary judgment.

TOWN OF LEICESTER

By its Attorney



JOSEPH C. COVE

One North Main Street

Post Office Box 390

Uxbridge, MA 01569

Telephone (508) 278-6711

BBO #102640

CERTIFICATE OF SERVICE

I, Joseph C. Cove, hereby certify that on this 14 th day of May ,1999 I have served a copy of the foregoing document by mailing a copy of same by first-class mail, postage prepaid to:

F. Alex Parra, Esquire
D'Agostine, Levine & Parra, P.C.
268 Main Street
Acton, MA 01720



Joseph C. Cove, Esq.

Town of Leicester - Board of Appeals
NOTICE OF VARIANCE

Conditional or Limited Variance or Special Permit

(General Laws Chapter 40A, Section 18 as amended)

Noctice is hereby given that a Conditional or Limited Variance or Special Permit has been ~~granted~~ denied

To Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One
by Ralph Colorusso Owner or Petitioner
Address 100 Lowder Brook Drive

City or Town Westwood, Ma.

Paxton Street, a.k.a. Route 56
Identify Land Affected

Leicester, Ma.

by the City/Town of Leicester Board of Appeals affecting the
rights of the owner with respect to the use of premises on

Paxton Street, a.k.a. Route 56, Leicester, Ma.
Street City / Town

the record title standing in the name of

Leicester Water Supply District

whose address is 124 Pine Street, P. O. Box 86, Leicester, Ma.
Street City / Town

by a deed duly recorded in the Worcester County Registry of Deeds in Book

5875 Page 395 Registry District of Land Court

Certificate No Book Page

The decision of said Board is on file with the papers in Decision or Case No.

in the office of the City/Town Clerk Leicester

Certified this 8th day of September 1998

Board of Appeals:

Lawrence Todd Chairman
John T. Bully Clerk

19..... at o'clock and minutes M

Received and entered with the Register of Deeds in the County of

Book..... Page.....

ATTEST

Register of Deeds

Notice to be recorded by Land Owner

RECEIVED

TOWN OF LEICESTER
ZONING BOARD OF APPEALS

98 SEP 10 PM 1:02

September 8, 1998

TOWN CLERK'S OFFICE
LEICESTER, MASS

Petition: Denied xxx
Approved

TO WHOM IT MAY CONCERN:

Upon Petition of Southwestern Bell Mobile Systems, Inc. whose address is located at
100 Lowder Brook Drive, Westwood, Ma. for a Special Permit under
Section 5.4 of the Leicester Zoning By-Laws, on September 8, 1998
at 7:30 P.M. a hearing was held in the Town Hall, 3 Washburn Square, Leicester,
Massachusetts, after publication and notice to abutters and others as required by Chapter 40A,
of the Massachusetts General Laws.

Present were Board Members: Laurence Todd; Chairman, Jim Buckley; Clerk,

Linda Finan, Vaughn Hathaway

Speaking in Favor: Ralph Colorusso, F. Alex Parna; Attorney, Deborah Haskell,

David Maxin, Frank Lyon, Mark Wood

Speaking in Opposition: Joe Hyland, Bob Hyland, Marilyn Hyland, Steve Radzik,

Paul Ravina, Dennis Griffin

The Petitioner Southwestern Bell Mobile Systems, Inc. whose address is
100 Lowder Brook Drive, Westwood, Ma. is/^{not}are the owner of certain premises
situated at Paxton Street, Route 56, Leicester, Ma. as more particularly described in a
deed recorded with the Worcester District Registry of Deeds in Book 5875 Page 395

Said land is situated in a district classified under the Town of Leicester Zoning Ordinance as

Suburban Agricultural

Presently said locus consists of 4.3331± acres

The Petitioner desires to use said premises for to allow the use of a radio

broadcasting and relay station antenna array and tower

Southwestern Bell
100 Lowder Brook Drive
Westwood, Ma.

Special Permit

- Page 2 -

September 8, 1998
7:30 pm

Petition: Denied.....xxxx.....
Approved.....

RECEIVED

Denied Approval subject to the following conditions: 30 SEP 10 PM 1:02

It doesn't satisfy criteria of Minimum Visual Impact. Any tower that will be red and white with a beacon, that needs to be seen by a plane traveling over 100 mph, cannot have minimum visual impact, when there are no trees to hide it. Roads go 360° around the site. The criteria for granting a Special Permit cannot be satisfied. It would be an attractive nuisance being located next to schools. This does demonstrate that there is an adverse affect on property values.

Statement of reasons for action of Board of Appeals:

The Zoning Board of Appeals of the Town of Leicester Denies the petition of Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One, by Ralph Colorusso, of 100 Lowder Brook Drive, Westwood, Ma., for a Special Permit to allow the use of a radio broadcasting and relay station antenna array and tower upon land zoned Suburban-Agricultural, located on Paxton Street a.k.a. Route 56, Leicester, Ma.

Vote: UNANIMOUS

This Special Permit shall not take effect until a copy is recorded hereof with the Worcester District Registry of Deeds pursuant to General laws. Chapter 40A. Section 11. as amended; and further that said recording shall be accomplished not later than six months from the date of this decision; and further that any construction hereunder must commence no later than one year from the said recording.

It was ordered by the Board that persons notified of the hearing be notified of the foregoing decision.

Any appeal to this decision must be made to the Superior Court within 20 days after the filing of this decision with the Town Clerk, in accordance with Section 17 of Chapter 40A of Massachusetts

General Laws.



Board of Appeals:

Laurence T. Ad...
Jim G. Fin...
[Signature]
[Signature]

Filed with the Town Clerk on the 10th day of September 1998

Patricia A. Hartnett
Town Clerk

Town of Leicester
ZONING BOARD OF APPEALS
Washburn Square
Leicester, Massachusetts 01524



The Zoning Board of Appeals of the Town of Leicester, Ma., will hold a public hearing on Monday, June 15, 1998 at 7:30 pm in the Selectmen's Conference Room, Town Hall, Washburn Square, Leicester, Ma., on the petition of Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One, by Ralph Colorusso, of 100 Lowder Brook Drive, Westwood, Ma., for a Special Permit to allow the use of a radio broadcasting and relay station antenna array and tower upon land zoned Suburban-Agricultural, Located on Paxton Street a.k.a. Route 56, Leicester, Ma.

All those wishing to express their opinion on this petition are urged to attend this meeting or express their views in writing to the Board of Appeals no later than June 15, 1998.

PLEASE RUN IN THE WORCESTER TELEGRAM JUNE 1ST AND JUNE 8TH

LAURENCE TODD
Chairman, Leicester ZBA

cc: ZBA

Copy
FIG

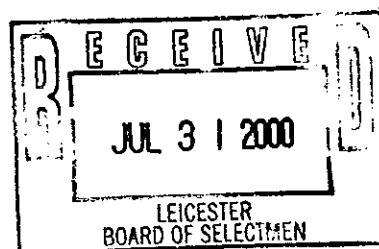
JOSEPH C. COVE
ATTORNEY AT LAW
ONE NORTH MAIN
P.O. BOX 390
UXBRIDGE, MASSACHUSETTS 01569-0390

TELEPHONE (508) 278-2210
(508) 278-6711

FAX (508) 278-6491

July 26, 2000

Mr. James Purcell, Town Administrator
Town of Leicester
3 Washburn Square
Leicester, MA 01524

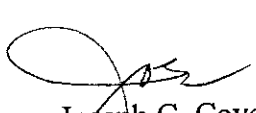


RE: Southwestern Bell
Vs. Town of Leicester

Dear Jim:

The Southwestern Bell vs. Town of Leicester Federal Appeals Case will be argued on September 15th, 2000 at 9:30 a.m. at the Federal Appeals Court in Boston.

Very truly yours,

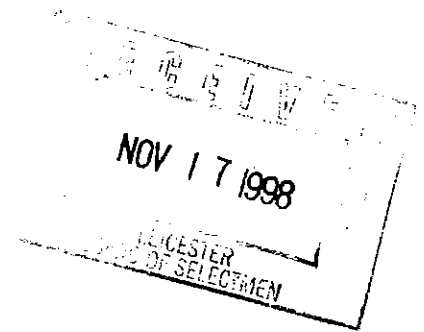

Joseph C. Cove

JCC/amc

JOSEPH C. COVE
ATTORNEY AT LAW
ONE NORTH MAIN STREET
P.O. BOX 390
UXBRIDGE, MA 01569

(508) 278-2210

Fax: (508) 278-6491



David Moore, Esq.
Law Department, City of Worcester
City Hall
Main Street
Worcester

VIA TELEFACSIMILE: 799-1163

Town of Leicester / Cellular One

Dear Mr. Moore:

I represent the Town of Leicester in a telecommunications review in the Federal District Court on the denial of a permit for a cellular tower at the end of the runway for the Worcester Airport. Mr. Rick Foley may have spoken to you on this. Mr. Tom Hoover has spoken with the Leicester Administrator, Mr. Jim Purcell, and is aware of the circumstances.

May I suggest that you consider moving immediately to join in the District Court action by a motion to intervene and joining me in a motion to change the venue to the Worcester Federal District Court and then remanding the action to the Leicester ZBA where the Airport's concerns can be fully addressed.

I await your call.

Very truly yours,

Joseph C. Cove
CC: Jim Purcell

CONFIDENTIAL

Office of the Superintendent
Leicester Public Schools
1078 Main Street
Leicester, MA 01524

Leicester Public Schools

August 31, 1998

Town of Leicester
Zoning Board of Appeals
Washburn Square
Leicester, Ma 01524

RE: Information request

Dear Zoning Board of Appeals Members:

The Leicester School Committee met in open session on August 24, 1998 to conduct a comprehensive review of all the latest information forwarded by the Zoning Board of Appeals and other representatives. Mr. Carl Wicklund, Facilities manager for the Leicester Public Schools, presented an oral review of this information at this meeting. After careful consideration of all of the information presented the school committee in the role of abutters wishes to forward their comments and concerns to you:

- At the present time there is no significant evidence from the scientific community indicating that cell tower technology poses health or other safety concerns for human beings within specific parameters stated by the Federal government and the State Board of Health. However, the school committee is concerned that cell tower technology is a significant growth industry that has burst upon the scene in recent years and future research may indicate health concerns for our children in the Leicester Public Schools. Bearing this in mind the school committee would request that should a cell tower be erected in the proposed site that an independent testing company be contracted to conduct testing inside and outside school facilities to verify the safety of our school children and staff members. This cost should not be borne by the school district.
- The school committee is also concerned about the aesthetics of placing a cell tower with its associated dishes and arrays in proximity to school buildings. The school committee has tried to improve the quality of its buildings and surrounding properties to enhance the environment of the Town. The school committee also believes that this is a requirement to be examined in the Town's zoning by-laws.

RE: Cellular Tower Technology

August 31, 1998
Page 2

In conclusion, the school committee wishes to thank the Zoning Board of Appeals for the opportunity to provide this input. We hope that this information will assist you in a very difficult decision making process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael N. Dubrule".

Michael N. Dubrule, Ed.D.
Superintendent of Schools

A handwritten signature in cursive script, appearing to read "Lawrence Spaulding".

Lawrence Spaulding
Chairman
Leicester School Committee

To the Zoning Board of Appeals,
of Leicester, Ma.

I, Gertrude G. Linen, a
registered voter, of 140 Payton St.,
Leicester, opposed a radio
broadcasting and relay station
antenna array and tower upon
land, located on Payton St.

I am concerned about
health hazards, the value of
property going down, and a
big eye sore. Gertrude G. Linen

TOWN OF LEICESTER, MASSACHUSETTS
Office of the Inspection of Codes
3 Washburn Square, Town Hall
Leicester, Massachusetts 01524

Building & Zoning Enforcement
DONALD E. SMITH, Jr.

Telephone (508) 892-7003
FAX (508) 892-7070



Plumbing & Gas Inspector
JOHN P. DOLEN

Wiring Inspector
ARNOLD L. ROBERTSON

DATE: July 9, 1998

TO: Larry Todd
Zoning Board of Appeals

FROM: Donald E. Smith, Jr. *DCJ, 10*
Inspector of Buildings
Zoning Enforcement Officer

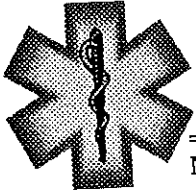
SUBJ: Communication Towers

In response to your letter of June 24, 1998:

It is my understanding that the Planning Board has approved the plans. After reviewing the plans, I notice nothing in the way of the fall area, therefore, I see no danger to the schools.

I have attended two seminars on cellular towers at which we were informed that positively there were no adverse effects on health.

After the towers have been erected, you won't even know that they are there..



Town of Leicester • Emergency Medical Services

Town Hall, 3 Washburn Square • Leicester, MA 01524-1333

MARK F. WILSON, EMS Director • SHERI R. BEMIS, EMS Assistant Director • (508) 892-7006

June 12, 1998

Frank W. Lyon
Leicester Water Supply District Superintendent
124 Pine Street
P. O. Box 86
Leicester, MA 01524

Dear Mr. Lyon,

I am writing to you concerning our numerous discussions over the past several months regarding the proposal of a communications tower at the site of the Leicester Water Supply tanks located on Paxton Street by Cellular One.

During the past year the Town of Leicester EMS has spent substantial funds to upgrade our communication equipment. This involved extensive research in canvassing the town for proper tower sites. Leicester EMS will be constructing the one-hundred foot tower to provide service to southern portions of the town. The Paxton Street site was tested and proved to be an extremely beneficial site to provide coverage to the northern portion of the town.

I fully recommend the construction of a communications tower at this site as long as stipulations are made to allow public safety departments access to the tower for their communication equipment.

I would gladly answer any questions that you or anyone else have regarding this issue.

Thanking you in advance for your extensive cooperation in this matter.

Sincerely yours,

Mark F. Wilson, EMT-P
EMS Director



CHIEF OF POLICE
RUSSELL J. DRAKE

TOWN OF LEICESTER MASSACHUSETTS
Department of Police
1037 Main Street
Leicester, Massachusetts 01524



TELEPHONES
Emergency: 911
Non-Emergency: (508) 892-7009
Non-Emergency: (508) 892-7010
FAX: (508) 892-7012

Leicester Water Supply District
124 Pine Street
P.O. Box 86
Leicester, MA 01524

June 10, 1998

Dear Water Supply Commissioners,

This letter is in regards to a proposed tower site at the water tanks on Paxton Street to be erected by Cellular One. I have had an opportunity to review the plans submitted by Cellular One. These plans appear to have been thoroughly thought out and well prepared.

I am writing this letter to express my interest in this particular site. The Leicester Police Department has done some extensive testing for our communications and found this site on Paxton St. at the water tanks extremely advantageous. We have done some site testing at that location already. Due to the elevation there we have found that this site would be beneficial to the communications networks for the Town of Leicester. Including the Police, Fire, Ambulance, Highway Departments and the Council on Aging.

It is with this interest, that if the proposal should become a reality, Cellular One should allocate tower space available for use by the Town of Leicester communication networks.

Respectfully,

Sgt. Joseph E. Fontaine



TOWN OF LEICESTER FIRE DEPARTMENT

15 WATER STREET
LEICESTER, MASSACHUSETTS 01524



OFFICE (508) 892-7022

CHIEF
ROBERT F. WILSON

June 15, 1998

Mr. Frank W. Lyon, Superintendent
Leicester Water Supply Dist.
P.O. Box 86
Leicester, MA 01524

Dear Mr. Lyon:

The Leicester Fire Department fully supports the proposed communication tower to be located on the property of Leicester Water Supply District on Paxton St. near the existing water tanks.

The space that will be made available on this tower for public safety. Radio access will enhance the communications of not only the Leicester Fire Department but all public safety departments within the town of Leicester.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert F. Wilson".
Robert F. Wilson
Fire Chief

LEICESTER PUBLIC SCHOOLS
1078 MAIN STREET
LEICESTER, MASSACHUSETTS 01524

MEMORANDUM

TO: Zoning Board of Appeals

FROM: Norman G. Limoges, D. Ed., Superintendent of Schools

DATE: July 16, 1998

RE: Communications Tower

Please be advised that at their April 28, 1997 meeting, the School committee voted to allow the erection of a communications tower at the Memorial School, as presented by Officer Tim Fontaine and Mark Wilson.

Certain safety factors, as described by both presenters, were to be completed. In light of this, I do not believe that the Committee would have a problem with a comparable Cellular One tower with the same safety conditions in place.

The next School Committee meeting is on August 24, 1998, if you have any further concerns regarding this.

NGL/nk

cc: F. Lyons



ARGEO PAUL CELLUCCI
GOVERNOR

WILLIAM D. O'LEARY
SECRETARY

HOWARD K. KOH, MD, MPH
COMMISSIONER

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Radiation Control Program
305 South Street, Jamaica Plain, MA 02130
(617) 727-6214 (617) 727-2098 - Fax

April 30, 1998

Julie Hall Payne
RF Safety Officer
Cellular One
190 Second Avenue
Waltham, MA 02154

RE: Cellular

Dear Ms. Payne:

Pursuant to your notification of April 29, 1998, this is to advise you that approval, under the provisions of 105 CMR 122.021 has been granted to maintain the cellular facility located at 180 Paxton Street in Leicester, Massachusetts.

Should you have any questions, please contact Robert T. Watkins at (617) 727-6214.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert M. Hallisey".

Robert M. Hallisey, Director
Radiation Control Program

cc: Leicester Board of Health

RMH/RTW/jc

APPLICATION TO
LEICESTER BOARD OF APPEALS
FOR SPECIAL PERMIT

RE: 180 PAXTON STREET
(ROUTE 56)
LEICESTER, MA
OWNER: LEICESTER WATER SUPPLY DISTRICT

SUBMITTED BY SOUTHWESTERN BELL MOBILE SYSTEMS, INC.
d/b/a CELLULAR ONE

BY ITS AGENT,
RALPH A. COLORUSSO
REAL ESTATE CONSULTANT
100 LOWDER BROOK DRIVE
WESTWOOD, MA 02090
TEL: (617)462-4049
FAX: (617)462-5974

TABLE OF CONTENTS

Tab 1.	Letter of Transmittal
Tab 2	Application for Special Permit Findings of Facts
Tab 3.	Letter of Authorization dated February 11, 1998 from the Superintendent of the Leicester Water Supply District
Tab 4.	Building Inspector's Letter of Rejection Rejected Building Permit Application Rejected Building Permit
Tab 5.	Copy of Check for \$55.00 (filing fee)
Tab 6.	Property Deed Assessors Map Zoning Map
Tab 7	Photos & Specification Sheets
Tab 8	Site Plans (2 sheets)

CELLULARONE®

Corporate Office
100 Lowder Brook Drive
Westwood, MA 02090
(617) 462-4000

April 24, 1998

From ☺ Southwestern Bell

Town of Leicester, MA
Board of Appeals
Town Hall
3 Washburn Square
Leicester, MA 01524

Re: Special Permit Application
Petitioner: Southwestern Bell Mobile Systems, Inc., d/b/a/ Cellular One
Site Locus: 180 Paxton Street a.k.a. Route 56, Leicester, MA
Assessors' Reference: Map # 15, Lot # A-19.2

Dear Chairman,

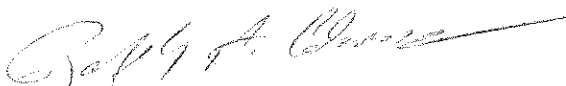
Please be advised that I have been retained by the petitioner in the above referenced Application for a Special Permit.

Attached, please find an application and request for a special permit, so as to allow the construction of a radio broadcasting and relay station antenna array and tower upon the above referenced parcel of land owned by the Leicester Water Supply District.

All plans, exhibits, findings and the like are believed to be provided herein. If any additional information is needed, or further clarification is desired, please contact me directly, at 617-462-4049.

Thank you for your time and consideration regarding this matter.

Sincerely,



Ralph A. Colorusso
Real Estate Consultant
As Agent for Cellular One

BOSTON • 33 Union Street • MA 02108 • (617) 367-2871 • **BRIGHTON** • 1686 Commonwealth Avenue • MA 02135 • (617) 566-1100
HYANNIS • 1224 Iyanough Road • MA 02601 • (508) 778-2277 • **RANDOLPH** • 1395 North Main Street • MA 02368 • (617) 961-5300
WALTHAM • 221 Bear Hill Road • MA 02154 • (617) 890-9366 • **WILMINGTON** • 310 Lowell Street • MA 01887 • (508) 657-4100
WORCESTER • 453 Park Avenue • MA 01610 • (508) 791-1900

The Commonwealth of Massachusetts

Town of Leicester

April 24 19 98

To the Board of Appeals:

The undersigned hereby petitions the Board of Appeals to vary the terms of the Zoning By-Laws of the Town of Leicester, Acts of 1978 at the premises on

Paxton Street a.k.a. Route 56, Leicester, MA
Assessors' Map #15, Lot #A-19.2
Owner: Leicester Water Supply District

in the following respect: The granting of a Special Permit, so as to allow the use of a radio broadcasting and relay station antenna array and tower upon land zoned Suburban-Agricultural, per the Town of Leicester Zoning By-Laws, relative to Sections 3.2.05 and 6.4.02.

or any limitation, extension, change, alteration or modification of use, method of use as may at hearing appear as necessary or proper in the premises.

State Briefly Reasons for ~~Variance~~ Special Permit

Please refer to the attached package of information relating to this matter.

RECEIVED
98 APR 24 PM 1:48
TOWN OF LEICESTER, MASS.

Southwestern Bell Mobile Systems, Inc.
d/b/a Cellular One

Petitioner

Ralph A. Colorusso
Real Estate Consultant, as Agent

By

100 Lowder Brook Drive
Westwood, MA 02090

Address

617-462-4049

Telephone Number Fax: 617-462-5974

Corporate Office
100 Lowder Brook Drive
Westwood, MA 02090
(617) 462-4000

April 24, 1998

From **Ⓢ** Southwestern Bell

Town of Leicester
Board of Appeals
Town Hall
3 Washburn Square
Leicester, MA 01534

Re: Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One
Map 15, Lot A-19.2
180 Paxton Street (Route 56)
Request for Special Permit

Ladies and Gentlemen:

This letter brief is submitted in support of the application by Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One for a Special Permit to allow the construction and maintenance of a radio broadcasting and relay station antenna array and tower as described in the application.

On March 26, 1998 a denial was issued by the Town of Leicester Zoning Enforcement Officer & Inspector of Buildings, Donald E. Smith, Jr. (see Tab 3) relative to an Application for a Permit to Build a radio broadcasting and relay station, connected by coaxial cable and supported by a cable tray to a precast concrete modular, 12'W x 28'10"L x 9'10"H equipment shelter, emergency generator and propane fuel tank situated at the base of the proposed tower structure to be located upon land owned by the Leicester Water Supply District as referenced on Assessor's Map 15, Lot A-19.2 on Paxton Street, which is Route 56 in Leicester, Massachusetts. The site is zoned SA (Suburban-Agricultural) and is within the Water Resources Protection Overlay District. The equipment building will contain electronic gear, switching equipment and back-up generator connected by coaxial cables to the antennas to be placed at the 150' height mark and two antenna dishes on the leg(s) of the proposed tower. In making this application, Cellular One seeks a special permit as authorized by Section 6.4.02 of the Town of Leicester Zoning By-Laws ("By-Laws") and specifically, in accordance with Section 3.2.05 of the By-Laws, which permit Radio or TV broadcasting and relay station as a use allowed by Special Permit from the Board of Appeals on land zoned suburban-agricultural upon a finding, after public hearing, that certain uses, structures or conditions are designated, as subject to the issuance of a Special Permit in appropriate cases and subject to the appropriate conditions and safeguards. Furthermore, the conditions for granting a Special Permit include a consideration by the Building Inspector of the specific site as an appropriate location for the use or structure; the adequacy of public sewage and water facilities, or the suitability of soils for on-lot sewage and water; the use developed as a possible adverse effect on the neighborhood; undue nuisance or serious hazard to

BOSTON • 33 Union Street • MA 02108 • (617) 367-2871 • **BRIGHTON** • 1686 Commonwealth Avenue • MA 02135 • (617) 566-1100
HYANNIS • 1224 Iyanough Road • MA 02601 • (508) 778-2277 • **RANDOLPH** • 1395 North Main Street • MA 02368 • (617) 961-5300
WALTHAM • 221 Bear Hill Road • MA 02154 • (617) 890-9366 • **WILMINGTON** • 310 Lowell Street • MA 01887 • (508) 657-4100
WORCESTER • 453 Park Avenue • MA 01610 • (508) 791-1900

vehicles or pedestrians; and adequate and appropriate facilities to ensure the proper operation of the proposed use, structure or condition.

By way of information, Cellular One responded to a Request for Proposals from the Leicester Water Supply District in December 1997, under the terms of which the Leicester Water Supply District proposed to lease a parcel of land consisting of 4.3331± acres, as shown on Map 15, Lot A-19.2 on the Leicester Assessor's Map, on land currently owned by the Leicester Water Supply District, for the purpose of installing a radio broadcasting and relay station facility on the existing water district's water tank sites. Cellular One submitted a proposal in accordance with the terms of the Request for Proposals, which proposal was accepted by the Leicester Water Supply District. Cellular One, the applicant herein, is in the process of finalizing the lease between the Leicester Water Supply District and Cellular One (refer to Tab 2 for authorization).

A. The Type of Use Proposed for Land: The applicant holds a Radio Station Authorization (see attached) from the Federal Communications Commission, so as to service the greater Leicester area. Therefore, the Applicant proposes to erect a radio broadcasting and relay station antenna array and tower consisting of twelve (12) panel antennas upon a 150 foot three (3) legged self-supporting galvanized steel lattice tower painted with F.A.A. required red and white alternating color bands and air-craft signal lighting and two (2) antenna dishes on the leg(s) of the proposed tower structure which is to be located on Paxton Street (Route 56, Leicester, MA). The antenna array shall be connected by coaxial cable and supported by a cable tray (ice bridge) to electronic gear and switching equipment as well as a back-up generator housed in a 12'W x 28'10"L x 9'10"H precast concrete modular equipment shelter, situated adjacent to the proposed tower structure within the proposed 8 feet high security fence area that will enclose the tower compound.

B. The Conditions and Character of Operations of the Proposed Use is Consistent With the General Purpose and Intent of the District and the By-Laws: The proposed location of the radio broadcasting and relay station antenna array and tower and equipment shelter is on a site within a SA (Suburban-Agricultural) zone and is appropriate and consistent with those uses generally associated with suburban-agricultural use of property the purpose of which is to provide essential and necessary services to the community. The proposed use of the property is consistent with the general purpose of the By-Laws to wit, "to promote the health, safety, convenience, morals and general welfare of its inhabitants...and to improve the Town..." thusly, Leicester's By-Law serves to encouraging the most appropriate use of the land. In this case suburban-agricultural land with a proposed use and improvement able to accommodate the communications Town of Leicester

facility will have the direct effect and immediate benefit of providing and possibly improving the existing communications

service to the Town of Leicester and the surrounding community so as to enhance the quality of life of the inhabitants of Leicester. The placement and activation of the radio broadcasting and relay station antenna array and tower will provide enhanced wireless communication services to telecommunications customers including police, fire and emergency personnel who utilize such technology to enhance response time to accidents and address public safety issues. The Leicester Water Supply District and their rate payers will receive a significant economic benefit in the form of revenue arising from the lease of the site to the applicant on a long term lease basis. The location of the proposed radio broadcasting and relay station antenna array and tower in a suburban-agricultural district is consistent with the intention of the By-Laws to encourage communications providers to locate in areas zoned for transportation, communication, and utility use.

C. The Use Will Not Result in a Substantial Detriment to the Neighborhood: The facility will be automated, requiring no full-time employees and, therefore, parking and traffic congestion will not result, nor will pedestrian safety be unduly impaired. Additionally, the facility will not require any water or sewerage services, ect. There will be no excessive or unreasonable noise, unnecessary lights, fumes, smoke, vapors, noxious odors, dust, glare or vibration emanating from the facility. All vehicular traffic will be limited to routine maintenance checks conducted by Cellular One trained technicians, and on-site parking will be provided. The facilities will be located wholly within the security fence area located on the property to protect against unwanted intrusion or curiosity seekers. The proposed radio broadcasting and relay station antenna array and tower is to be located adjacent to the existing Leicester Water Supply District water tanks, thereby continuing the utility use of the areas land. The neighborhood is not densely residential in nature, and the proposed tower structure could be utilized by other telecommunications carriers, thus serving to minimize the construction of additional tower structures within the area, plus due to the relatively high elevation above sea level the proposed tower structure would not require any additional height and thus be largely unobtrusive to many residences within the community. Furthermore, the site's overall size, shape and contour is particularly well suited for the proposed use as a radio broadcasting and relay station tower. Consequently, the Applicant can utilize the proposed site for the intended use without causing considerable change to the contour, natural vegetation or rural character of the tract as it presently exists.

D. The Proposed Use is Reasonably Necessary for the Convenience and Welfare of the Public: The proposed installation will improve and enhance existing telecommunications service provided to inhabitants of the Town of Leicester who utilize telecommunications devices. The increased availability and delivery of the services

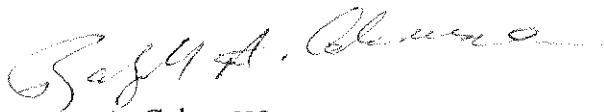
Town of Leicester
Board of Appeals
April 24, 1998
Page 4

results in long-term savings to users of telecommunications services. The use by law enforcement officials, including police, fire, and emergency service providers, is present and growing in the community as wireless communication services have been found to have a net positive impact on the ability of these officials to detect and respond to public safety situations. Furthermore, the Applicant does not anticipate considerable objections to the proposed use from abutters since several abutters have discussed this project with the Leicester Water Supply District's Superintendent, and voiced no serious objections.

Accordingly, the Applicant believes that the above facts, and reasons are sufficient grounds for the Board to approve the Application for a Special Permit to construct the proposed radio broadcasting and relay station antenna array and tower.

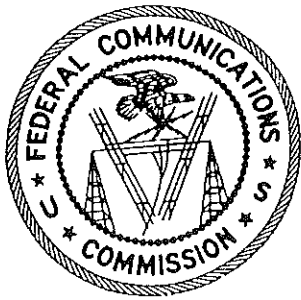
The applicant proposes to elaborate and expand on the materials submitted herewith at the scheduled public hearing, at which time this Application for Special Permit will be heard.

Respectfully submitted,
Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One
By its agent,



Ralph A. Colorusso
Real Estate Consultant

cc: Frank W. Lyon, Superintendent - Leicester Water Supply District
Louis N. Levine, Atty. - D'Agostine, Levine & Gordon, P.C.



WORCESTER TELEPHONE COMPANY
17330 PRESTON ROAD, SUITE 100A
DALLAS, TX 75252

United States of America
Federal Communications Commission
RADIO STATION AUTHORIZATION
Cellular Radiotelephone Service

Call Sign: KNKA359

Market: 0055 Channel Block: A-1 SID: 0007
Market Name: WORCESTER, MASSACHUSETTS

The Licensee hereof is authorized, for the period indicated, to operate a radio transmitting station in accordance with the terms and conditions hereinafter described. This authorization is subject to the provisions of the Communications Act of 1934, as amended, subsequent Acts of Congress, international treaties and agreements to which the United States is a signatory, and all pertinent rules and regulations of the Federal Communications Commission, contained in Title 47 of the Code of Federal Regulations.

Initial Grant Date..... November 18, 1985

Expiration Date..... February 09, 2006

WAIVERS / CONDITIONS:

Pursuant to Section 309(h) of the Communications Act 1934, as amended, (47 U.S.C. § 309(h)), this authorization is subject to the following conditions: (1) This authorization does not vest in the licensee any right to operate a station nor any right in the use of the electromagnetic spectrum designated herein beyond the term thereof nor in any other manner than authorized herein. (2) Neither this license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended (47 U.S.C. § 151, *et. seq.*). (3) This authorization is subject in terms to the right of use or control conferred by Section 706 of the Communications Act of 1934, as amended (47 U.S.C. § 606).

This authorization does not convey to the licensee the right to receive protection from the capture of subscriber traffic, co-channel interference or first-adjacent-channel interference in any area outside of the authorized cellular geographic service area (CGSA) of the system. Moreover, any facility authorized herein with a service area boundary (SAB) extending into the CGSA of any other operating cellular system on the same channel block, regardless of when such other cellular system was authorized, is subject to the following condition: In the event that the licensee of the other cellular system requests that the SAB of the facilities authorized herein be removed from its CGSA, the licensee herein must reduce transmitting power or antenna height (or both) as necessary to remove the SAB from the CGSA, unless written consent from the licensee of the other cellular system, allowing the SAB extension to remain, is obtained.

Issued by IFG on Wednesday February 11, 1998
FCC Form 463A

LEICESTER WATER SUPPLY DISTRICT
P.O. BOX 86 - 124 PINE STREET
LEICESTER, MA 01524
tel: 508 892-8484
fax 508 892-1822

February 11, 1998

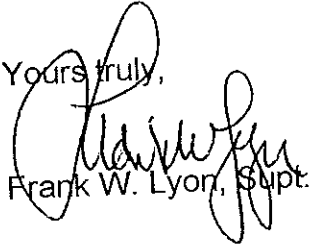
CellularONE
Mr. Ralph Colorusso, Real Estate Consultant
100 Lowder Brook Drive
Westwood, Ma 02090

Re: Leicester Water Supply District (LWSD) Zoning for Proposals Wireless
Communication Tower, Paxton St., Leicester.

Please be advised that the Commissioners of the Leicester Water Supply District
at their monthly Meeting of January 8, 1998 authorized CellOne to apply for
applications for zoning, building or any other permits necessary to proceed with
our proposal for lease arrangements on our Paxton Street property.

Should you need additional information please contact me at the above address.

Yours truly,


Frank W. Lyon, Supt.

TOWN OF LEICESTER, MASSACHUSETTS

Office of the Inspection of Codes

3 Washburn Square, Town Hall
Leicester, Massachusetts 01524

Building & Zoning Enforcement
DONALD E. SMITH, Jr.

Telephone (508) 892-7003
FAX (508) 892-7070



Plumbing & Gas Inspector
JOHN P. DOLEN

Wiring Inspector
ARNOLD L. ROBERTSON

April 1, 1998

Mr. Ralph Colorusso
100 Lowder Brook Drive
Westwood, Ma 02090

Dear Mr. Colorusso,

In reference to the letter dated March 26, 1998, regarding the application for a building permit for Leicester Water Supply District, 180 Paxton St., Leicester, MA., for a radio broadcasting and relay station antenna array & tower, has been denied for the following reasons, Leicester Zoning Bylaw 3.2.05 states, "Radio or TV broadcasting and relay station" needs a special permit from the Leicester Zoning Board of Appeals.

If you should decide to pursue this further, an application must be made with the Town Clerk within thirty (30) days of the receipt of this letter.

If I can be of further assistance to you relative to this matter, please do not hesitate to contact this office.

Sincerely,

Donald E. Smith, Jr.
Zoning Enforcement Officer
Inspector of Buildings

DES/pvd

THE COMMONWEALTH OF MASSACHUSETTS
Town of Leicester
Building Department
Application for Permit to Build

Permit #

Date:

Fee:

To the Inspector of Buildings:

The undersigned hereby applies for a permit to build according to the following specifications:

Leicester Water Supply District

1. Owner's Name: (as LESSOR/landowner) Telephone # 508-392-8484
2. Owner's address: P.O. Box 86 - 124 Pine Street, Leicester, MA 01524
3. Architect's name: To be determined Telephone # T3D
4. Builder's name: Daniel J. Champagne Const. Sup. Lic #055116
5. Builder's address: 13 Charlesmere Road, Billerica, MA 01862
6. Location of building, No.: 130 Street: Patton Street
7. Size of lot: 4.3331 Acres
8. Is this a new building, addition or removal: New structure (not a building)
9. Side of Street: North South East West
10. If removal, from where: N/A
11. What is the purpose of building: Radio broadcasting & relay station antenna array & tower
12. Material of building: Galvanized steel for self-supporting lattice tower
13. If for a dwelling, for how many families: N/A How many: N/A
14. Is there to be a store in the lower story: No No. of stories: N/A
15. Size of building, No. of feet front: N/A; No. of feet deep: N/A
16. No. of feet from the level of ground to the highest part of the roof: 150' Feet
17. Size of ell, No. of feet front: N/A; No. of feet deep: N/A; No. of feet high: N/A
18. How near the line of the street: 350+/- Feet
19. How near the line of adjoining lot: right 170+/- Feet; left 190+/- Feet rear 150+/- Feet
20. Nearest building is 170+/- feet in an Easterly direction to L.W.S.D. water tanks
21. What will be the means of access to roof: N/A; 1st N/A; 2nd N/A; 3rd N/A; 4th N/A; 5th N/A
22. Size of floor timbers, 1st N/A; 2nd N/A; dist. to centers N/A
23. No. of feet span: N/A
24. Will the building be erected on solid or filled land: Solid land
25. What is the material of foundation: Poured concrete
26. Will the roof be flat, pitched, mansard, hip or gambrel: N/A
27. Material of roof covering: N/A
28. Will the building be heated by steam, furnace, stoves, or grates: N/A
29. No. of brick walls: N/A Where located: N/A Thickness: N/A
30. Number of rooms: None
31. Fireplace: None
32. Size of studding: N/A
33. Estimated cost, must be filled out: \$65,000.00
34. Will the building conform to the requirements of the law: Yes
35. Is a sewage disposal system to be constructed, altered, installed or repaired in connection with this project: Yes No X
36. What is or will the water supply for this building: None needed, nor proposed N/A
37. Is the above water supply suitable and available for year round use: N/A

Signature of Applicant: Ralph A. Colorusso

Telephone: 617-462-4049

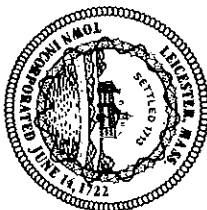
Applicant agrees to give the Inspector of Buildings 24 hours notice before lathing, plastering or closing in studding of this building. The building will conform to the requirements of the law.

Remarks: CellularOne as LESSEE/improvement owner @ 617-462-4049 / Fax: 617-462-5974
100 Lowder Brook Drive, Westwood, MA 02090

TOWN OF LEICESTER BUILDING PERMIT

Description of work covered by this permit Radio broadcast, relay station, antennas, guy wires

NO. 98-039 FEE Building Inspector Donald E. Smith, Phone (508) 892-7003



Leicester, MA March 26 1998

THIS IS TO CERTIFY that Donald E. Smith owner by Donald E. Smith, Inc. No. 055116 builder has permission to construct, remodel, or demolish at 150 Bay View St.

TYPE: USE:

In accordance with application filed in this office and subject to the Provisions of the Building By-Laws in force in this State which relate to the inspections and construction of building in the Town of Leicester, Massachusetts.

This permit must be posted in a conspicuous place on the premises. It must not be defaced nor removed until the work is completed.

BUILDING INSPECTOR <small>(check if OK)</small>		WIRING INSPECTOR <small>(check if OK)</small>	
FOUNDATION	<input type="checkbox"/>	UNDERGROUND	<input type="checkbox"/>
ROUGH	<input type="checkbox"/>	ROUGH	<input type="checkbox"/>
INSULATION	<input type="checkbox"/>	FINAL	<input type="checkbox"/>
FINAL	<input type="checkbox"/>		
PLUMBING INSPECTOR <small>(check if OK)</small>		FIRE INSPECTOR <small>(check if OK)</small>	
UNDERGROUND	<input type="checkbox"/>	SMOKE	<input type="checkbox"/>
ROUGH	<input type="checkbox"/>	BURNER	<input type="checkbox"/>
FINAL	<input type="checkbox"/>		

NOTE



No person shall lay plaster or other wise cover or conceal any of the space between studs, joists, framework or turning of any structure until permission to lath, etc., is stamped hereon.

There Must Be No Drainage Towards Highway

Please obtain all required permits from respective Inspectors before any work is done - Building Inspector, Fire Department Inspector, Sanitary Inspector, Wiring Inspector. Check with Supt. of Streets before entering Highway with drive way.

NOTE: Certificate of Occupancy must be obtained from the Building Inspector before premises can be occupied.

For Structures Connecting to Town Water and Sewer, Contact Water and Sewer Commissioners.
INSPECTIONS DUE: FOUNDATION, ROUGH, INSULATION, FINAL

GUARDIAN SAFETY™
AMERICAN PC

RALPH A. COLORUSSO
149 FOREST STREET
MEDFORD, MA 02155

April 24 1998 1299

53-7051
2113

Pay to the order of Town of Leicester, MA.

\$ 55.00

Fifty-Five

XX
100 Dollars



MEDFORD SAVINGS BANK

MEDFORD, MASSACHUSETTS

Board of Appeals

Filing Fee

Memo As Agent for Cellular One

Ralph A. Chrom

⑆ 211370516⑆ 07032303⑆ 1299

BOOK 5875 PAGE 395

I, WILLIAM HYLAND

of Leicester,

Worcester

County, Massachusetts

being ~~unmarried~~, for consideration paid, and in full consideration of \$12,000.00grants to LEICESTER WATER SUPPLY DISTRICT, a corporation created by law in
said Massachusetts,

of Leicester, in said county at P. O. Box 86 with quitclaim covenants

~~and~~ The land in Leicester on the easterly side of Paxton Street
being more particularly bounded and described as follows:
(Description and assurances, if any)Parcel 1BEGINNING: at a Worcester County Highway bound on the Easterly line
of Paxton Street (1932 co-nty layout) opposite baseline
station 107+91.97;THENCE: N. 17° 09' 55" E. 114.50 feet by the Easterly line of said
Paxton Street to a corner at land of William Hyland;THENCE: S. 89° 04' 45" E. 481.06 feet by land of William Hyland
to a corner at land of Leicester Water Supply District;THENCE: S. 0° 55' 15" W. 411.00 feet by land of Leicester Water Supply
District to a corner;THENCE: N. 78° 49' 45" W. 554.90 feet by land of Leicester Water
Supply District to a corner in the Easterly line of
Paxton Street;THENCE: N. 10° 10' 15" E. 205.00 feet by said Easterly line of Paxton
Street to the point of beginning.

Said parcel contains 4.3331 acres, and is shown as

Parcel 1 on a plan titled "PLAN OF LAND IN LEICESTER, MASS., PARCEL 1
and 3 OWNED BY WILLIAM HYLAND" prepared by Moore Survey & Mapping
Corp. and dated 8 October 1975, and recorded herewith Plan Book PlanParcel 2BEGINNING: at the Northwesterly corner of the parcel to be conveyed,
said corner being S. 89° 04' 45" E. 569.77 feet from the
Northwesterly corner of the previously described Parcel 1;THENCE: S. 89° 04' 45" E. 100.00 feet by land of William Hyland to
a corner;THENCE: S. 9° 12' 57" W. 454.26 feet by land of William Hyland to
a corner;THENCE: N. 78° 50' 50" W. 100.00 feet by land formerly of Hyland
Farms to a corner at land of Leicester Water Supply
District;XX
(Individual) Joint Tenants Tenants in Common or Beneficiaries of a Trust

THENCE: N. 9° 20' 45" E. 436.46 feet by land of Leicester Water Supply District, ..., to the point of beginning.

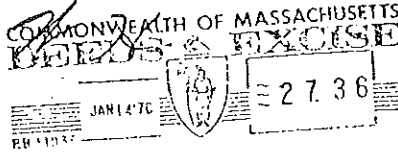
Said parcel contains 1.0167 acres and is shown as Parcel 3 on a plan titled "PLAN OF LAND IN LEICESTER, MASS., PARCEL 1 and 3 OWNED BY WILLIAM HYLAND" prepared by Moore Survey & Mapping Corp. and dated 8 October 1975, recorded herewith Plan Book 421 Plan 15 .
Said premises are conveyed subject to taxes for 1976.

602432 802

JAN 14 1976

RECEIVED

058850



JAN 14 1976

Witness my hand and seal this 14th day of January 1976

William Hyland

The Commonwealth of Massachusetts

14 January

1976

Worcester,

ss.

Then personally appeared the above named William Hyland

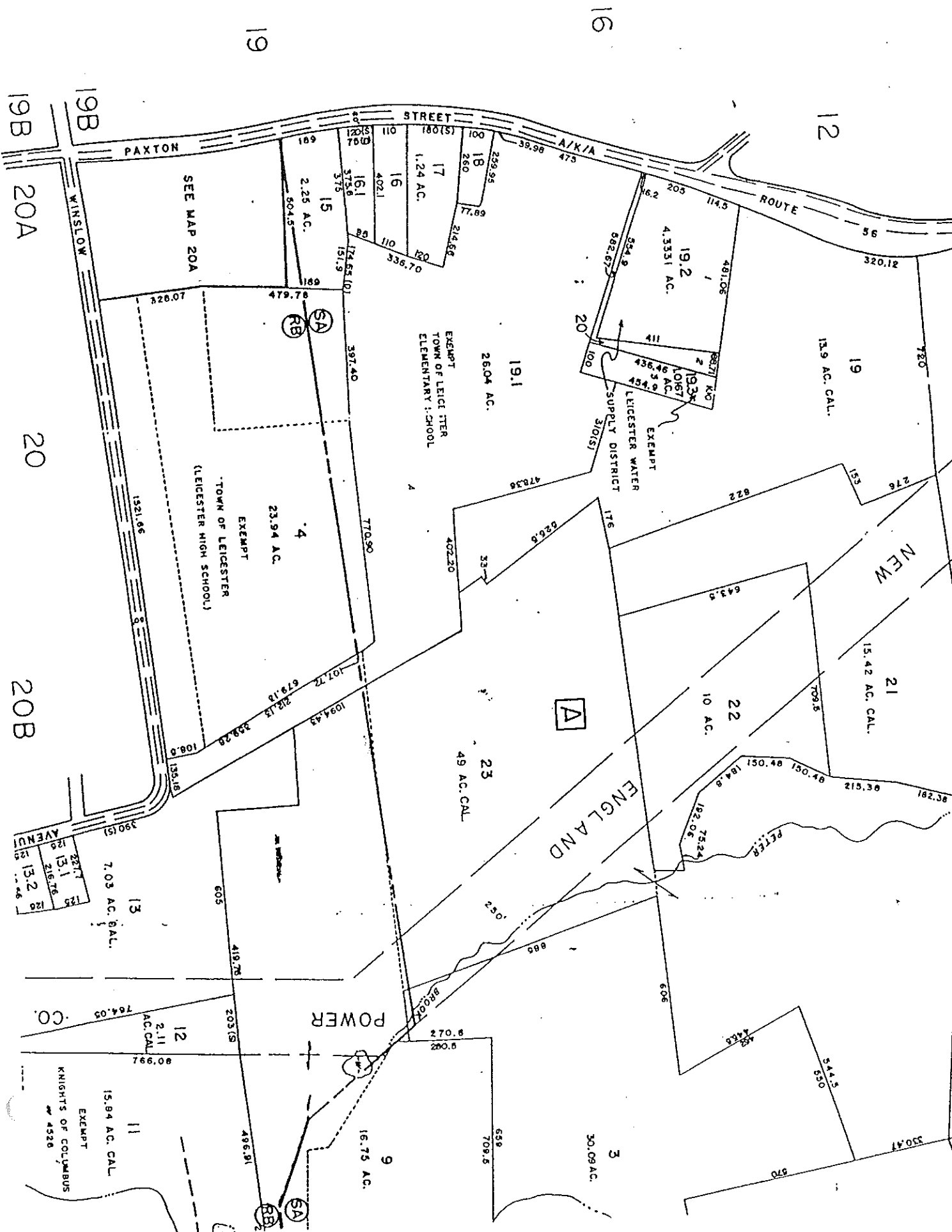
and acknowledged the foregoing instrument to be his free act and deed, before me

Amos E. Wasgatt, Jr.,

Notary Public — Justice of the Peace

My Commission Expires April 21, 1978

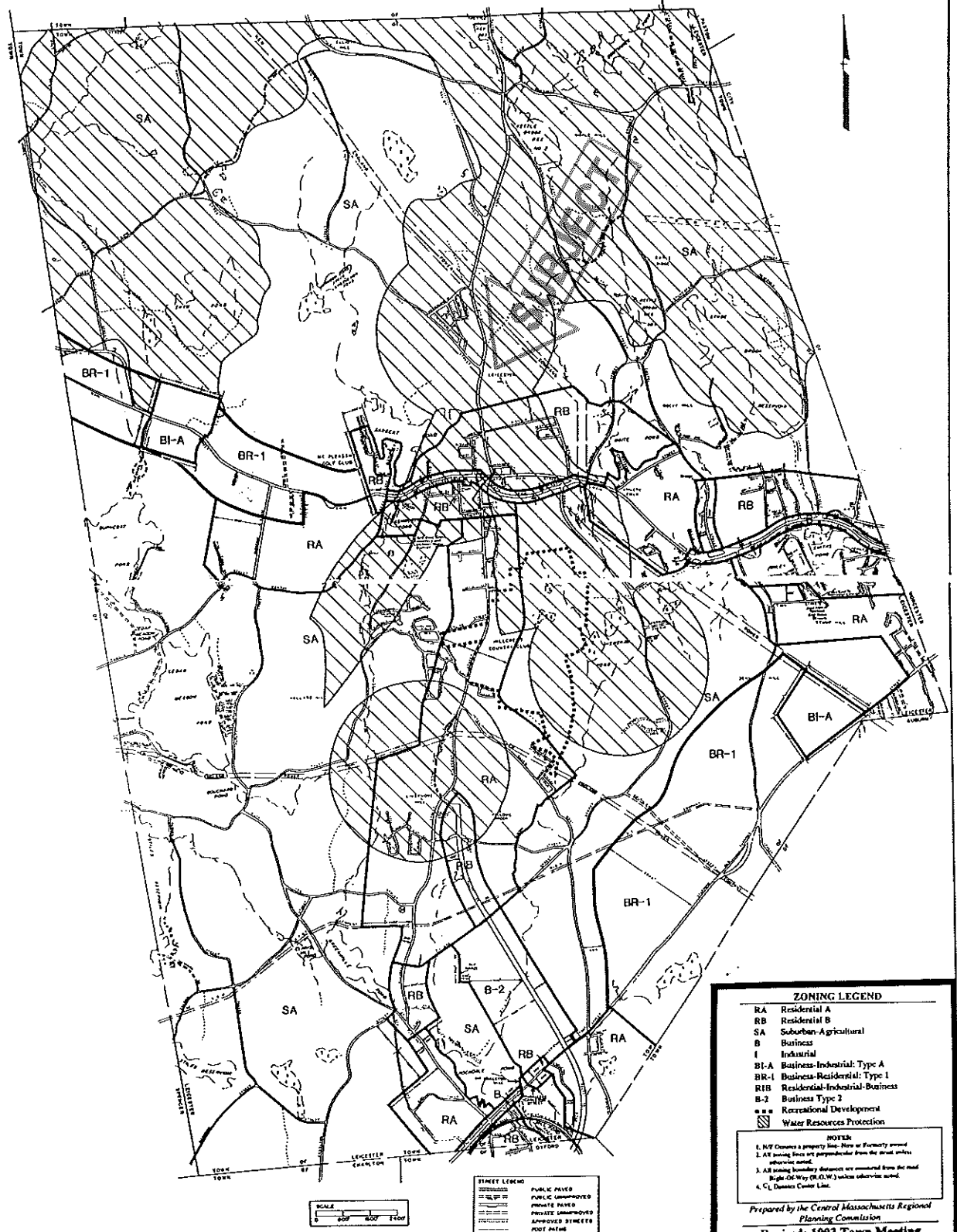
Recorded JAN 16 1976 at 4:15 m. P.M.



ZONING MAP

TOWN OF LEICESTER

WORCESTER COUNTY, MASS.



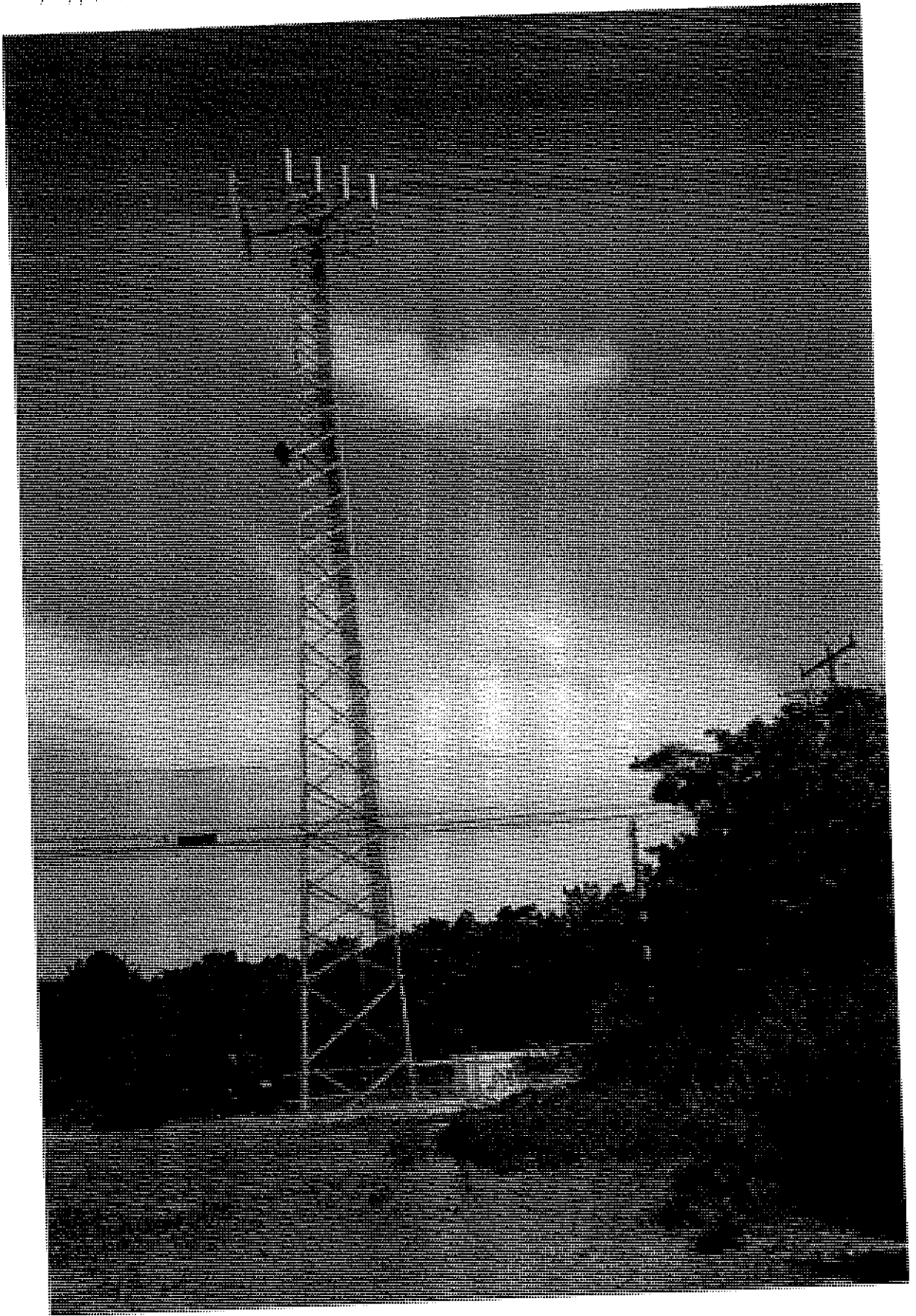
ZONING LEGEND

- RA Residential A
- RB Residential B
- SA Suburban-Agricultural
- B Business
- I Industrial
- BI-A Business-Industrial: Type A
- BR-1 Business-Residential: Type 1
- RIB Residential-Industrial-Business
- B-2 Business Type 2
- BR-2 Business-Residential: Type 2
- == Recreational Development
- Water Resources Protection

NOTES:
 1. Not shown a property line, line or formerly owned.
 2. All zoning lines are perpendicular to the street unless otherwise noted.
 3. All zoning boundary changes are measured from the road Right-Of-Way (R.O.W.) unless otherwise noted.
 4. C.L. Denotes Center Line.

Prepared by the Central Massachusetts Regional
 Planning Commission
 Revised: 1993 Town Meeting

TYPICAL LATTICE TOWER INSTALLATION



TYPICAL PANEL ANTENNA

Swedcom Corporation

ALP 8013-N

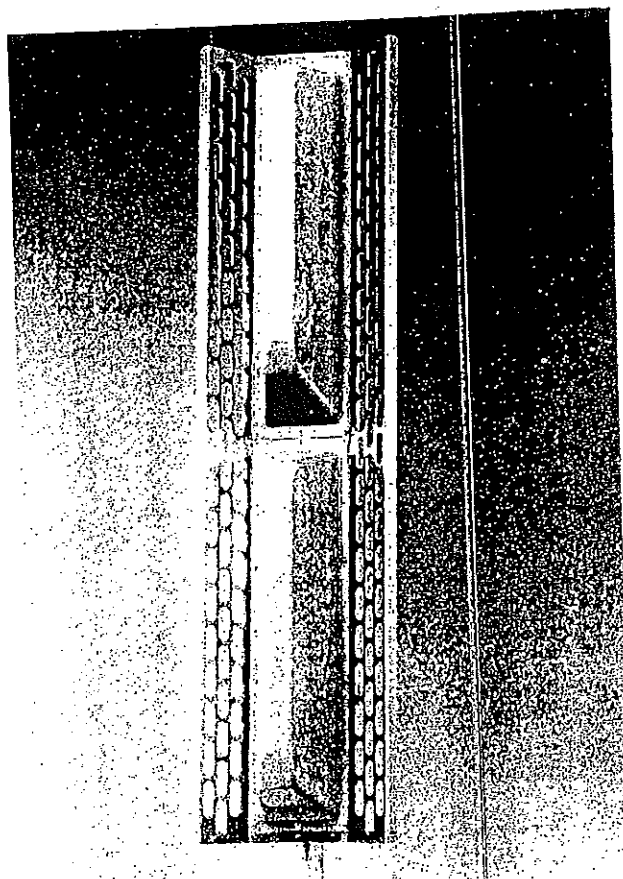
Log-Periodic Reflector Antenna

80 Degrees 13 dBd

Features:

- ☐ Broadbanded. (800-900 MHz)
- ☐ Low backlobe radiation. Front-to-back ratio better than 30 dB
- ☐ Low Intermodulation Products.
- ☐ Low Wind-load.
- ☐ Low weight.
- ☐ Small size.
- ☐ Rugged design.

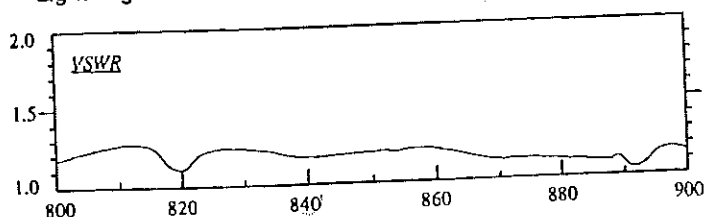
Please see the following pages including radiation patterns/tables for ALP 8013-N.



Electrical Specifications:

Frequency range:	806-896 MHz
Impedance:	50 ohm
Connector:	N-female or 7/8" EIA
VSWR:	Typ. 1.3:1 max 1.5:1
Polarization:	Vertical
Gain:	13 dBd
Front to back ratio:	>30 dB
Side-lobe suppression:	>18 dB
Intermodulation: (2x25W):	IM3 >146 dB
	IM5 >153 dB
	IM7 & IM9 >163 dB

Power Rating:	500 W
H-Plane: -3 dB	84 °
E-Plane: -3 dB	15 °
Lightning Protection:	DC Grounded



Mechanical Specifications:

Overall Height:	52 in	(1320 mm)
Width:	13 in	(330 mm)
Depth:	11.4 in	(290 mm)
Weight including brackets:	27.3 lbs	(12.3 Kg)
Rated wind velocity:	113 mph	(180 Km/h)
Wind Area (CxA/Front):	4.5 sq.ft	(0.42 sq.m)
Lateral thrust at rated wind		
Worst case:	650 N	

Materials:

Radiating elements:	Aluminum
Element housing:	Grey PVC
Back-plate:	Aluminum

Mounting hardware
clamps:
bolts:

Hot dip galvanized steel
Stainless steel

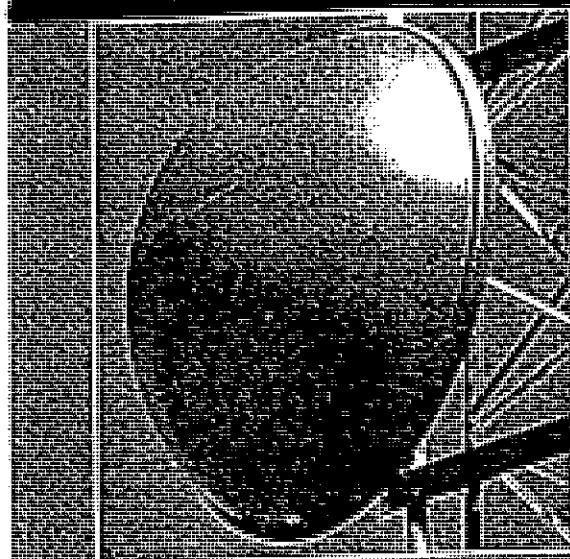
Manufactured by: Allgon System AB



Radome Electrical Characteristics

Planar Radomes. The electrical characteristics of the planar radome are incorporated into the electrical performance specifications of the shielded antenna.

Molded Radomes. The use of a molded radome on standard (P-Series) or focal plane (FP-Series) antennas may slightly impact maximum antenna VSWR. Attenuation and system VSWR effects are listed in the table below. To determine the maximum VSWR across the band for the antenna/radome combination, add the figure from the table to the maximum antenna VSWR specification.



Typical Molded Radome Attenuation and VSWR

Typical Molded Radome Attenuation and VSWR						Add to Antenna VSWR			
Radome Type	Diameter ft (m)	2 GHz	6 GHz	11 GHz	13 GHz	2 GHz	6 GHz	11 GHz	13 GHz
Standard Antenna Radomes									
Standard	2 (0.6)	0.1	0.4	1.0	1.2	0.02	0.03	0.05	0.05
Standard	4 (1.2)	0.1	0.4	1.2	1.5	0.02	0.03	0.05	0.05
Standard	6 (1.8)	0.1	0.5	1.4	1.7	0.02	0.03	0.03	0.03
Standard	8 (2.4)	0.1	0.6	1.5	1.8	0.02	0.03	0.03	0.03
Standard	10 (3.0)	0.2	0.9	1.8	2.1	0.02	0.03	0.03	0.03
Standard	12 (3.7)	0.2	1.0	1.9	2.2	0.02	0.03	0.03	0.03
Extra Strength	6 (1.8)	0.2	0.8	1.8	2.1	0.02	0.03	0.03	0.03
Extra Strength	8 (2.4)	0.02	0.9	1.8	2.1	0.02	0.03	0.03	0.03
Extra Strength	10 (3.0)	0.3	1.2	2.0	2.2	0.02	0.03	0.03	0.03
Extra Strength	12 (3.7)	0.03	1.4	2.0	2.3	0.02	0.03	0.03	0.03
Focal Plane Antenna Radomes									
Standard	4 (1.2)	0.1	0.4	-	-	0.03	0.03	-	-
Standard	6 (1.8)	0.1	0.5	-	-	0.03	0.03	-	-
Standard	8 (2.4)	0.1	0.6	-	-	0.03	0.03	-	-
Standard	10 (3.0)	0.2	0.9	-	-	0.03	0.03	-	-
Standard	12 (3.7)	0.2	1.0	-	-	0.05	0.05	-	-
Extra Strength	4 (1.2)	0.1	0.4	-	-	0.05	0.05	-	-
Extra Strength	6 (1.8)	0.2	0.8	-	-	0.05	0.05	-	-
Extra Strength	8 (2.4)	0.2	0.9	-	-	0.05	0.05	-	-
Extra Strength	10 (3.0)	0.3	1.2	-	-	0.05	0.05	-	-
Extra Strength	12 (3.7)	0.3	1.4	-	-	0.05	0.05	-	-



10.5 - 10.7 GHz

	Type Number	Diameter ft (m)	Input Flanges	Regulatory Compliance†	Bottom	Gain, dBi Mid-Band	Top	Beamwidth Degrees	Cross Pol. Disc., dB	F/B Ratio dB	VSWR max. (R.L., dB)
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UHX*



Ultra High Performance Antennas - TEGLAR® Long Life Radome Included

Dual Polarized	UHX4-105A	4 (1.2)	CPR90G	A	39.8	39.9	40.0	1.7	33	70	1.08 (28.3)
	UHX6-105A	6 (1.8)	or	A	43.4	43.5	43.6	1.2	33	81	1.06 (30.7)
	UHX8-105	8 (2.4)	PDR100	A	45.8	45.9	46.0	1.0	33	80	1.06 (30.7)
	UHX10-105	10 (3.0)		A	47.8	47.9	48.0	0.8	33	83	1.06 (30.7)
	UHX12-105	12 (3.7)		A	49.2	49.3	49.4	0.65	33	80	1.06 (30.7)

HP HPX



High Performance Antennas - Hypalon (Except 2 and 4 ft are TEGLAR®) Radome Included

Single Polarized	HP2-105A	2 (0.6)	CPR90G	—	34.0	34.1	34.2	3.4	30	52	1.30 (17.7)
	HP4-105C	4 (1.2)	or	A	39.8	39.9	40.0	1.8	30	60	1.08 (28.3)
	HP6-105C	6 (1.8)	PDR100	A	43.4	43.5	43.6	1.2	30	66	1.06 (30.7)
	HP8-105C	8 (2.4)		A	45.8	45.9	46.0	0.9	30	68	1.06 (30.7)
	HP10-105C	10 (3.0)		A	47.7	47.8	47.9	0.8	30	70	1.06 (30.7)
	HP12-105C	12 (3.7)		A	49.2	49.3	49.4	0.7	30	71	1.06 (30.7)
Dual Polarized	HPX2-105A	2 (0.6)	CPR90G	—	34.0	34.1	34.2	3.4	30	52	1.30 (17.7)
	HPX4-105B	4 (1.2)	or	A	39.8	39.9	40.0	1.8	30	60	1.10 (26.4)
	HPX6-105A	6 (1.8)	PDR100	A	43.4	43.5	43.6	1.2	30	64	1.08 (28.3)
	HPX8-105A	8 (2.4)		A	45.8	45.9	46.0	0.9	30	68	1.06 (30.7)
	HPX10-105A	10 (3.0)		A	47.7	47.8	47.9	0.8	30	70	1.06 (30.7)
	HPX12-105A	12 (3.7)		A	49.2	49.3	49.4	0.7	30	71	1.06 (30.7)

P PX



Standard Antennas

Single Polarized	P2-105A	2 (0.6)	CPR90G	—	34.0	34.1	34.2	3.5	25	39	1.30 (17.7)
	P4-105A	4 (1.2)	or	B	39.8	39.9	40.0	1.8	30	45	1.15 (23.1)
	P6-105B	6 (1.8)	PDR100	B	43.4	43.5	43.6	1.2	30	51	1.10 (26.4)
	P8-105B	8 (2.4)		B	45.8	45.9	46.0	0.9	30	53	1.10 (26.4)
	P10-105B	10 (3.0)		A	47.8	47.9	48.0	0.8	30	53	1.10 (26.4)
	P12-105B	12 (3.7)		B	49.2	49.3	49.4	0.7	30	55	1.10 (26.4)
Dual Polarized	PX6-105B	6 (1.8)	CPR90G	B	43.4	43.5	43.6	1.2	30	49	1.15 (23.1)
	PX8-105B	8 (2.4)	or	B	45.8	45.9	46.0	0.9	30	50	1.10 (26.4)
	PX10-105B	10 (3.0)	PDR100	B	47.7	47.8	47.9	0.8	30	52	1.10 (26.4)
	PX12-105B	12 (3.7)		B	49.2	49.3	49.4	0.7	30	55	1.10 (26.4)

† FCC Parts 21 and 94



HELIAX[®] Coaxial Cables



LDF5-50A

Cable Ordering Information

Description	Type No.
Standard Cable	
7/8" Standard Cable, Standard Jacket	LDF5-50A
Fire Retardant Cable	
7/8" Fire Retardant Jacket (CATVR)	LDF5RN-50A
Low VSWR and Specialized Cables	
7/8" Low VSWR, specify operating band	LDF5P-50A-(**)
Cable for Cellular, standard jacket	
824-960 MHz, 1.10 VSWR, max.	LDF5P-50A-9A
Cable for Cellular, fire retardant jacket, (CATVR)	
824-894 MHz, 1.20 VSWR, max.	41690-75
Qualified to MIL-C-28830/4	202071-2
Phase Stabilized and Phase Measured Cable	See page 585

** Insert suffix number from "Low VSWR Specifications" table.

Attenuation and Average Power

Frequency MHz	Attenuation dB/100 ft	Attenuation dB/100m	Average Power kW
0.5	0.025	0.0804	91.0
1	0.035	0.115	78.9
1.5	0.043	0.141	64.3
2	0.050	0.164	55.6
10	0.112	0.367	24.6
20	0.160	0.525	17.3
30	0.197	0.646	14.0
50	0.257	0.843	10.7
88	0.345	1.13	8.01
100	0.369	1.21	7.49
108	0.384	1.26	7.19
150	0.458	1.50	6.04
174	0.496	1.63	5.58
200	0.535	1.76	5.18
300	0.666	2.18	4.15
400	0.781	2.56	3.55
450	0.834	2.74	3.32
500	0.883	2.90	3.13
512	0.896	2.94	3.09
600	0.979	3.21	2.83
700	1.07	3.50	2.59
800	1.15	3.78	2.40
824	1.17	3.85	2.36
894	1.23	4.03	2.25
960	1.28	4.20	2.16
1000	1.31	4.30	2.11
1250	1.49	4.90	1.85
1500	1.66	5.45	1.66
1700	1.79	5.87	1.54
2000	1.97	6.46	1.40
2300	2.15	7.05	1.29
3000	2.53	8.31	1.09
4000	3.03	9.94	0.914
5000	3.50	11.5	0.792

Standard Conditions:

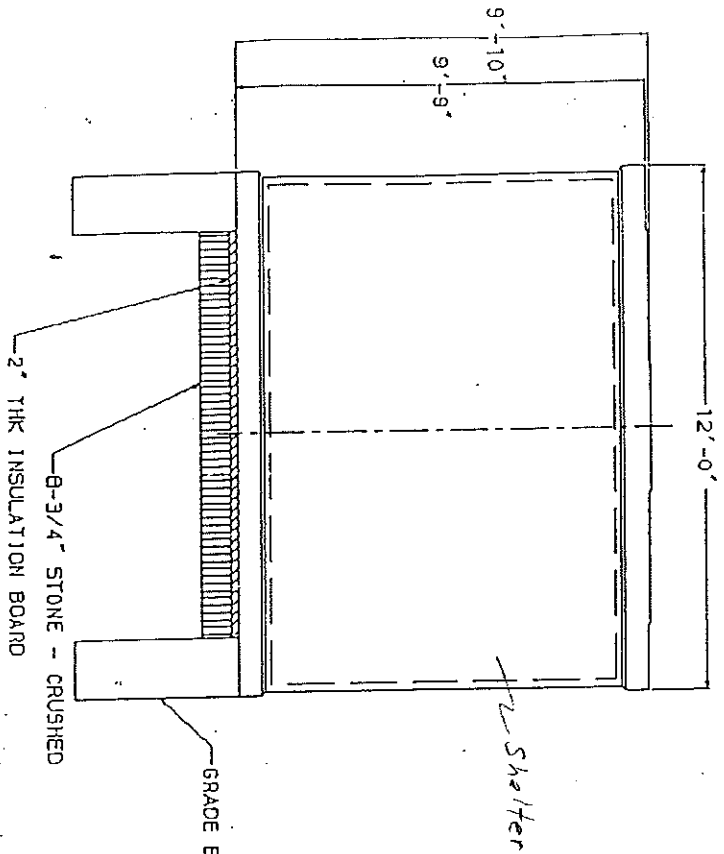
For Attenuation, VSWR 1.0 ambient temperature 24°C (75°F).

For Average Power, VSWR 1.0, ambient temperature 40°C (104°F), inner conductor temperature 100°C (212°F), no solar loading.

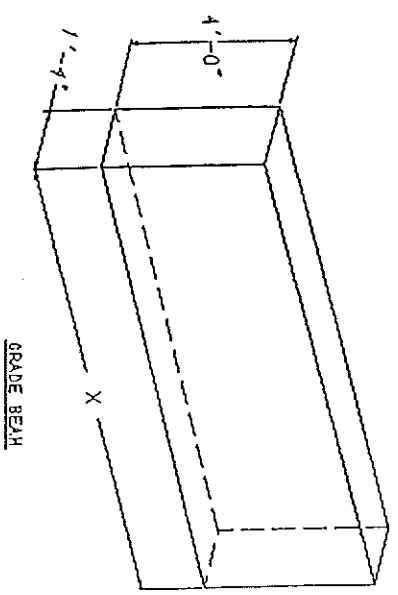
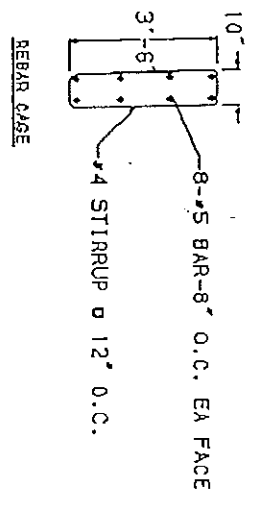
Characteristics

Electrical	
Impedance, ohms	50 ± 1
Maximum Frequency, GHz	5.0
Velocity, percent	89
Peak Power Rating, kW	91
dc Resistance, ohms/1000 ft (1000 m)	
Inner	0.32 (1.05)
Outer	0.32 (1.05)
dc Breakdown, volts	6000
Jacket Spark, volts RMS	8000
Capacitance, pF/ft (m)	22.8 (75.0)
Inductance, pH/ft (m)	0.057 (0.187)
Mechanical	
Outer Conductor	Copper
Inner Conductor	Copper
Diameter over Jacket, in (mm)	1.09 (28)
Diameter over Copper Outer Conductor, in (mm)	0.98 (24.9)
Diameter Inner Conductor, in (mm)	0.355 (4.0)
Nominal Inside Transverse Dimensions, cm	2.11
Minimum Bending Radius, in (mm)	10 (250)
Number of Bends, minimum (typical)	15 (50)
Bending Moment, lb-ft (N·m)	12 (16.3)
Cable Weight, lb/ft (kg/m)	0.33 (0.49)
Tensile Strength, lb (kg)	325 (147)
Flat Plate Crush Strength, lb/in (kg/mm)	80 (1.4)

* 5-ohm 7/8" diameter cable is available. Contact Andrew for further information.



- NOTES -
1. 3000 PSF SOIL BEARING CAPACITY ASSUMED.
 2. ALL DIMENSIONS NOMINAL.
 3. FINAL DESIGN TO BE CALCULATED UPON REVIEW OF ACTUAL SOIL REPORTS SUPPLIED BY CUSTOMER TO C.S.I.



MINI HD									
BLOG TYPE	MIN DB	MIN 10	MIN 12	MIN 14	MIN 16	MIN 21	MIN 24	MIN 25	MIN 32
MIN X	8'-11"	10'-12"	13'-0"	15'-0"	17'-0"	22'-0"	25'-0"	29'-0"	33'-1"

GRADE BEAM DETAIL		CONCRETE SYSTEMS, INC. 11050K, NEW HAVEN, CT 06511	
DATE		DRAWN BY	
SCALE		CHECKED BY	
PROJECT		COMPANY	

UNIT: MINI MOD

FUNCTION: COMMUNICATIONS

MODEL	EXTERNAL DIMENSIONS
MM 100	12'0"W x 8'10"L x 9'10"H
MM 210	12'0"W x 10'10"L x 9'10"H
MM 212	12'0"W x 12'10"L x 9'10"H
MM 214	12'0"W x 14'10"L x 9'10"H
MM 215	12'0"W x 15'10"L x 9'10"H
MM 315	12'0"W x 15'10"L x 9'10"H
MM 316	12'0"W x 16'10"L x 9'10"H
MM 318	12'0"W x 18'10"L x 9'10"H

MODEL	EXTERNAL DIMENSIONS
MM 320	12'0"W x 20'10"L x 9'10"H
MM 321	12'0"W x 21'10"L x 9'10"H
MM 322	12'0"W x 22'10"L x 9'10"H
MM 323	12'0"W x 23'10"L x 9'10"H
MM 324	12'0"W x 24'10"L x 9'10"H
MM 325	12'0"W x 25'10"L x 9'10"H
MM 426	12'0"W x 26'10"L x 9'10"H
MM 427	12'0"W x 27'10"L x 9'10"H

MODEL	EXTERNAL DIMENSIONS
MM 428	12'0"W x 28'10"L x 9'10"H
MM 429	12'0"W x 29'10"L x 9'10"H
MM 430	12'0"W x 30'10"L x 9'10"H
MM 431	12'0"W x 31'10"L x 9'10"H
MM 432	12'0"W x 32'10"L x 9'10"H
MM 533	12'0"W x 33'10"L x 9'10"H
MM 535	12'0"W x 35'10"L x 9'10"H
MM 540	12'0"W x 40'10"L x 9'10"H

...it's another

CONCRETE
solution

SPECIFICATIONS:

The Concrete Systems, Inc. Precast Concrete Building is designed to meet the requirements of loading of the American National Standards (ANS) "Building Code Requirements for Minimum Design Loads in Buildings and Other Structures," and the requirements of the American Concrete Institute (ACI-318R-83) "Building Code Requirements for Reinforced Concrete."

The building is designed to meet the following minimum loadings:

A. Roof Live Load	60 PSF
B. Floor Live Load	100 PSF
C. Wall Wind Load	140 MPH
D. Earthquake	Zone 4

A flat level, compacted crushed stone foundation, prepared by others, is the standard factory recommended foundation. It is constructed on 3,000 PSF soil minimum, with crushed stone final grade set a minimum of 4"-6" above the surrounding grade to insure that water drains away from the building.

The roof is designed clear span without the use of interior supporting of any type. The building interior ceiling height is 9' maximum.

The exterior finish is 1/2" Architectural Fluted Fin finish and the exterior color is a natural concrete light gray or painted to customer specifications with Sherwin-Williams standard 10 year masonry paint.

The exterior calculates at a 2-hour fireproof rating without affecting the structural properties of the building.

The Mini Mod is designed for maintenance-free use and is highly vandal resistant. The building envelope is bullet proof to a 308 rifle and steel bullet at 50 feet.

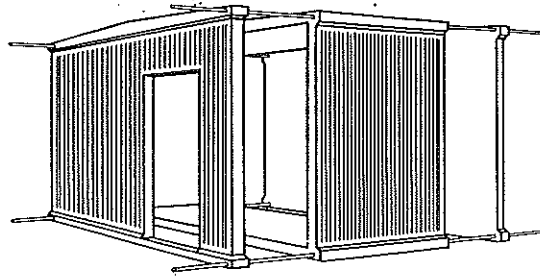
The roof system is designed to protect interior equipment, on remote sites, from falling ice and is designed to be handled and off-loaded with standard pickups in the roof of the structure.

The building is professionally engineered to meet zoning and code requirements for the state or county in which the building is located.

The precast concrete building is designed so that the floor, walls and roof are monolithic at manufacture, with end walls attached. Design also allows for future expansion.

The building is manufactured with a system for assembly under tension at the factory, and provided with joints to be caulked with a Tremco Dymonic compound to maintain a permanent seal under severe weather conditions. The roof joints are sealed with .045 EPDM membrane roofing strips 6" wide, cemented to the concrete with a compound designed for this purpose, and sloped for drainage.

The building is equipped with a 3'0" wide x 7'0" high, 18 gauge honeycomb core steel door. The cast-in 14 gauge door frame is fitted with a 3/4" stepped steel threshold to insure against water infiltration. Three 4 1/2" door hinges are supplied and fitted with vandal resistant, non-removable hinge pins. The door is fitted with a 2 1/2" rain drip cap and a Schlage extra heavy duty deadbolt lock-set. All standard doors are right hand swing.



OPTIONS:

Interior Insulation
R-11, R-14.4, R-21
Plywood Interior Sheathing
3/4" Fire Code Drywall
FRP Board
Interior Partitions
Interior Paint
3'6" x 7'0" Interior Door
3'6" x 7'0" Exterior Single Door
6'0" x 7'0" Exterior Double Door
Lock Guard
Hydraulic Closer
Mortis Lock
Panic Hardware
Weather Strip
Floor Tile
Insulated Plywood Floor

ELECTRICAL
100 amp Basic Electrical System
100 amp Manual Transfer Switch
100 amp Generator Inlet
100 amp Meter Socket
100 amp Overhead Service Mast
100 amp Fuseable Disconnect Switch
100 amp Circuit Breaker Disconnect Switch
200 amp Basic Electrical System
200 amp Manual Transfer Switch
200 amp Generator Plug
200 amp Meter Socket
200 amp Overhead Service Mast
200 amp Fuseable Disconnect Switch
200 amp Circuit Breaker Switch
400 amp Basic Electrical System
400 amp Manual Transfer Switch
400 amp Generator Plug
400 amp Fuseable Disconnect Switch
400 amp Circuit Breaker Switch
Additional Interior Lights
Covered Interior Lights

Wave Guide Cable Entrance
Intake & Exhaust Fan Systems
Louvers & Dampers
Window Mounted Air Conditioners
Wall Mounted Air Conditioners
Heating Systems
HVAC Control Systems
12" & 24" Cable Tray
Halo Grounding
Single Point Grounding
Ground Windows
Halon Automatic Fire Suppression Systems
Halon Hand Held Extinguishers
Generator Installation

Light Timer
Emergency Lighting
100 watt Incandescent Exterior Light
70 watt High Pressure Sodium Exterior Light
175 watt Metal Halide Exterior Light
Photo Cell
Additional Duplex Outlets
4-plex Outlets
Twist-lock Outlets
Equipment Power Drops
Installation of customer supplied automatic transfer switch
Lightning Protection
Surge Protection
Fire Alarm Cross-over Panel
Photo Electric Smoke Detectors
Ionization Smoke Detectors
Heat Detectors
Commercial Power Failure Alarm
Illegal Door Entry Alarm
High and Low Temperature Alarm
High Humidity Alarm

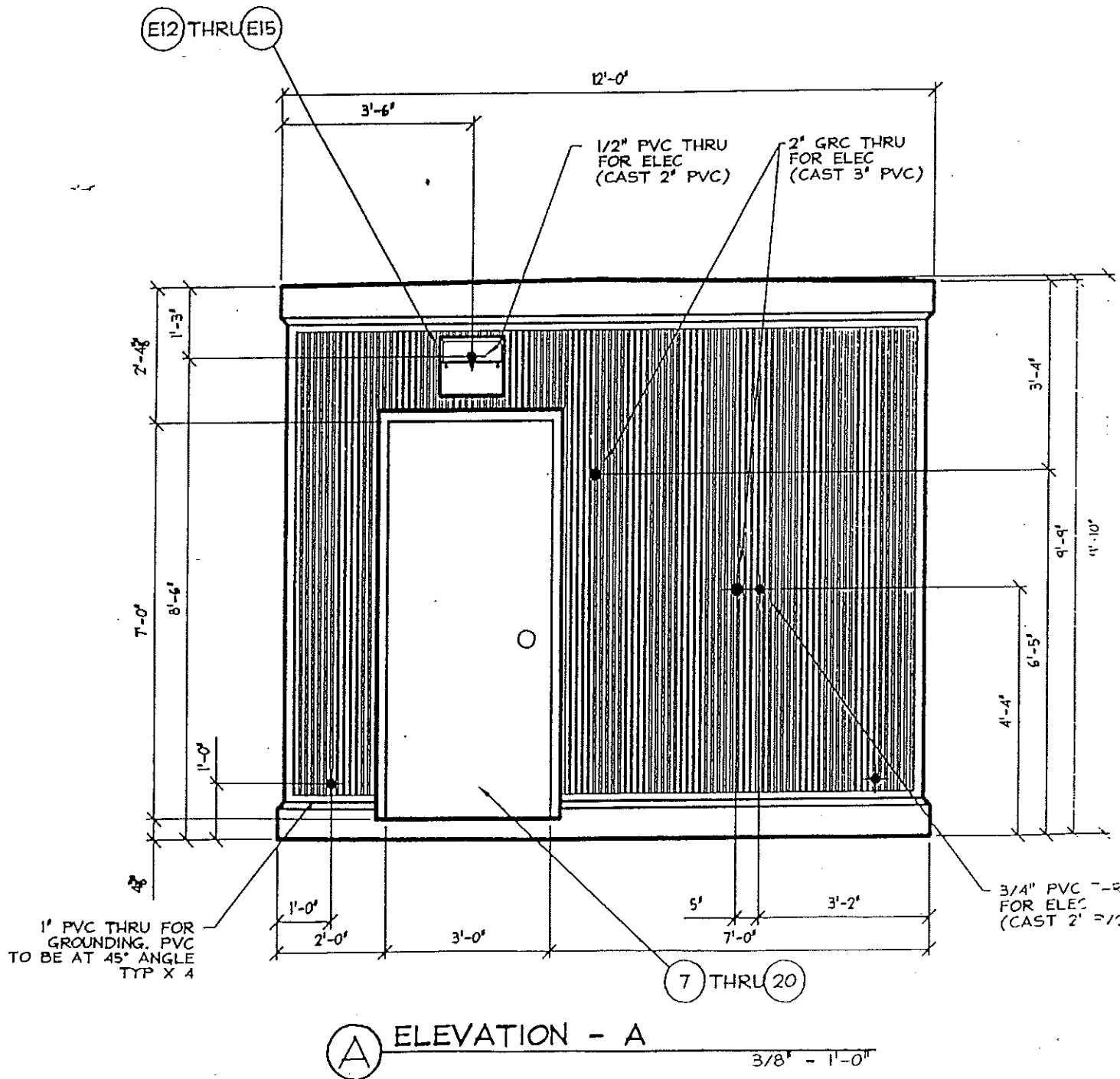


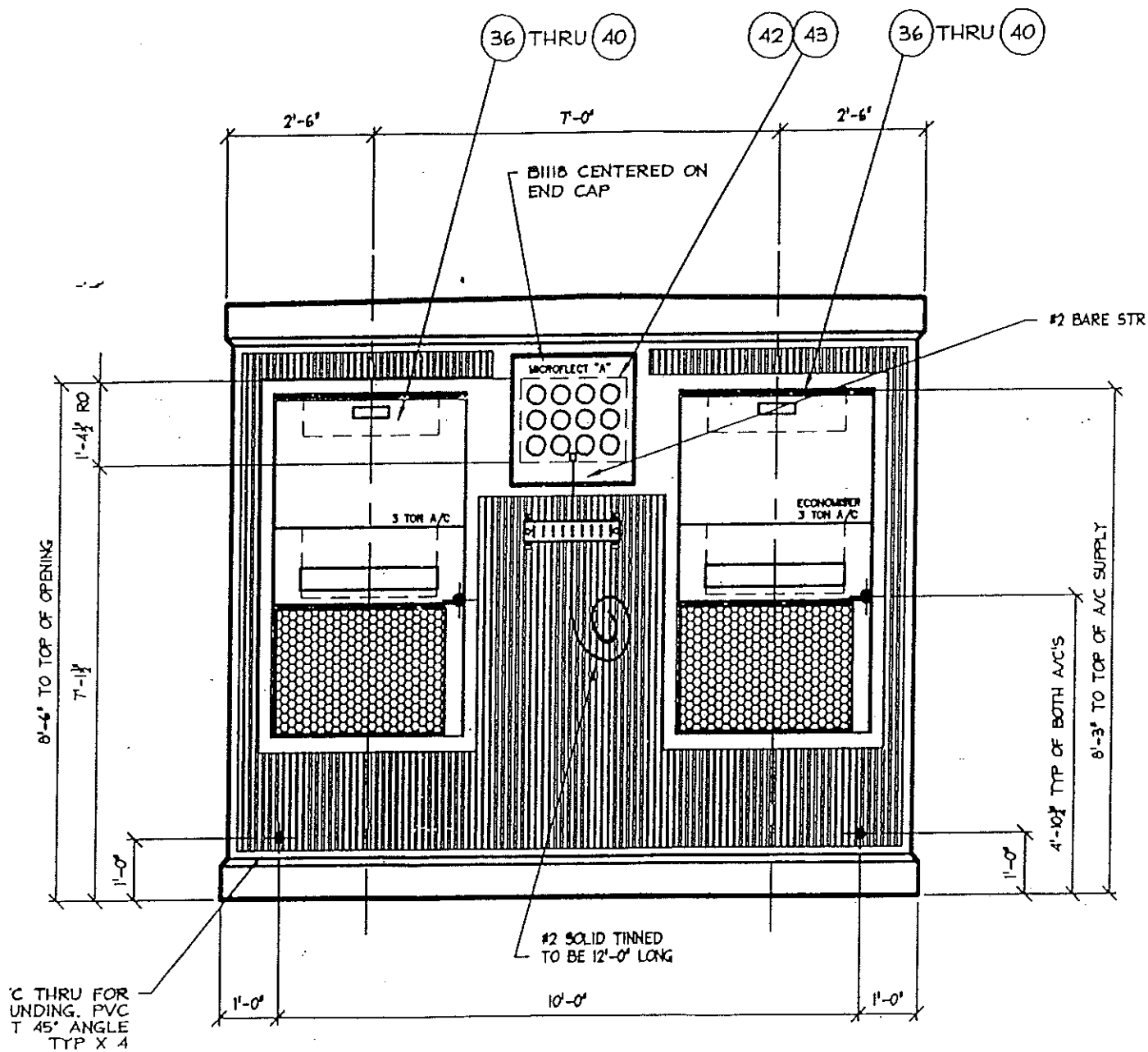
SHELTER TECHNOLOGIES

A Division of Concrete Systems, Inc.

15 Independence Drive/Londonderry, New Hampshire 03053
1(800) 342-3374 (603) 889-4163 FAX (603) 437-8668

PRECAST CONCRETE MODULAR SHELTER





© ELEVATION - C

3/8" = 1'-0"

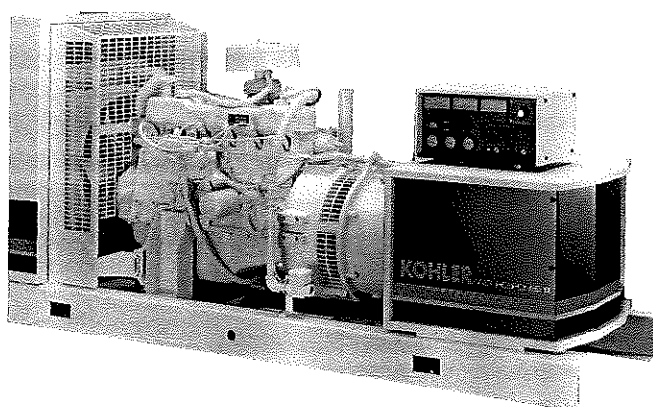
Model: **35RZ**

KOHLER® POWER SYSTEMS

Gas/Gasoline

Standard Features:

- Kohler Co. provides one-source responsibility for the generating system and accessories.
- All generator sets and components are prototype tested, factory built, and production tested.
- Kohler's unique Fast-Response™ excitation system delivers the fastest voltage response in the industry.
- Kohler's PMG (permanent magnet generator) provides superior short-circuit capability along with broadrange reconnectability.
- Two-thirds pitch stator and skewed rotor provide for superior waveform.
- Stator and rotor are vacuum impregnated with fungus resistant epoxy varnish for superior generator performance.
- Electronic, isochronous governor provides superior regulation.
- Low coolant level shutdown provides generator set protection.
- Integral vibration isolation eliminates the need for vibration spring isolators under the unit.
- All systems and components are covered by a one-year limited warranty. Two-, five-, and ten-year extended warranties are available.



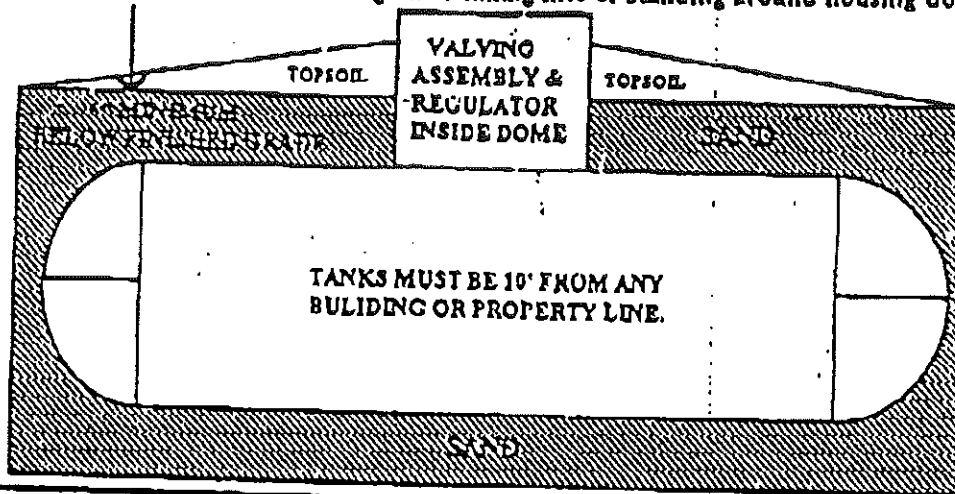
Generator Ratings

Model Series	Voltage Code	Voltage	Standby Amps	Phase	Hz	Generator Model	Standby Ratings, kW/kVA			Prime Power, kW/kVA		
							Nat. Gas	LP Gas	Gasoline	Nat. Gas	LP Gas	Gasoline
35RZ	01	120/240	105	3	60	4P5B	35/44	35/44	35/44	32/40	32/40	32/40
35RZ	51	139/240	105	3	60	4P5B	35/44	35/44	35/44	32/40	32/40	32/40
35RZ	51	127/220	115	3	60	4P5B	35/44	35/44	35/44	32/40	32/40	32/40
35RZ	61	120/240	121	1	60	4P7B	35/35	35/35	35/35	32/32	32/32	32/32
35RZ	71	277/480	53	3	60	4P5B	35/44	35/44	35/44	32/40	32/40	32/40
35RZ	71	220/380	66	3	60	4P5B	35/44	35/44	35/44	32/40	32/40	32/40
35RZ	81	120/208	121	3	60	4P5B	35/44	35/44	35/44	32/40	32/40	32/40
35RZ	91	347/600	42	3	60	4P5B	35/44	35/44	35/44	32/40	32/40	32/40
35RFZ	01	110/220	98	3	50	4P5B	30/38	30/38	30/38	27/34	27/34	27/34
35RFZ	51	110/190	114	3	50	4P5B	30/38	30/38	30/38	27/34	27/34	27/34
35RFZ	61	110/220	114	1	50	4P7B	30/30	30/30	30/30	27/27	27/27	27/27
35RFZ	71	220/380	57	3	50	4P5B	30/38	30/38	30/38	27/34	27/34	27/34
35RFZ	71	230/400	54	3	50	4P5B	30/38	30/38	30/38	27/34	27/34	27/34
35RFZ	71	240/416	52	3	50	4P5B	30/38	30/38	30/38	27/34	27/34	27/34
35RFZ	81	120/208	104	3	50	4P5B	30/38	30/38	30/38	27/34	27/34	27/34

RATINGS: Standby ratings are continuous for the duration of any power outage. No overload capacity is specified at this rating. Prime ratings are continuous per BS 5514, DIN 6271, ISO-3046, and IEC 34-1 with 10% overload capacity one hour in twelve hours. All single-phase units are rated at 1.0 power factor. All 3-phase units are rated at 0.8 power factor. Contact the factory for ratings of city water-cooled and remote radiator models. Larger generators may be used to meet special application requirements. Availability is subject to change without notice. Kohler Co. reserves the right to change the design or specifications without notice and without any obligation or liability whatsoever. Availability can be determined by contacting your local Kohler Co. Distributor. DERATION: Maximum altitude before generator deration, ft. (m): 3300 (1007). Altitude deration factor, % per 1000 ft. (305 m): 1.5%. Maximum intake air temperature before generator deration, °F (°C): 105 (40). Temperature deration factor, % per 10°F (5.5°C): 2.7%.

EASTERN PROPANE GAS, INC. SPECS FOR UNDERGROUND LP-GAS INSTALLATIONS

Grade ground downward and away around housing dome.
This prevents water collecting and running into or standing around housing dome.



500 GALLON UG TANK SPECS

Tank Dimensions: 10' x 37" diameter

Depth of Hole: 14' long x 5' wide x 4' deep*

6" Sand in bottom of hole

Prior to back-filling: 1 anode bag
cadwelded to tank. Pour 1 gallon of
water on bag and immediately cover
with sand.

Once tank is placed, back-fill entire hole
with sand.**

1000 GALLON UG TANK SPECS

Tank Dimensions: 16' x 42" diameter

Depth of Hole: 20' long x 5 1/2' wide x
4 1/2' deep*

6" Sand in bottom of hole

Prior to back-filling: 2 anode bags
cadwelded to tank. Pour 1 gallon of
water on bags and immediately
cover with sand.

Once tank is placed, back-fill entire hole
with sand.**

*If a concrete pad is required, depth of hole must be 6" deeper to accommodate a 6" concrete pad in the
dimensions of the tank with 4 anchor eye bolts (one in each corner of the pad). Attach stainless steel or
similar shapping from lifting lugs down to eye bolts.

**Touch-up any scratches or marks on tanks or lifting lugs before back-filling.

GAS LINE TRENCH SPECS

COPPER: Trench, from tank to point of entry to building, must be 18" deep with a bed
of sand. Place sand on top of copper before back-filling.

POLYETHYLENE PIPING: Trench, from tank to point of entry to building, must be 2'
deep with 6" bed of sand and 6" sand over pipe. Lay detector tape on top of sand
and back-fill.