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ATTACHMENT NO. 5.214



The Impact of Wireless Towers on Residential Property Values

BY CAROL C. McDONOUGH, PhD

The Telecommunications Act of 1996 authorized the Federal Communications Commission (FCC) to expand the wireless telephone industry by auctioning off six personal communication services (PCS) licenses per geographic area. Because wireless communication antennae must be mounted on high, unobstructed locations, the build out of the PCS industry has led to the need for additional communications towers.

Abutters and neighbors of these communication towers have often opposed their construction, citing aesthetic and health concerns, and alleging a consequent decrease in property values. Such opposition has primarily targeted towers located in residential zones, where such towers are generally less harmonious with surrounding structures. This article examines the impact of proximity to a wireless tower on residential property values.

Mundy (1992) and Patchin (1991) report that a nuisance feature, or source of stigma, typically reduces the market value of a property. It is the perceived undesirability of a source of stigma that leads to reduction in property value. As

Farber (1998) explains, perceived risks are a function of subjective risk factors as well as statistical risks; whether the source of the perception is quantitative or subjective, the effect on property values may be the same.

In *Komis v. City of Sante Fe*, the Supreme Court of New Mexico awarded damages for the perceived decline in property value resulting from a source of stigma, even when no objective evidence demonstrated that the perceived nuisance was unsafe, and when market loss was not proven by comparable sales data. The Criscuola decision established the "fear in the marketplace" theory of damages, by allowing fear in the marketplace regarding transmission lines, rather than actual epidemiological evidence of adverse health effects from electromagnetic frequencies (EMF), to affect appraised valuation. The literature (for example, Mundy 1992, Levitt 1995, and Harrison 1989) includes high-tension wires and utility poles as sources of stigma to a property.

Are wireless towers also a source of stigma? Because most wireless towers have been constructed recently, time-series data for a valid empirical study of

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the impact of wireless towers on property values are virtually unavailable. Therefore, the first step is to review research on the impact of electric power lines and towers on property values, because they may have effects similar to wireless towers. If it is found that (1) proximity to electrical lines reduces residential property values, and (2) the factors causing reduced valuation near electric lines also apply to proximity to wireless towers, and (3) these factors

Such opposition has primarily targeted towers located in residential zones, where such towers are generally less harmonious with surrounding structures.

have led to significant concern about proximity to wireless towers, then it may be inferred that proximity to a wireless tower may reduce residential property values.

POWER LINES AND PROPERTY VALUES: SOME EVIDENCE

The scientific community has conducted numerous studies of the health effects of proximity to power lines. The first epidemiological study linking EMF exposure and cancer incidence was published in 1979. In June of 1998, a panel convened by the National Institute of Environmental Health Sciences concluded that low-frequency EMF should

be classified as a Group 2B human carcinogen under the International Agency for Research on Cancer classification scheme. This means the agent is possibly carcinogenic to humans. The California Department of Health's *1999 Fact Sheet on EMF* points out that epidemiology studies of childhood leukemia provide enough evidence to classify EMF as a possible human carcinogen.

Numerous studies have examined the impact of proximity to power lines on property values:

Kinnard (1967) reported that proximity to a tower line had little negative impact on residential market values in several Connecticut subdivisions. Higher priced subdivisions showed slightly greater negative impact from power line proximity.

Colwell (1990) found that proximity to power lines was associated with diminished selling prices in two Illinois subdivisions.

In Delaney and Timmons's (1992) survey of appraisers, 84 percent responded that the market value of residential property is negatively affected when located proximate to a high voltage electric power line; on average, market price is 10.01 percent lower than the price of comparable properties. The most frequently cited factors for property value reduction were visual unattractiveness and issues of health and safety.

Kung and Seagle's attitudinal survey (1992) found that 53 percent of the Tennessee homeowners surveyed considered transmission lines and towers an eyesore. Once informed of possible health risks, 87 percent felt power lines and towers would adversely affect property values.

Kroll and Priestley (1992) reported that the perceived impact of transmission lines cluster's into three areas: health and safety, aesthetics, and property values. They concluded that overhead transmission lines have the potential to reduce the sales price of single-family homes by zero to 10 percent.

Gimmy's (1994) research on power

lines and California residential property values found diminutions of between 18 and 54 percent in lot values from properties abutting power line easements.

Studying residential home prices in Vancouver, Canada, Hamilton and Schwann (1995) reported that properties adjacent to 60 kV power lines lost 6.3 percent of their value due to proximity and the visual impact.

According to the Cowger, Bottemiller, Cahill study (1996), the value of Oregon single-family residential property fell by less than 10 percent because of proximity to overhead transmission lines.

Gregory and von Winterfeldt (1996) determined that the public perception of health risks associated with proximity to power lines led to a reduction in property value: post-1979 property valuation studies showed a decline in values of 5 to 10 percent.

According to Bolton and Sick (1999), real estate professionals, (even those performing studies for power line companies) believed that concern about the adverse health effects of EMF from power lines resulted in a reduction in the values of nearby properties. Bolton's earlier study (1994) found that the general public's perception that EMF were harmful drove down the values of adjacent property.

Jaconetty (2001) concluded that, on a subjective level, most people believe that the electromagnetic fields generated by high-voltage towers and lines adversely influence real property values, primarily because of health concerns.

SIMILARITIES BETWEEN POWER LINES AND WIRELESS TOWERS

According to the studies cited above, proximity to electric lines and towers is associated with a reduction in residential property values because of aesthetic and health concerns. In this section, the similarities between the aesthetic and health effects of electric lines and wireless towers are examined.

Consider first aesthetic similarities. The literature states that the view enjoyed from a property may affect its value—a poor view, such as that of utility poles and high-tension wires, detracts from value. The aesthetic effects of transmission lines and wireless towers are similar. Both electric lines and wireless towers rise above building height in typical single-family neighborhoods; therefore, they are visible for some distance. Unless camouflaged, these structures typically do not complement rural or suburban landscapes.

Are health concerns surrounding elec-

...perceived risks are a function of subjective risk factors as well as statistical risks; whether the source of the perception is quantitative or subjective, the effect on property values may be the same.

tric lines also applicable to wireless towers?

Technically, radio waves from wireless antennae differ from the electromagnetic fields produced by power lines. Although both radio waves and EMF are part of the electromagnetic spectrum, electric power in the United States operates at 60 Hz, while cellular phones operate at 860–900 MHz, and PCS phones operate at about 2000 MHz. As Moulder (1998) explains, radio waves

are non-ionizing, that is, the energy of the particles is too low to break chemical bonds. Power lines are nonthermal, that is, they produce no significant non-ionizing radiation. Fields from power lines do not radiate energy into space, and the fields cease to exist when power is turned off.

However, the technical distinction between radio waves emitted by wireless antennae and low-frequency EMF emitted by electric lines is not generally

In other cases, courts have ruled for the wireless companies, finding that community opposition was not sufficient grounds for denying a permit for tower construction.

understood. The federal government has issued guidelines regarding safe levels of exposure for both power lines and wireless antennae, but there is ongoing controversy within the scientific community about whether these government guidelines are too lax. Because a final verdict on the safety of both electric lines and wireless antennae is still moot, many people are fearful about living in proximity to either type of structure. As Rikon (1996) points out, the fear in marketplace argument established by the Criscuola decision regarding EMF has also been invoked regarding health concerns about cell towers.

EVIDENCE OF CONCERNS ABOUT WIRELESS TOWERS

In this section, evidence is presented about the significant level of concern about the aesthetic and health effects of wireless towers. The evidence is grouped into three categories: (1) lawsuits regarding wireless tower construction, (2) organizations and conferences dealing with the harmful effects of wireless towers, and (3) municipal moratoria on wireless tower construction and mandatory visual impact studies.

Lawsuits

Numerous lawsuits have been filed regarding the actual or proposed construction of wireless towers. As Foster and Carrel (1999) discuss, case law on the issue is somewhat ambiguous. Some courts have ruled for the municipality opposing wireless tower construction. In *Franklin v. Nextel*, for instance, the court found that a 120 foot wireless tower erected in a residential neighborhood was so incongruous and damaging to the neighborhood that it must be dismantled. In Jacksonville, Florida, in 1996, community opposition to a 150 foot tower in a residential neighborhood led the wireless company, InterCel, to take it down.

In other cases, courts have ruled for the wireless companies, finding that community opposition was not sufficient grounds for denying a permit for tower construction. For instance, in *Westinghouse v. Hampton*, the court found that the Telecommunications Act preempts tower regulation based on perceived health concerns and that "aesthetics alone... [are not]... an adequate reason to deny... use of...property." OMP-USA, dealing specifically with the location of towers in residential neighborhoods, found that "towers cannot always be compatible with the character of the surrounding property. [I]n order to meet...demand...towers have to be...located in...residential, commercial, and rural areas.

Organizations, Conferences, and International Concerns

Concerns about wireless towers have resulted in the formation of organizations and the scheduling of conferences to voice these concerns. The EMR Alliance argues that electromagnetic radiation from wireless antennae is hazardous to life and public health. The Communication Workers of America and the EMR Alliance jointly published *Your Community Guide to Cellular Phone Towers* to help consumers mobilize against the placement of wireless transmission facilities that could adversely affect their health, safety, property values, or the aesthetics of the community.

The 2000 International Conference on Cell Tower Siting included testimony from numerous scientists on the health effects of exposure to high frequency EMF. Several questioned the safety of current standards for exposure to radiation from wireless antennae.

The US Supreme Court, in January 2001, denied a writ for certiorari filed by the Ad Hoc Association of Parties Concerned about the Federal Communications Commission Health and Safety Rules (AHA). Fifty-four petitioners filed as co petitioners; similar appeals by the Communications Workers of America and The Cellular Phone Task Force were consolidated with the AHA case. The AHA had charged that the FCC's ruling, that adverse health effects cannot be discussed in reviewing zoning rules or permit applications for cell towers, denies the public their first amendment right to free speech.

In Europe, opposition to cell tower construction has led to lawsuits and the destruction of wireless equipment. In an attempt to quell concerns about the health effects of wireless towers, one Italian mobile phone operator, Omnitel, launched an Internet site on which residents can check the amount of electromagnetic radiation emitted by nearby cell phone towers and antennas.

Municipal Regulations

Responding to community concerns about the negative impact of wireless towers, more than 150 municipalities have adopted temporary moratoria on wireless tower construction. Although the Telecommunications Act prevents a municipality from permanently banning wireless tower construction, the Act does allow municipalities to establish criteria based on aesthetic—but not health—considerations.

Community concern has also led to municipal enactment of zoning ordinances regulating wireless tower construction by

- Requiring that the visual impact of wireless towers be disclosed prior to construction
- Limiting tower construction to municipal sites, or encouraging such sites
- Encouraging co-location and the use of concealed structures

In response to community concerns about the aesthetics of wireless towers, so-called stealth towers—in the form of pine and palm trees—have been erected in more than 200 locations in the United States. The issue of the visual impact of wireless towers has also been addressed by placing antennas on silos, church steeples, tall buildings, and water towers.

CONCLUSION

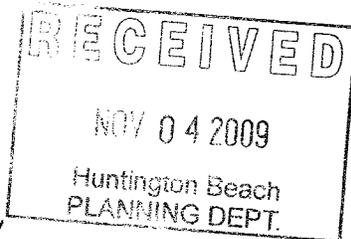
It has been shown that aesthetic and health concerns about electric lines and towers lead to a reduction in the valuation of nearby residential properties. There are similar concerns about wireless towers; these concerns are widespread and have been expressed in multiple venues. Therefore, proximity to a wireless tower needs to be considered as a negative amenity that may reduce residential property valuation. However, the severity of the aesthetic impact may be mitigated by screening and concealment of the wireless towers.

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ATTACHMENT NO. 5.220

Norma



I have been a member of the Comm United Methodist Church since 1964. I have also served the HB Community as a city council member & Mayor. My contribution has always been for the greater good. I am saddened by some of the neighbors objecting to the construction of the cell tower. We at the church thought this was a blessing. Instead of it going up on a telephone pole in the neighborhood we could erect it on our property & gain a small monetary benefit. We support countless groups who use our facilities, we started an after school program for middle school & parents are thankful. We understood there is no detriment to children & this concerned us greatly because of our outstanding preschool.

I wholeheartedly support this project.



6102 Summerdale Drive
Huntington Beach, CA 92647
November 3, 2009

Planning Administrator
City of Huntington Beach

Dear Sir;

I am a resident of the City of Huntington Beach (6102 Summerdale Drive) and a member of Community United Methodist Church of Huntington Beach. I would like to be heard in the matter of the proposed cellular phone repeater station on the Church's property on Heil Avenue. Unfortunately, I work in El Segundo and am unable to attend the hearing on November 4. Please consider my thoughts in making your decision.

The proposed cellular repeater on the Church property will provide a stable source of income for the Church that will enable the strong community outreach program to continue, even as it becomes more difficult to raise funds through the tithes and offerings of the Church members. Some of these outreach programs are the food pantry and shower programs we offer to the homeless and needy of the Huntington Beach community. The church also offers a free after-school program (the COVE) to middle school students. In addition, the church makes facilities available to community organizations such as AA and the Boy and Girl Scouts. These are but a few of the community organizations that Community UMC will be able to continue to support using the income provided by the cellular repeater station. Also, to consider is that the revised plan, utilizing and concealing the cellular equipment in a new bell tower, will be an attractive addition to the Church's campus and will, in no way, detract from the surrounding neighborhood. Thanks you for your consideration of my thoughts in favor of the application.

Respectfully,

William Paton

ATTACHMENT NO. 5.222

November 2, 2009

To Whom it May Concern:

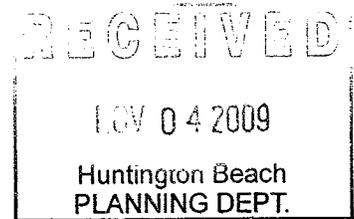
As members of Community United Methodist Church for more than twenty years, we have seen many wonderful things this church has done for the surrounding community. It has opened its doors to those with spiritual, physical, emotional and social needs. CUMC provides groceries for families in need through our Food Closet, Lunches for the Hungry, we participate in Self-Help Interfaith Program to help the homeless get off the streets, we are very active with Huntington Beach Interfaith Council, we provide meeting rooms for groups such as: Alcoholics Anonymous, AA Leaders, Narcotics Anonymous, Overeaters Anonymous, Multiple Scorsese, Daughter's of the American Revolution, Veterans of Foreign Wars, Girl Scouts, Boy Scouts, Cub Scouts, Brownies, Indian Guides, Indian Princesses, and more. Three years ago we started an After School Drop-in program for Middle School Latch Key kids. All of these programs and services are provided to our neighbors in the community AT NO CHARGE!

Does this sound like a selfish, non-caring congregation? NO, it does not. We care deeply about our neighbors and because we care, we willingly and lovingly participate in these programs and provide these services to this community. We encourage you to vote "Yes" to the cell tower proposal as the monies gained from the T-Mobile lease will help us to continue to provide these and other programs and services to our neighbors.

We live, work and worship here; we are all part of this community. Part of COMMUNITY United Methodist Church.

Sincerely,

Mikey and David Foster



ATTACHMENT NO. 5.223

----- Original Message -----

From: Gaye Fisher

To: Jan Wiley

Sent: Tuesday, November 03, 2009 5:33 PM

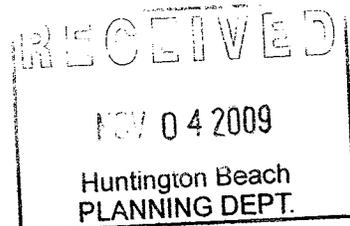
Subject: RE: cell tower - need for letters or presence

Dear Planning Administator - I have been a member at CUMC for the past 21 years, I have watched the church take care of all people within our community and the county. I was at the original meeting in 2008 and voted for the cell tower then; I am more for it now, I have heard the information for and against. I have been at 2 meetings this year and voted each time for the cell tower.

I would love to come to this meeting; however, I am a state employee and I have to be at work due to the furloughs the next 3 Fridays.

Thank you for listening to my letter (I am a T-mobile customer - I look forward to better service).

Gaye Fisher
7692 Alhambra Dr.
Huntington Beach 92647



ATTACHMENT NO. 5.224

----- Original Message -----

From: Charleswl@aol.com

To: JWiley@cumchb.org

Sent: Monday, November 02, 2009 1:24 PM

Subject: Cell Tower Approval Hearing

My Name is Charles Leatherwood, I am a member of Community United Methodist Church. I am unable to appear in person due to having surgery at the time of the hearing. I do wish to speak in support of the tower approval for two reasons. The first is the need for improved service for T Mobil customers. The second is the benefits to the community the Church will be able to provide with the income from the rental to T Mobil. These monies will help support the Churches day care, after school program, and the homeless outreach. among others.

The opposition is based on fear and misinformation. The Tower produces less R F exposure than a cordless phone, baby monitor, or WiFi router.

I worked in the Cellular industry for ten years. This has been an ongoing reaction and is based un-proven science or information taken out of context.

Chuck Leatherwood

19602 Elm Ridge Lane

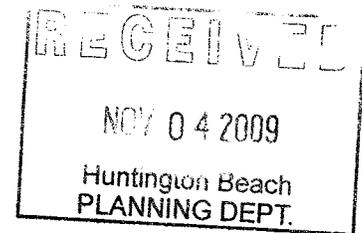
Huntington Beach, CA 92648

714-374-6151

714-875-1480 (cell)

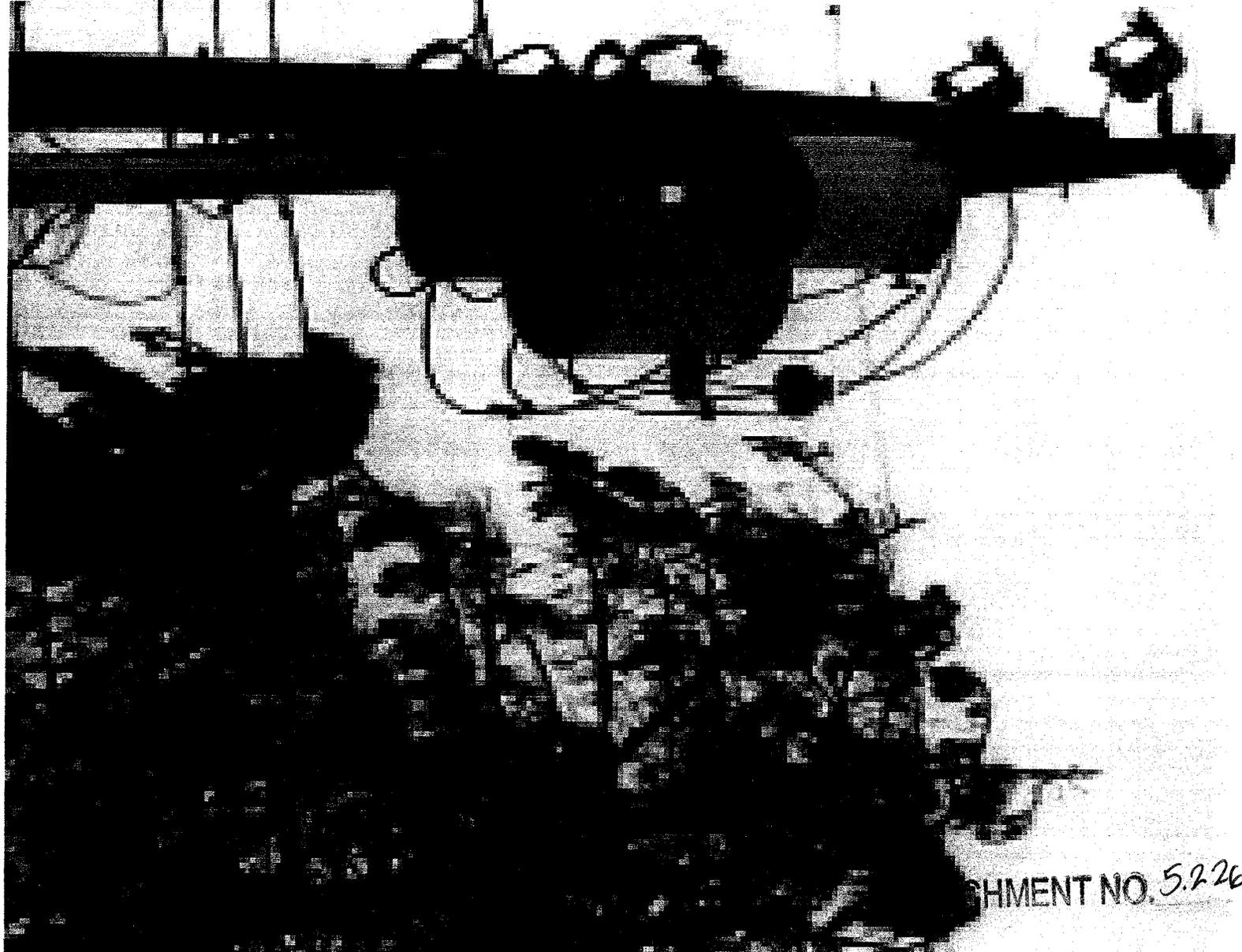
714-374-6171 (fax)

charleswl@aol.com



ATTACHMENT NO. 5.225

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ATTACHMENT NO. 5.226

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NOV 04 2009

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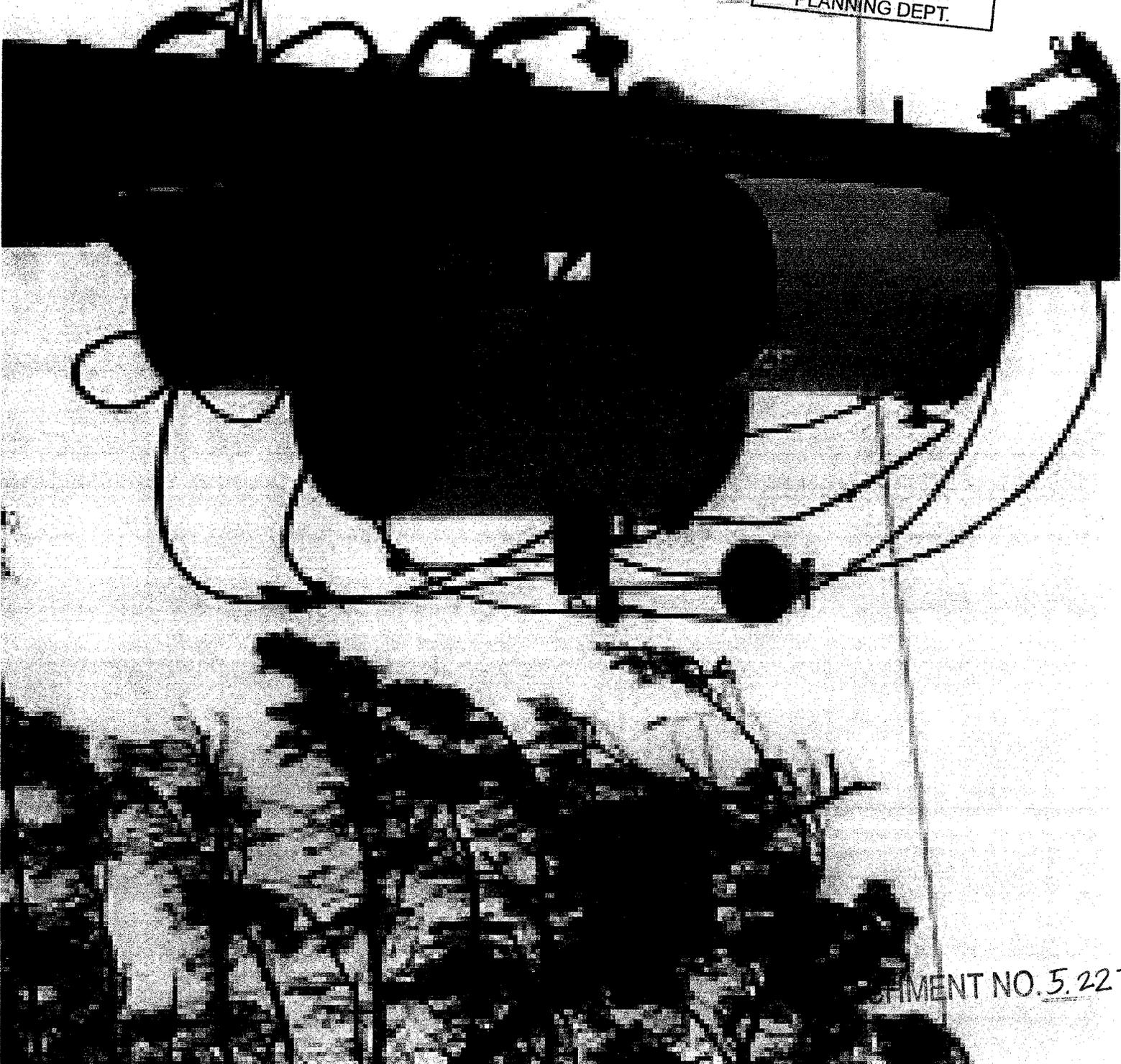
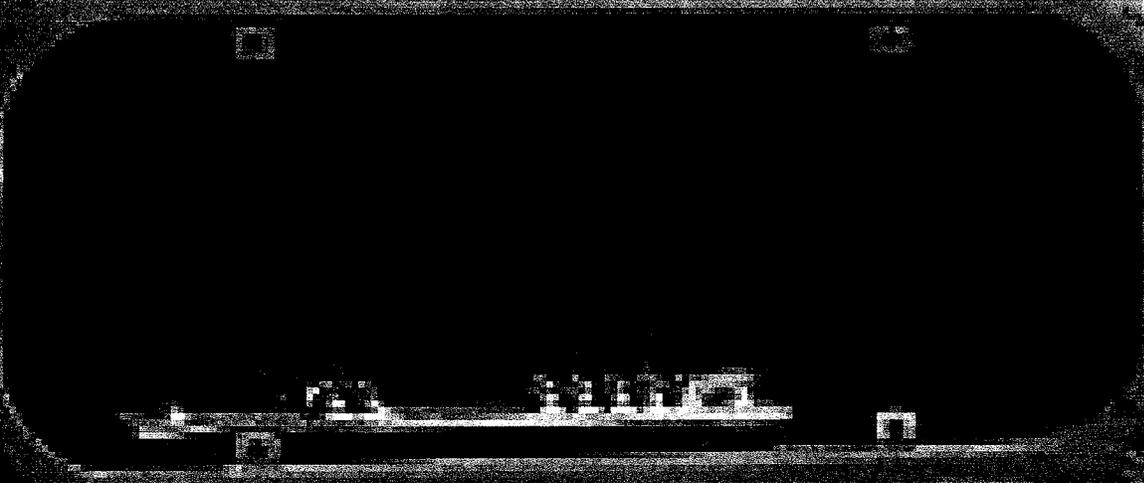


EXHIBIT NO. 5.227

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ATTACHMENT NO. 5.728

PETITION TO STOP THE T-MOBILE CELL TOWER!

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"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

NOV 04 2009

Print Your Name	Residence Street Address & City	Signature	Huntington Beach PLANNING DEPT.
Ailene Foley	15921, Malm Circle, Hunt. Beach, CA 92647	<i>Ailene Foley</i>	
Joshua Bean	7265 Lisamane Court, HB CA 92648	<i>Joshua Bean</i>	
GARY C. BEAN	15892 MALM CIRCLE H.B. BEACH CA 92647	<i>Gary C. Bean</i>	
JOHN VAN HOESEN	6861 BEEFLAND DR. H.B. CA. 92647	<i>John VanHoesen</i>	
Thany VanHoesen	——— " ——— Same	<i>Thany VanHoesen</i>	
Sabrina Tattary	15881 Malm Cir Huntington Beach CA 92647	<i>Sabrina Tattary</i>	
Jeff Hany	15981 Malm Cir Huntington Beach CA 92647	<i>Jeff Hany</i>	
Shannon Keady	15051 Malm Cir Huntington Beach CA 92647	<i>Shannon Keady</i>	
Sean Kearny	15951 Malm Cir HBeach CA 92647	<i>Sean Kearny</i>	
Jerald Real	7333 Bret Ct. H.B. ca 92648	<i>Jerald Real</i>	
JAMES B. TINDER	15952 Malm Cir HB CA 92647	<i>James B. Tinker</i>	
Luanne Washburn	15932 Malm Cir HB CA 92647	<i>Luanne Washburn</i>	
Cam VanHoygen	14121 Flower St Garden Grove CA 92843	<i>Cam VanHoygen</i>	

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name

Residence Street Address & City

Signature

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NOV 04 2008

Huntington Beach
PLANNING DEPT.

Todd Newton

6522 Bishop Dr. HB, CA 92647

Todd Newton

JUNE MCCANN

6531 Bishop HB CA 92647

June McCann

ISSAC McCANN

6531 Bishop Dr. HB, CA 92647

Issac McCann

HOWARD RASUIN

6541 BISHOP DR, HB, CA 92647

Howard Rasuin

William Schwesow

6502 Bishop Dr, HB CA 92647

William Schwesow

Katie CRONE

6521 Bishop Dr. HB CA 92647

Katie Crone

MEISSA CRAMBO

6501 BISHOP DR HB, CA 92647

Meissa Crambo

JULIE NEWTON

6522 Bishop Dr HB CA 92647

Julie Newton

RICK CRAMBO

6501 BISHOP DR HB CA 92647

Rick Crambo

TILLIE HAYNES

15854 LOS REYES F.V. CA 92708

Tillie Haynes

HENRY HAYNES

15854 LOS REYES F.V. CA 92708

Henry Haynes

EVANNE PENN

6651 MASON HB 92647

Evanne Penn

Brian Carter

6921 Marilyn Dr HB CA 92647

Brian Carter

PETITION TO STOP THE T-MOBILE CELL TOWER!

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Huntington Beach
PLANNING DEPT

Print Your Name

Signature

Residence Street Address & City

ERICK BLAHIA	16672 Fountain Ln HB, CA 92647	
JAMES DONALD	16551 PATRICIA LN. H.B., CA 92647	
Jens McElroy	6581 OAKGROVE Circle HBCA 92647	
CARLA BEARD	16541 Fountain Lane Hunt Beach CA 92649	
RON PASSMORE	16632 DAZE VISTA LN, H.B. CA 92647	
Ian L. McElroy	6581 Oakgrove Circle H.B. CA 92647	
Pamela J McElroy	6581 Oakgrove Circle H.B., CA 92647	
HARRISON CE	16432 Oakmont Lane HB 92647	
GRAVEL STINSON	6532 Abby H Dr. H.B. CA 92647	
Elvia Hencke	16091 Tellim Ln. H.B. CA 92647	
WILLIAM J. HENCKE	16091 Tellim Ln. H.B., CA 92647	
Lori Rodig	16101 Tellim Ln HB Ca. 92647	
DANA DRAKE	40301 Bluffsir Cir. Hunt Beach 92644	

PETITION TO STOP THE T-MOBILE CELL TOWER!

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Huntington Beach
PLANNING DEPT.

Print Your Name	Residence Street Address & City	Signature
Tammy L. Crowder	16391 Redlands Lane HB, CA 92647	Tammy L. Crowder
Mary Ann Shields	6446 Forester Drive HB, CA 92648	Mary Ann Shields
Tracy Smith	5962 Gildred Circle HB, CA 92647	Tracy Smith
Sky Peterson	18501 Avenida LN, HB, CA 92648	Sky Peterson
Karie Wilson	1722 Encino Cr. HB, CA 92647	Karie Wilson
Ramela Peterson	18541 Analia Ln HB, CA 92648	R Peterson
M. Cortez	18351 Olyso Ln. HB CA 92648	M. Cortez
Linda Tait	6251 Fairwells Dr. H.B. CA 92647	Linda Tait
Barbara Kaess	6711 Shannon Dr. H.B. CA. 92647	Barbara Kaess
Brad Kaess	6711 Shannon Dr. HB. CA. 92647	Brad Kaess
Lisa Gussis	7295 Jordynct HB CA 92648	Lisa Gussis
Katherine Sherkoff	17311 Coronado Ln. HB CA 92647	Katherine Sherkoff
James Sherkoff	17311 Coronado Ln HB CA 92647	James Sherkoff

PETITION TO STOP THE T-MOBILE CELL TOWER!

RECEIVED

11-04-2009

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property; 6666 Heil Avenue, Huntington Beach, CA 92647 PLANNING DEPT.

Print Your Name	Residence Street Address & City	Signature
ROBERT ROSENAU	17132 BARCELONA LN HUNTINGTON BEH CA	[Signature]
KATHY ROSENAU	17132 BARCELONA LN HUNTINGTON BEH CA	[Signature]
Donnetta Jensen-Horney	582 Robinwood Dr., Huntington Beh, CA	[Signature]
Paul Alexander	2015 Paseo Inso San Clemente CA 92673	[Signature]
GEORGE BASSETT	16571 DALE VISTA LANE HUNTINGTON BEACH CA 92647	[Signature]
DANA DRAKE	20301 Bluffsides Cir. Hunt. Beh 92646	[Signature]
HOMER FAIRECHILD	20101 GLACIER CIR, HUNTINGTON BEACH 92646	[Signature]
Debbie Cox	7582 Sandbluff Dr #102 H Beh 92646	[Signature]
Fran + Gunther Kallman	15461 Marquise Westminister CA 92683	[Signature]
Dottie Talbott	14572 Fountain Ln. Hunt. Beh. 92647	[Signature]
Dennis Talbott	16572 Fountain Ln. Hunt Beh. 92647	[Signature]
Steve Talbott	Stanton	[Signature]
Lisa Berglund	16872 Quida - Huntington Beh.	[Signature]

PETITION TO STOP THE T-MOBILE CELL TOWER!

RECEIVED

NGV-04-2009

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92641 HUNTINGTON BEACH PLANNING DEPT

Print Your Name Residence Street Address & City Signature

HEATHER LOCKE

6631 WALTON DR
HUNTINGTON BEACH CA

Heather Locke

CAROLYN ROWE

6842 MANHATTAN DR.
HUNTINGTON BEACH CA 92647

Carolyn Rowe

Sidney Elliott

6401 Waring Ave #549
Huntington Beach CA 92647

Sidney Elliott

SUSIE PAKARD

16701 MARIELLA
HB, CA 92647

Susie Pakard

David Locke

6631 Walton Dr
HB, CA

David Locke

LAURA PEREZ

5841 Chinook Dr.
Huntington Beach, CA 92647

Laura Perez

MARIA PEREZ

5841 Chinook Dr. H.B. CA-92647

Maria Perez

DIEGO PEREZ

5841 Chinook Dr.
Huntington Beach, CA 92647

Diego Perez

Jose Perez

5841 CHINOOK DR.
Huntington Beach, CA 92647

Jose Perez

MARTIN ROSS

HUNT BEACH CA 92647

Martin Ross

JUDY VON EPO

1701 FAIRM CIR
HUNTINGTON BEACH CA 92647

Judy Von EPO

Dona Baker

16001 Windemair Ln.
HB 92647

Dona Baker

Karon Rice

16041 Craig Ln
HB 92647

Karon Rice

GAI I EDWARDS

61302 Chippewa Dr
Westminster 92683

Gai I Edwards

PETITION TO STOP THE T-MOBILE CELL TOWER!

RECEIVED

NOV 04 2009
Huntington Beach
PLANNING DEPT.

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647"

Print Your Name	Residence Street Address & City	Signature
Kelly Mardiales	10469 Slater #105, Fountain Valley	<i>[Signature]</i>
KRISTIN SCHWARZ	6352 Broadway Ln. HB	<i>[Signature]</i>
Shawn Trance	17821 Still Harbor HB	<i>[Signature]</i>
Wendy Burdett	5021 Partridge circle HB	<i>[Signature]</i>
Jeanette Simeret Jeanette Simeret	17342 La Mesa Ln. HB	<i>[Signature]</i>
William J Simeret	17342 La Mesa Lane HB	<i>[Signature]</i>
Steve Hotelle	7582 Seabloss Dr - #105 H.B.	<i>[Signature]</i>
Marianne Moton	6536 Silent Harbor Dr. HB	<i>[Signature]</i>
Craig Moton	9151 Atlanta Ave #6575 HB	<i>[Signature]</i>
Scott Bradbury	21932 Cam Ln HB 92646	<i>[Signature]</i>
<i>[Signature]</i>	7012 Wellesley Ave. HB	<i>[Signature]</i>
Annette Ray Childers	6731 Lafayette HB 92647	<i>[Signature]</i>
Baron Childers	6731 Lafayette HB 92647	<i>[Signature]</i>

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name

THOMAS CORDAY

Residence Street Address & City

16522 FOURTH LN HUNTINGTON BEACH CA

Signature

Thomas Corday

92647

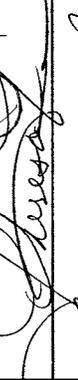
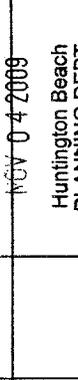
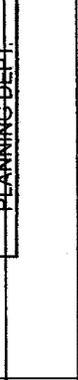
RECEIVED

NOV 04 2009

Huntington Beach
PLANNING DEPT.

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647

Print Your Name	Residence Street Address & City	Signature
Vicki Lundy	15931 Malm Circle HB	
Mick Lundy	26035 Marmora Dr HB	
CARRIE LUNDY	5001 CASAN CIR HB CA 92649	
Theresa Jinder	15952 Malm Circle HB 92647	
James Jinder	15952 Malm Circle HB 92647	
DALE JACOBSON	6921 RETHERFORD HB 92647	
Lance Miller	15891 Folsa Circle HB 92647	
Mark Berglund	16872 Oaida - Huntington Bch.	
		
		
		
		

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PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647	
Print Your Name	Residence Street Address & City
Jennifer Letourneau	17102 Camelot Cir, HB 92649
Wanda Mestoni	16252 Duchess Lane, HB 92647
IVANNA BROWN	6901 Lafayette Dr. HB. CA 92647
CHRISTINE ELAM	16112 PITMAN HB. CA 92649
Jackie Bonis	19572 Elderwood Cir HB CA 92648
Erica Rodriguez	5912 Camphor Ave, Westminster, CA 92683
Jennifer Kohnowsky	18916 Breezy lane Huntington Beach, CA 92648
Kathy Davison	18857 Coolwater Lane HB 92648
Lewy Mawad	5691 Ocean Terrace Dr HB 92648
	EST. JED
	1042009
	Huntington Beach PLANNING DEPT.

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
Afredo Fernandez	6671 Mason Dr. HB	
Wm G Spiller	6471 Ervood Dr	Wm G Spiller
Risite Bulsombut	16802 Cooper Lane H.B.	Risite Bulsombut
Cynthia Bradbury	16792 Cooper Lane HB	C Bradbury
Sarah Rowling	16752 Cooper Lane HB	S Rowling
Tim Nowak	16752 Cooper Ln H.B.	Tim Nowak
Tammy Hall	16642 Cooper Ln HB	T Hall
Anthony Nguyen	16592 Cooper Ln HB	Anthony Nguyen
Angela Bright	6581 Corrine Cir HB	Angela Bright
Tracy Zuehl	6582 Reggy Cir HB	Rick Novakoff
Karen Zuehl	16451 Redlands HB	Karen Zuehl
John Zuehl	16451 Redlands HB	John Zuehl
Diane Anderson	6651 MASON DR HB	Diane Anderson

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Huntington Beach
PLANNING DEPT.

PETITION TO STOP THE T-MOBILE CELL TOWER RECEIVED

SEP 30 2009
 HUNTINGTON BEACH PLANNING DEPT.
 6666 HEIL AVENUE, HUNTINGTON BEACH, CA 92647

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
Carmen L Bynum	16621 DALE VISTA LN HB, CA 92647	Carmen L Bynum
Steve Bynum	16621 DALE VISTA LN Huntington Beach CA 92647	Steve Bynum
Dana Stone	1651 Dale Vista Ln Huntington Beach, CA 92647	Dana Stone
Elizabeth McFarland	6631 Mason Dr, Huntington Beach, Ca 92647	Elizabeth McFarland
Jim Family SO MEANING	6631 Mason Dr, Huntington Beach, CA 92647	Jim Family
ARLETTA O'HARE	16781 Cooper Ln Huntg Bch Ca 92647	Arletta O'Hare
Miko Hair	16751 Cooper Ln. H.B. CA 92647	Miko Hair
Mark Lakerwood	16762 Cooper Ln H.B. CA 92647	Mark Lakerwood
Donna Lahmani	16742 Cooper Ln. H.B. CA 92647	Donna Lahmani
Lieta Strecke	16722 Cooper Ln. HB CA 92647	Lieta Strecke
Barbara Bowen	16652 Cooper Ln HB Ca 92647	Barbara Bowen
Maeha Puly	6611 Abbott Dr HB CA 92647	Maeha Puly
Tanya Rose	6582 Abbott Dr HB CA 92647	Tanya Rose

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
MICHAEL J. BERRY	15221 YORKSHIRE Lane, H.B.	
Brod Maguire	6422 Vikings Circle HB	
Tom Point	16542 Cooper Ln HB	
RICHARD S. EVANS	6641 MASON DRIVE HUNTINGTON BEACH	Richard S. Evans
BLANCA J. EVANS	6641 MASON DRIVE HUNTINGTON BEACH	Blanca J. Evans
PAVE ERICKSON	16531 FOUNTAIN W., HUNTINGTON BEACH	Pave Erickson
DEUSE DAUS	16501 FOUNTAIN DR HUNTINGTON BEACH	Deuse Daus
Saxon Kordeshian	16207 Fountain Ln HB Ca. 92647	
F. Cordry	16522 Fountain Ln HB 92647	
Tammy Alvarado	16404 Oakmont Ln. HB 92647	
Carol M. Bats	16372 Lake Mont Ln. 92647	
Pete Bats	" " " " " "	
JEFF JACKSON	16391 LAKE MOUNT LN H.B. 92647	

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Huntington Beach
PLANNING DEPT

PETITION TO STOP THE T-MOBILE CELL TOWER!

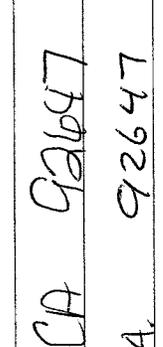
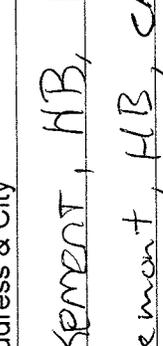
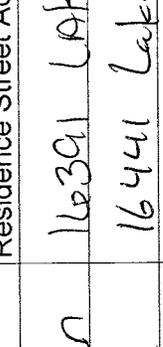
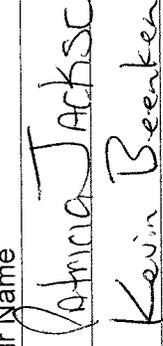
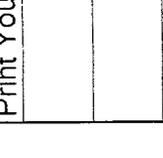
"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
JOY NISHIWAKI	16461 Redlands Lane Huntington Beach, CA. 92647	<i>[Signature]</i>
Ginny Bean	15842 Palm Circle Huntington Beach	<i>[Signature]</i>
Gillian Jensen	17052 Newquest HB 92646	<i>[Signature]</i>
Jennic Bolotin	16732 Kether Ln. H.B. 92647	<i>[Signature]</i>
JEAN E. HETHERINGTON	6541 ABBOTT Hunt Beach 92647	<i>[Signature]</i>
Bridget Mello	6511 Abbott Drive Hunt. Beach CA 92647	<i>[Signature]</i>
SUMMER POWERS	6601 ABBOTT DR. 92647	<i>[Signature]</i>
CHARLIE POWERS	" "	<i>[Signature]</i>
Lisa Veal	3716 Montego Dr 92649	<i>[Signature]</i>
Adam Godell	16631 Fountain Lane HB 92647	<i>[Signature]</i>
EDIE UEE	6591 ABBOTT DR. HB CA 92647	<i>[Signature]</i>
CAROL SETTIMO	16542 COOPER LN. HB 92647	<i>[Signature]</i>
JO ANN BUNY	15221 YORKSHIRE LN. HB 92647	<i>[Signature]</i>

RECEIVED
SEP 30 2009
Huntington Beach
PLANNING DEPT.

PETITION TO STOP THE T-MOBILE CELL TOWER!

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Print Your Name	Residence Street Address & City	Signature
Cynthia Jackson	16391 Lakement, HB, CA 92647	
Kevin Beenten	16441 Lakement, HB, CA 92647	
Jeff Crapenogle	16451 Lakement Ln HB CA 92647	
Brittany Dando	6671 Chel Circle HB, CA 92647	
ADAM URENA	16432 LAKEMONT LN HB, CA 92647	
Bill FERNANDEZ	16392 LAKEMONT LN HB CA 92647	
Ron Berry	16582 Fountain Ln. H.B. CA 92647	
Heather Benjamin	16630 Fountain Lane H.B. CA 92647	
Jaqueline Graves	16642 Fountain H.B. CA 92647	
Arnell Graves	4 4 4 4 4	
MARGARET BARNES	16702 Dale Vista Lane Huntington Beach, Ca. 92647	
DALE O. BARNES	16702 Dale Vista Lane Huntington Beach, Ca. 92647	
Evelyn Oshiro	16642 Dale Vista Ln. HB, CA 92647	

ATTACHMENT NO. 5.244

RECEIVED
SEP 30 2009
HUNTINGTON BEACH
PLANNING DEPT.

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
GINA FISHMAN	6722 BRIDGEWATER DR H.B, CA 92647	<i>[Signature]</i>
TOM TORRES	6782 BRIDGEWATER DR HB CA 92647	<i>[Signature]</i>
KIM HOHL	6832 BRIDGEWATER DR HB CA 92647	<i>[Signature]</i>
ROGER MIGNOSA	6751 BRIDGEWATER DR HB CA 92647	<i>[Signature]</i>
RONALD KNOB	6741 BRIDGEWATER DR H.B. - CA 92647	<i>[Signature]</i>
Richard Biggins	16611 Fountain Ln. H.B. Calif. 92647	<i>[Signature]</i>
Marielyn Millar	14891 Dale Vista Ln HB CA 92647	<i>[Signature]</i>
Ellen Hoshtrasser	16681 Dale Vista Ln HB CA 92647	<i>[Signature]</i>
John John W Finley	664 Abbott Dr HB 92647	<i>[Signature]</i>
Dennie Zentis	16641 Dale Vista Ln HB 92647	<i>[Signature]</i>
Kathy Utley	16661 Dale Vista Lane H.B. 92647	<i>[Signature]</i>
Archie G Reed	16701 Dale Vista Lane N.B. 92647	<i>[Signature]</i>
Joe Piretti	16791 Cooper Ln	<i>[Signature]</i>

RECEIVED
 SEP 30 2009
 Huntington Beach
 PLANNING DEPT.

ATTACHMENT NO. 5.245

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
Andrew Bynum	16671 Dale Vista Ln, Huntington Beach, CA, 92647	Andrew Bynum
Kacey Cupatola	7562 Ellis Ave, HB, CA 92648	Kacey Cupatola
Leticia R Pineda	16621 Dale Vista Ln HB CA 92647	Leticia R Pineda
Nancy Jones	14611 Dale Vista Ln. HB CA 92647	Nancy Jones
Ryad Jones	" "	Ryad Jones
Michael M. WAYLONIS	16601 DALE VISTA LANE, HB OF. 92647	Michael M. WAYLONIS
Suzanne WAYLONIS	" "	Suzanne WAYLONIS
Chicky Butler	16667 Fountain Ln H.B. CA. 92647	Chicky Butler
Dannika Butler	" "	Dannika Butler
JOANNE E LAWSON	15562 FOUNTAIN LN HB CA 92647	JOANNE E LAWSON
Lorrie Sanchez	16622 Dale Vista Ln HB. 92647	Lorrie Sanchez
Bill Ketter	16592 Dale Vista Ln. HB. 92647	Bill Ketter
Teresa Kettler	16592 Dale Vista Ln, HB. 92647	Teresa Kettler

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"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
Melanie Pickens	6851 Bonnie Drive Huntington Beach CA 92647	Melanie Pickens
MARY SUE LOYD	6831 BONNIE DRIVE HUNTINGTON BEACH, CA 92647	Mary Sue Loyd
Rachel Romero	6781 Bonnie Pl, HB, CA 92647	Rachel Romero
Sue Nishimura	16541 Patricia Ln, HB CA 92647	Sue Nishimura
KACI SCUDDELL	11571 Patricia Ln HB CA 92647	Kaci Scudell
NATHAN DEWE	16591 PATRICIA LN HB CA 92647	Nathan Dewe
DAVE BAKER	16622 Simone Ln HB CA 92647	Dave Baker
Christy Switzer	16622 Simone Ln HB CA 92647	Christy Switzer
Robert Tom	16651 Simone Ln HB CA 92647	Robert Tom
Robert Tom	16661 SIMMONS LN HB 92647	Robert Tom
Cheryl Tom	16661 Simone Ln H.B. 92647	Cheryl Tom
Cliff Bingham	16681 Simone Ln H.B. 92647	Cliff Bingham
Valerie Bingham	16681 Simone Lane HB 92647	Valerie Bingham

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PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

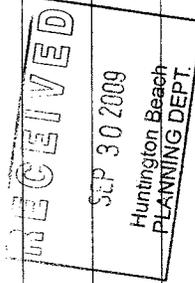
Print Your Name	Residence Street Address & City	Signature
Tracy Kincaid	16552 Patricia Lane, HB	<i>Tracy Kincaid</i>
Connie Koehn	16572 Patricia Lane HB	<i>Connie Koehn</i>
Carol GRIFFITH	16602 Patricia Ln HB	<i>Carol Griffith</i>
Analya Sahnchaisere	16761 Dak Vista Ln HB	<i>Analya Sahnchaisere</i>
Sigita Greene	16601 Simone Lane, HB	<i>Sigita Greene</i>
Diana Boyadjian	16571 Simone HB	<i>Diana Boyadjian</i>
Robert Boyadjian	16571 Simone HB	<i>Robert Boyadjian</i>
KEITH BARBOUR	16591 SIMMONS LN, HB	<i>Keith Barbour</i>
Mary Nader	16561 SIMMONS LN HB	<i>Mary Nader</i>
Mary Jo Williams	16561 SIMMONS LN HB	<i>Mary Jo Williams</i>
EDAN WERNIK	16592 SIMMONS LN HB	<i>Edan Wernik</i>
NETA REITER	16592 SIMMONS LN HB	<i>Neta Reiter</i>
Alice R. Kiler	6842 Sylvia Dr, HB	<i>Alice R. Kiler</i>

RECEIVED
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 PLANNING DEPT.

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
M.P. Moore	16712 KETTLER LN	M.P. Moore
MARK BOLSTIN	16732 KETTLER LN	M.W. Bolst
A. KIRA MIYA	16702 KETTLER LANE HUNTINGTON BCH, CA	Akira Miya
Ryan Passwater	16692 Kettler Lane Huntington Beach	Ryan Passwater
Nancy Huggins	16662 Kettler Lane, Huntington Beach	Nancy Huggins
ANITA S. GARDNER	16632 Kettler Ln HTB CA	Anita Gardner
MICHAEL STORNER	16622 KETTLER LANE HB CA	Michael Storrer
Laurie Frandsen	16612 Kettler Lane HB CA	Laurie Frandsen
Nancy Ferry	16592 Kettler Lane HB CA	Nancy Ferry
EMILY A. STORNER	16512 Kettler Ln HB CA	Emily A. Storrer
Carolyne Elbert	16532 Kettler Ln HB CA	Carolyne Elbert
Lewis E. Storrer	16512 Kettler Ln HB CA	Lewis E. Storrer
Jacquelyn M. Storrer	16512 Kettler Ln HB CA	Jacquelyn M. Storrer



PETITION TO STOP THE T-MOBILE CELL TOWER!

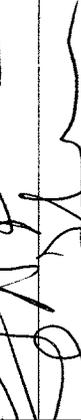
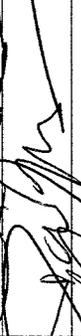
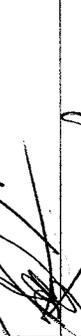
"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
Bryan Renard	16671 KETTLER LN	<i>[Signature]</i>
Margaret Baxter	16641 Kettler Ln HB	<i>Margaret A. Baxter</i>
Earl Mueller	16641 KETTLER LN HB	<i>Earl Mueller</i>
JACK GOODGAME	16631 KETTLER LN, HB.	<i>Jack Goodgame</i>
Tara & Mike Pistilli	16611 Kettler Jn HB.	<i>Tara Pistilli</i>
Art & Robin Vold	16621 Kettler Ln. H.B.	<i>Art Vold</i>
Robin Vold	16621 Kettler Ln HB	<i>Robin Vold</i>
MIKE JUSTICE	16611 KETTLER LN HB	<i>Mike Justice</i>
SERGE LOPEZ	16601 KETTLER LN	<i>Serge Lopez</i>
SHARON TOYLES	16591 Kettler Lane HB	<i>Sharon Toyles</i>
Derek Ray	6832 Bunker Ave, HB	<i>Derek Ray</i>
John Richardson	6792 Bonnier Dr HB	<i>John Richardson</i>
CHRISTINA RICHARDSON	16531 PATRICKA LN, HB	<i>Christina Richardson</i>

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Print Your Name	Residence Street Address & City	Signature
John Moore	6571 Abbott Dr.	
Michelle Hetherington Fox	6567 Abbott Dr	
Eugene Motta	6581 Abbott Dr HB CA 92647	
Michelle Kanno	6501 Abbott Dr. HB CA 92647	
Tom Honrath	6512 ABBOTT DR H.B. 92647	
Suzie Hunter	6512 ABBOTT DR H.B. 92647	
MATT EVERLING	6542 ABBOTT DR., H.B. 92647	
Dennis Justiniani	6572 Abbott Dr H.B. 92647	
DAVID MISLO	6551 ABBOTT DR HB 92647	
Grandmother	6561 Bishop Dr. Hnt. Bch. 92647	
DARRIN ROY	16721 DALE VISTA LN HB, CA 92647	
Roy Scheidhauser	16761 Dale Vista Lane HB Ca 92647	
DIANNE LARSON	16631 DALE VISTA LN - HB, CA 92647	

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Print Your Name	Residence Street Address & City	Signature
LARRY OSHIRO	16642 ABUSCA LAWS	<i>Larry Oshiro</i>
DARAC HOVIS	6642 MARILYN DR.	<i>DH</i>
VILAI ATTIBERRY	16582 KETTLER LN	<i>Viloi</i>
Greg Hotel	6682 Marilyn Dr. Huntington Beach 92647	<i>Greg Hotel</i>
Che Chereskin	6691 Marilyn Dr. Huntington Beach, 92647	<i>Che Chereskin</i>
TOM SWYDEN	4	<i>Tom Swyden</i>
DAVID BECKETT	6692 MARILYN DR. HB. 92647	<i>David Beckett</i>
Cory Catalano	6731 Marilyn Dr. H.B. 92647	<i>Cory Catalano</i>
Michelle Laffo	6711 Marilyn Dr. HB 92647	<i>Michelle Laffo</i>
RODARD WILLIAMS	6712 MARILYN DR. H.B. 92647	<i>Rodard Williams</i>
CHARLIE WILLIAMS	6712 Marilyn Dr. H.B. 92647	<i>Charlie Williams</i>
STACY RUMIREZ	6752 Marilyn Dr. HB CA 92647	<i>Stacy</i>
CHRISTOPHER	6762 Marilyn Dr. HB CA 92647	<i>Christopher</i>

Chris Parano

PETITION TO STOP THE T-MOBILE CELL TOWER!

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 PLANNING DEPT.

Print Your Name	Residence Street Address & City	Signature
EDWARD RYAN	6771 MARILYN DR HUNTINGTON BEACH	Edward Ryan
MICHELLE MICHON	16801 DIANE LANE HB	Michelle Michon
LAURA ROEDEL	16801 DIANE LANE, HB 92647	Laura Roedel
Steve Russakov	16772 Diane Ln HB 92647	Steve Russakov
Sharri Russakov	16772 Diane Lane Hunt. Bch 92647	Sharri Russakov
Kelly Woodson	16771 Diane Lane HB 92647	Kelly Woodson
Xanka Yen	16761 Diane Lane HB 92647	Xanka Yen
ETHAN POST	16761 DIANE LANE HB 92647	Ethan Post
MAKE FAREGATE	16762 Diane Ln. H.B. 92647	Make Fargate
KASSI BACQUET	16752 DIANE LN BB 92647	Kassi Bacquet
Tammi Titsworth	16751 Diane Ln HB 92647	Tammi Titsworth
Emilia Montano	16741 Diane Ln. H.B. 92647	Emilia
CARLOS SANCHEZ	16741 DIANE LN H.B. 92647	CARLOS SANCHEZ

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	Signature
WANDA PATTERSON	17642 DIANE LN HA 92647	Wanda Patterson
NICK SANDERCOCK	16731 DIANE LN. HB 92647	Nick Sandercock
KATHRYN THOMAS	16721 DIANE LN HB 92647	Kathryn Thomas
GIINA MURTA	16711 Prairie Lane HB 92647	Giina Murta
Kristen Reici	6772 Sylvia HB 92647	Kristen Reici
Phyllis Thompson	6772 Sylvia HB 92647	Phyllis Thompson
Kaith Connolly	6782 Sylvia HB 92647	Kaith Connolly
Leigh Huber	6822 Sylvia HB 92647	Leigh Huber
Nicole Johnson	6838 Sylvia HB 92647	Nicole Johnson
Alan Tran	6831 Sylvia HB 92647	Alan Tran
Ron Duesen	6821 Sylvia Dr. HB 92617	Ron Duesen
Mark Chin	6632 Marilyn Dr. HB 92647	Mark Chin
Don Byer	6602 Marilyn Dr., HB 92647	Don Byer

RECEIVED
SEP 30 2009
Huntington Beach
PLANNING DEPT.

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

Print Your Name	Residence Street Address & City	SEP 30 2009	Signature
Cheryl Bynum	5842 Marshall DR H.B ca 92649	Huntington Beach TRAINING DEPT	Cheryl Bynum
Jeremy Bynum	2857 W. 230 th St. Torrance Ca 90505		Jeremy Bynum
PAUSA Bynum	5842 Marshall Drive Huntington Beach CA 92649		PAUSA Bynum
JOSH Bynum	5842 Marshall Drive H.B. CA 92649		JOSH Bynum
Randy Frew	5821 Marshall DR H.B. CA 92649		Randy Frew
Rheleew Frew	5821 Marshall Dr, H.B CA 92649		Rheleew Frew
Michelle Skelton	5811 Marshall Dr Huntington Beach Calif		Michelle Skelton
Dana Frenk	5832 Marshall OR H.B. CA 92649		Dana Frenk
JANE PERKINS	16612 SIMMONS CV. H.B. CA 92647		JANE PERKINS
Lisa FISH	16602 Simmons Ln H.B. Ca. 92647		Lisa FISH
Andrew Fish	16602 Simmons Ln. H.B., Ca. 92647		Andrew Fish
Elyvia Figueroa	16621 DALE VISTA LN HB CA 92670		Elyvia Figueroa
Patty Skelton LUX	16382 Nassau Lane H.B. Ca. 92649		Patty LUX

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Print Your Name Residence Street Address & City Signature

Kevin Roe 6582 Abbott dr. H.B. *Kevin Roe*

Janet Roe 6542 Bishop Dr. H.B. *Janet Roe*

Julie Wynn 16622 Cooper Ln H.B. *Julie Wynn*

Daniel Beessler 16622 Cooper Ln. H.B. *Daniel Beessler*

Andrea Navarro 4582 Peggy Cir. HB *A. Navarro*

Laura Harris 16682 Dale Vista Ln, HB *Laura Harris*

Edward 16632 Dale Vista Ln, HB *Edward*

Terry Harris 16682 Dale Vista Ln, HB *Terry Harris*

John Anderson 6651 Mason Drive, H.B. *John Anderson*

Marilyn Cohen 6691 Mason Dr. H.B. *Marilyn Cohen*

Denise Porter 6691 Mason Dr. H.B. *Denise Porter*

RECEIVED
52 30 100
Huntington Beach
PLANNING DEPT

PETITION TO STOP THE T-MOBILE CELL TOWER!

"We the concerned parents and neighbors seek to STOP the T-Mobile cell tower from being built in our backyard on "Community United Methodist Church of Huntington Beach & Preschool" property, 6666 Heil Avenue, Huntington Beach, CA 92647."

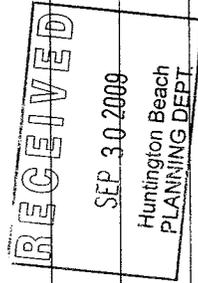
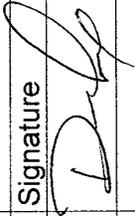
Print Your Name

DANA LUC

Residence Street Address & City

16382 NASSAU LN HB 92649

Signature



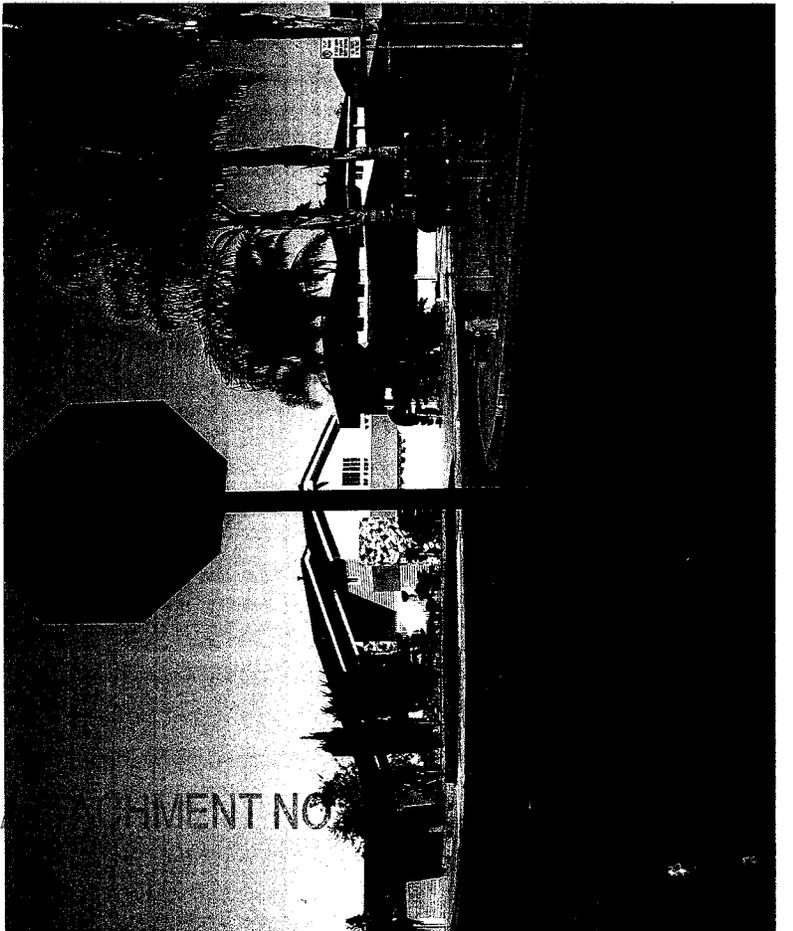
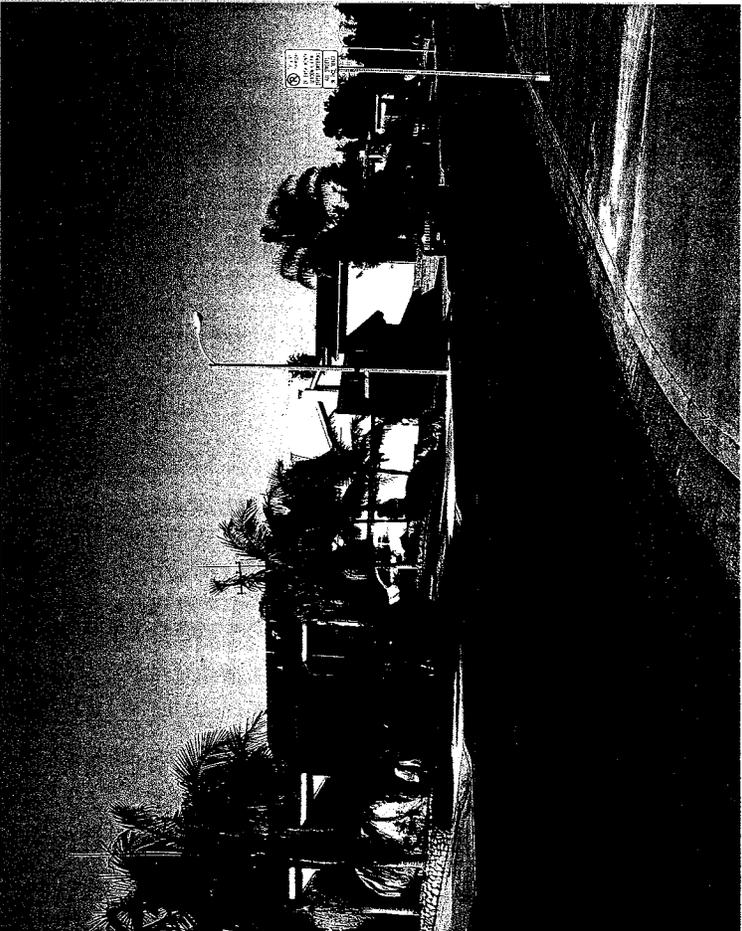
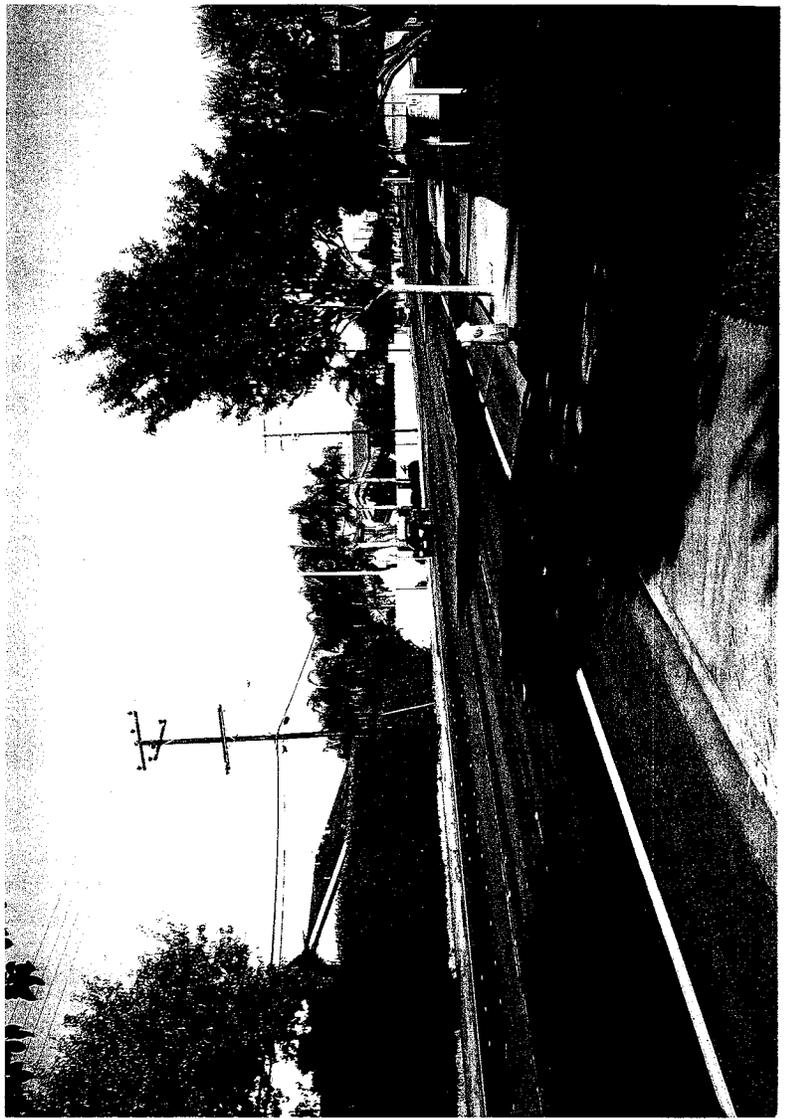
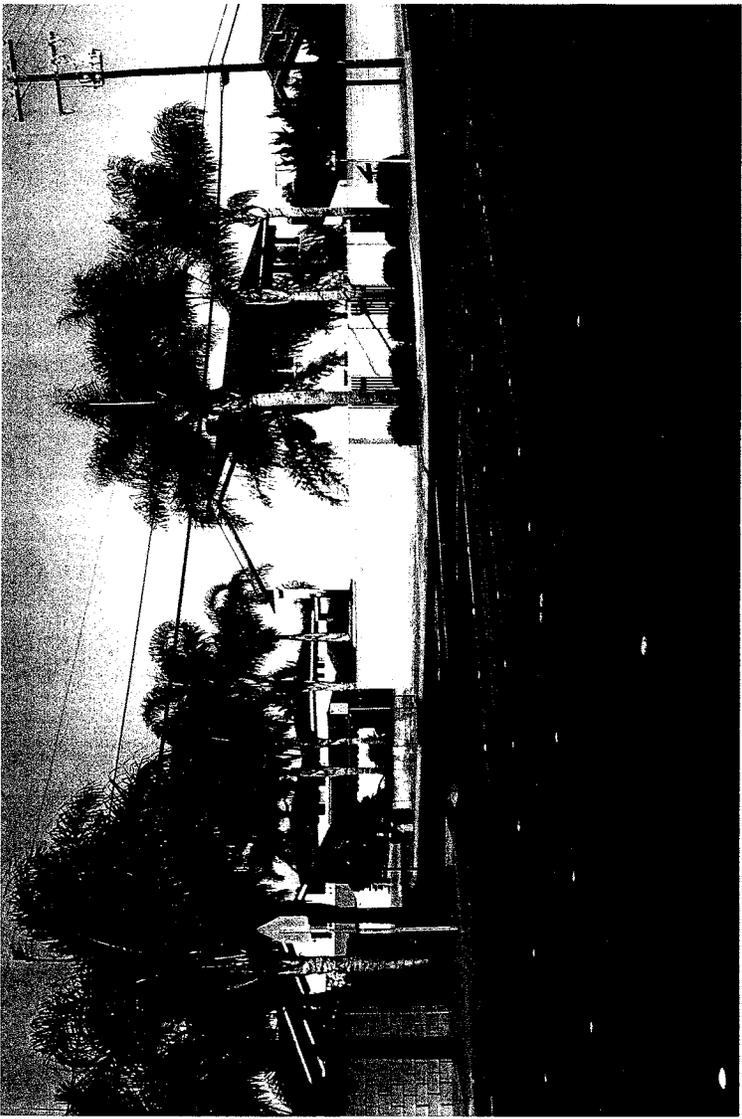
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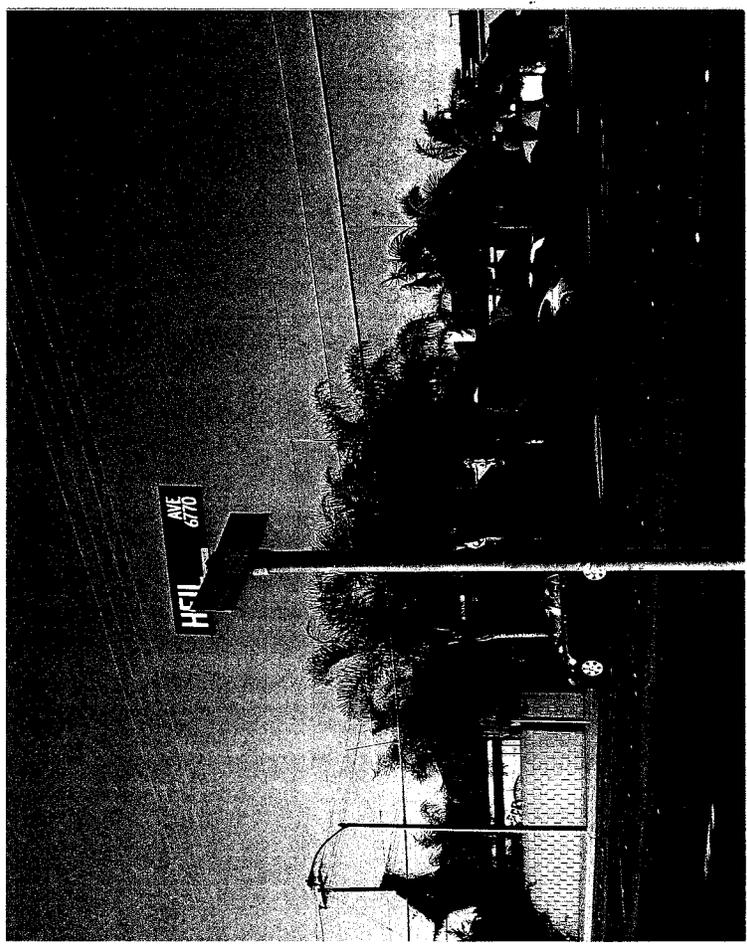
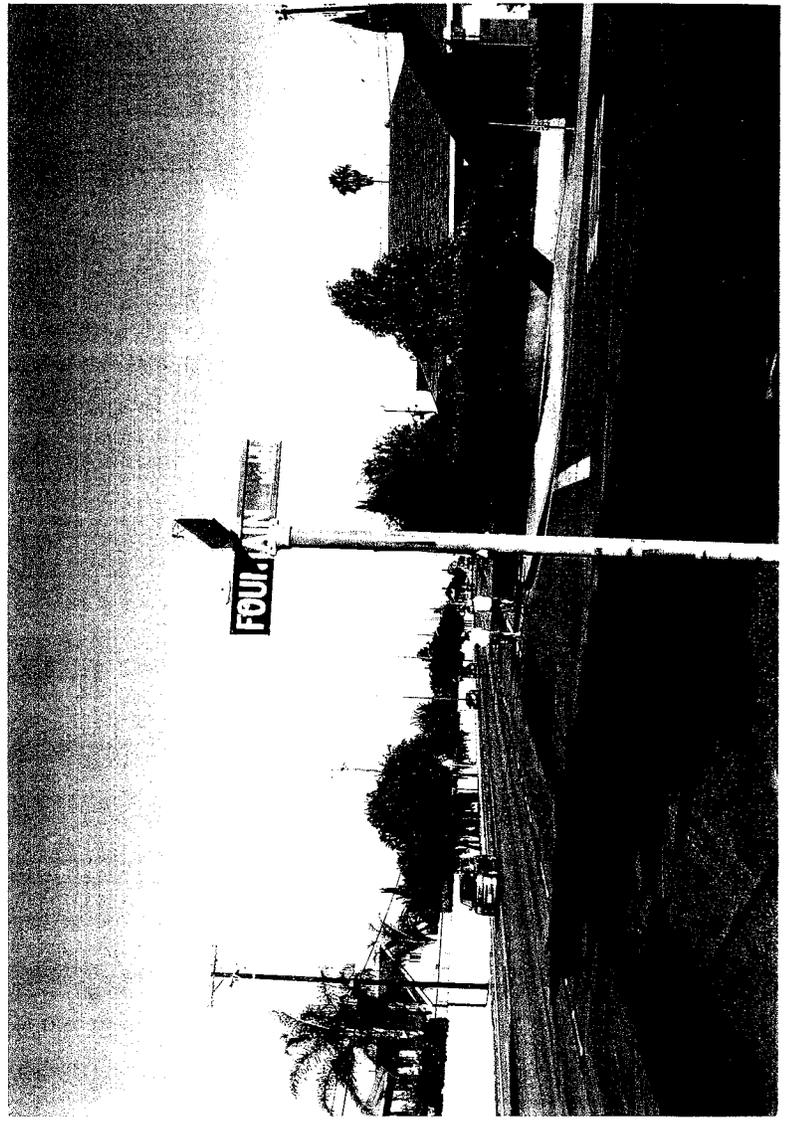
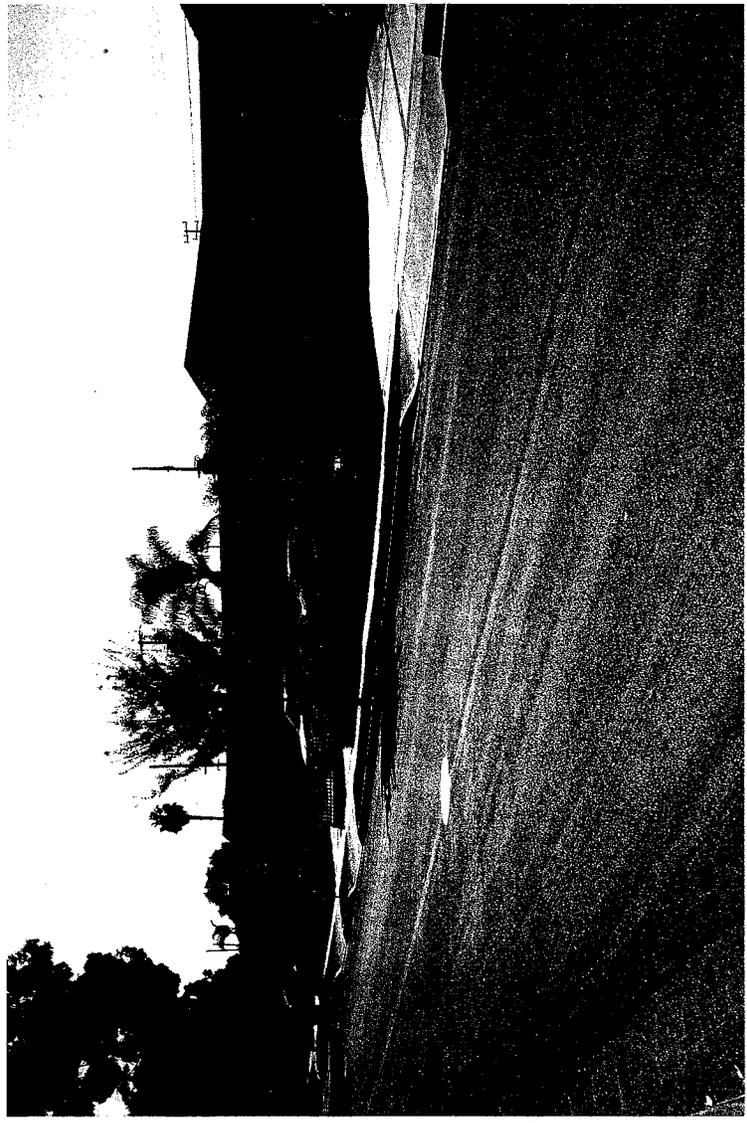
REDLANDS

North/East of Church



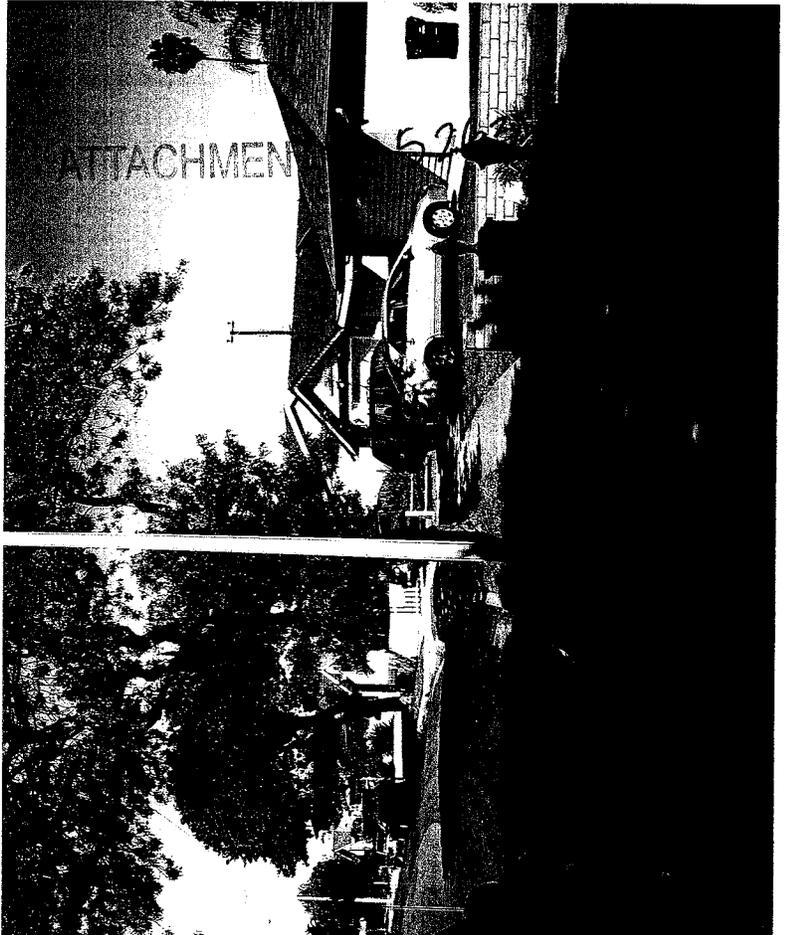
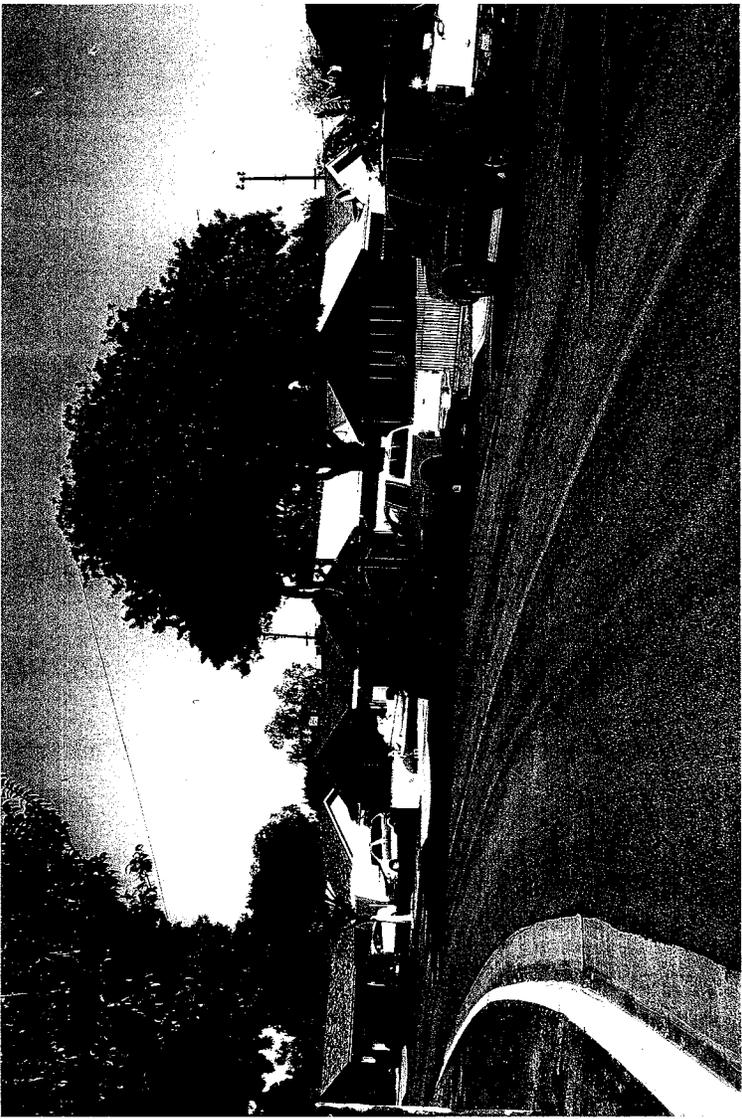
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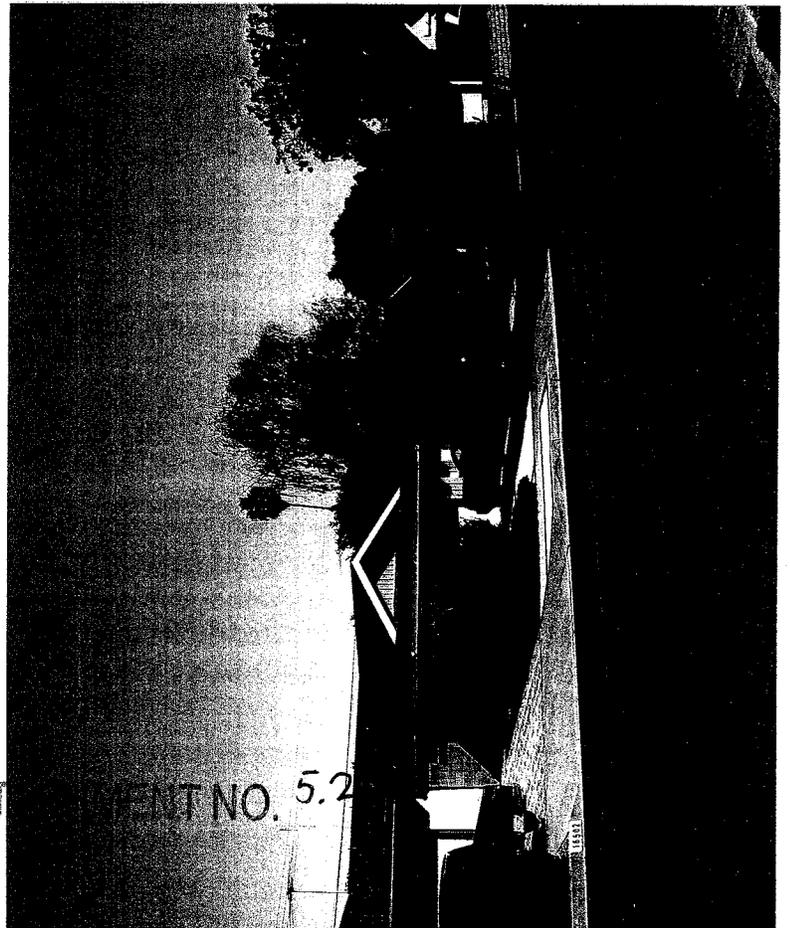
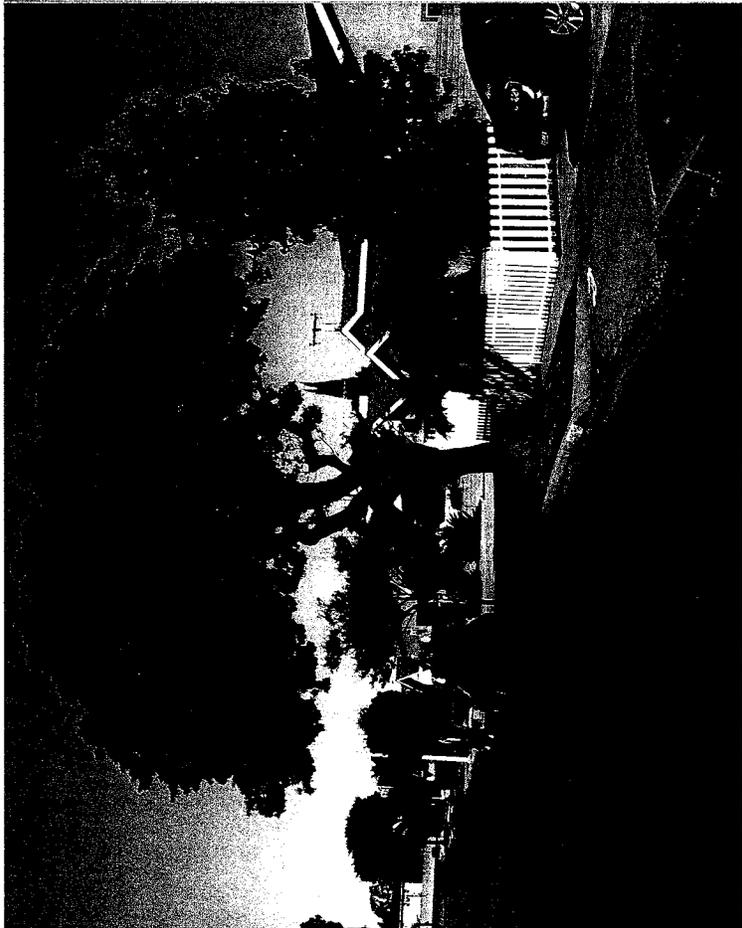
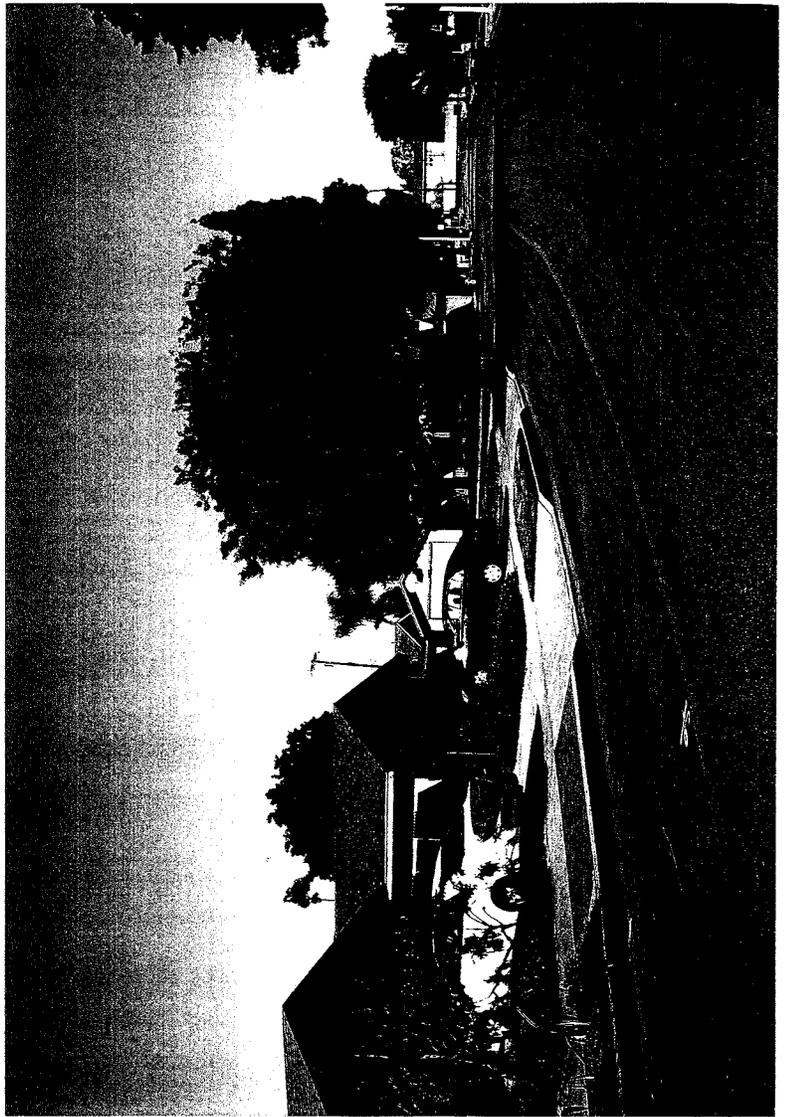
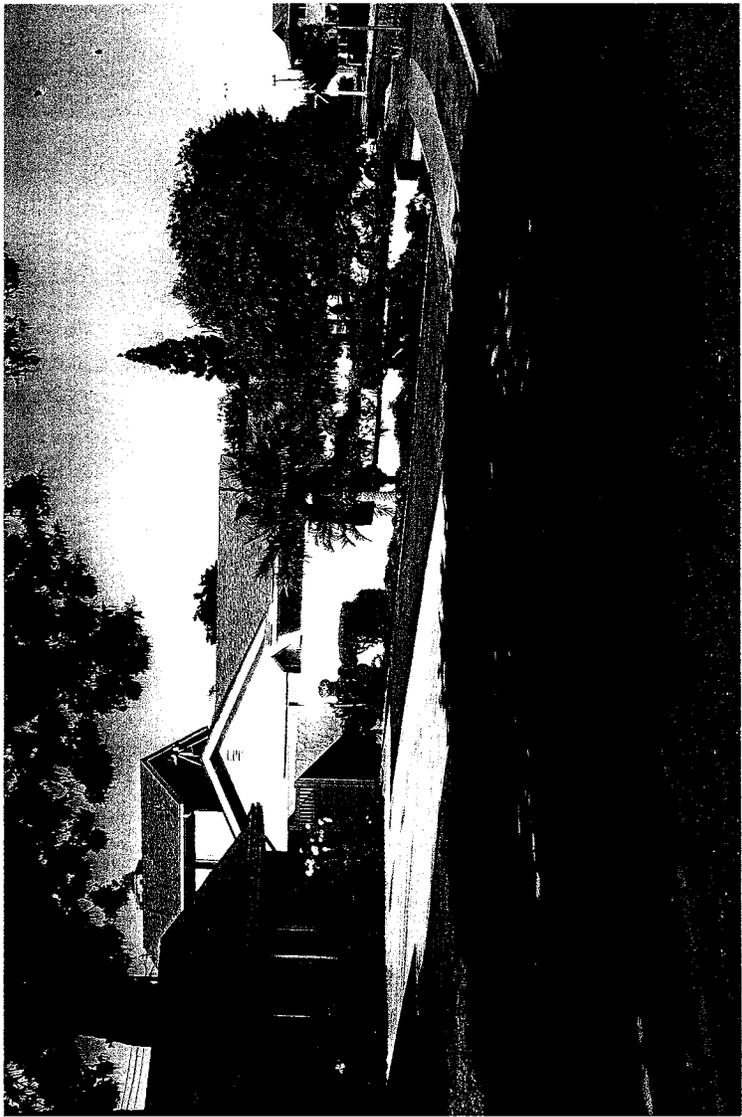




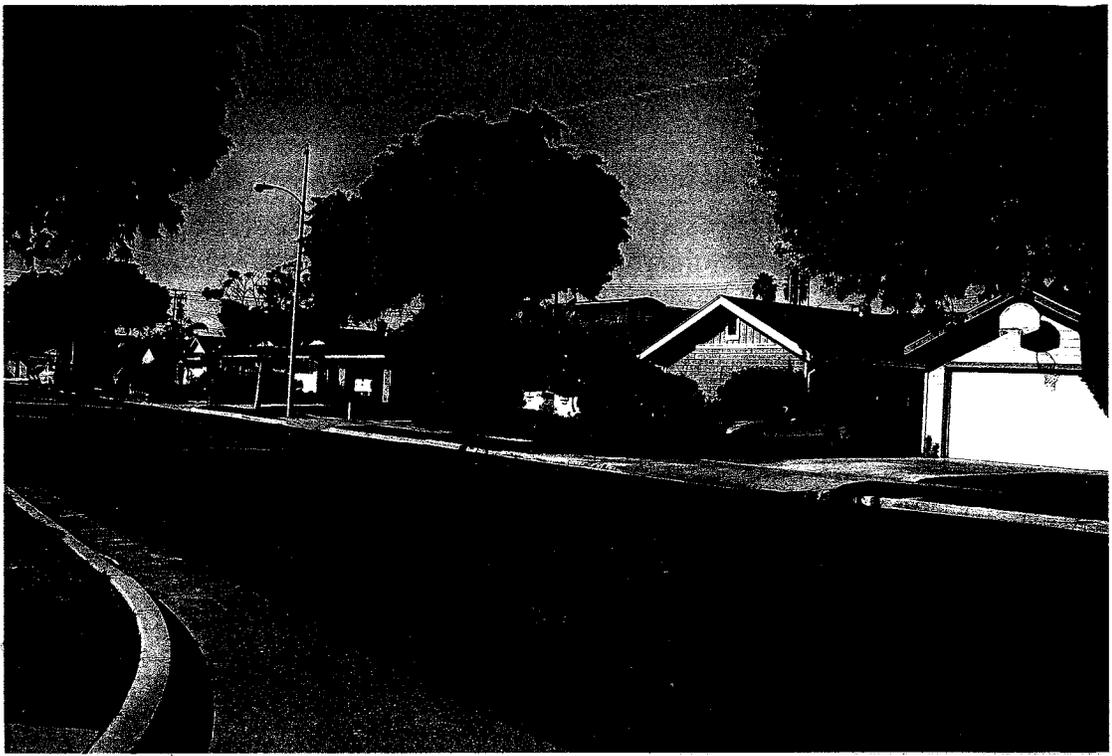
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South/East of Church

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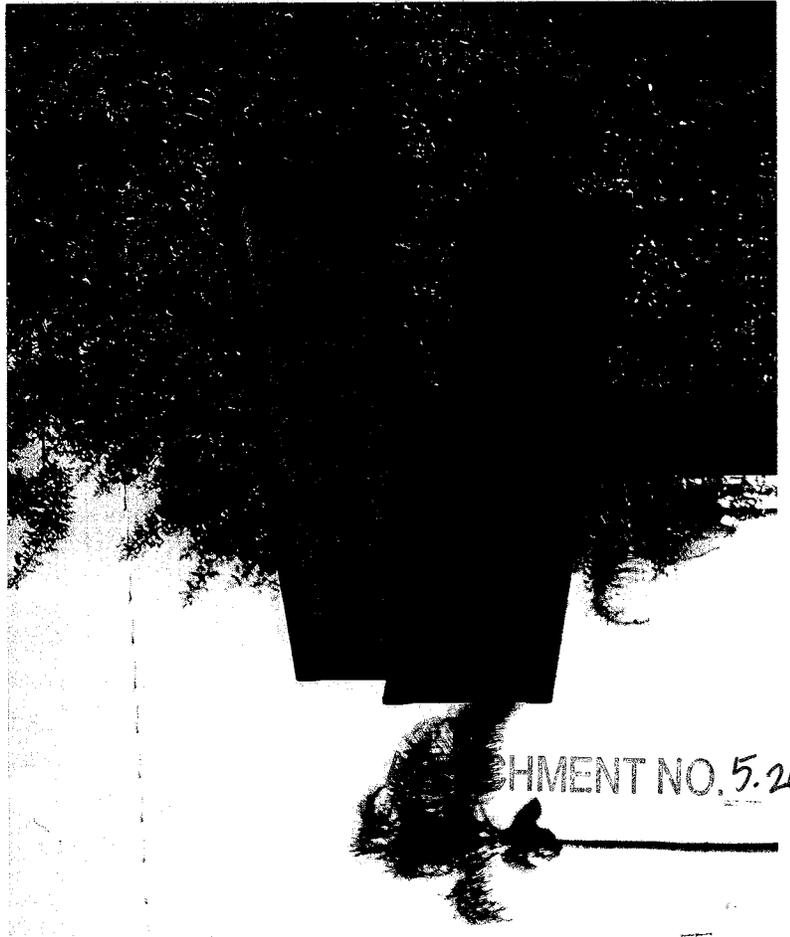
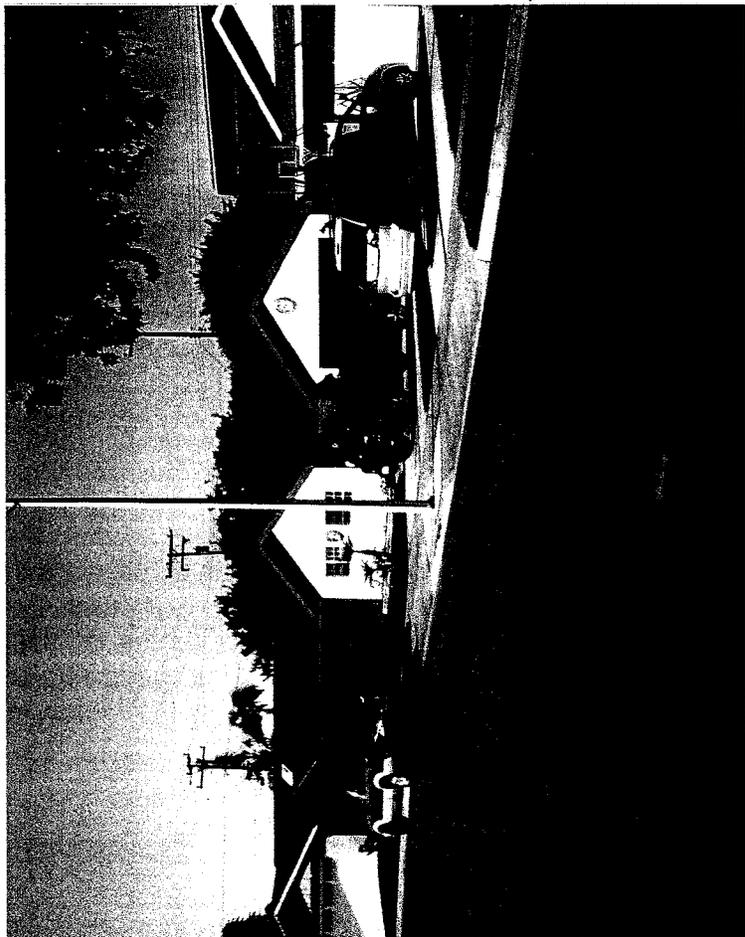
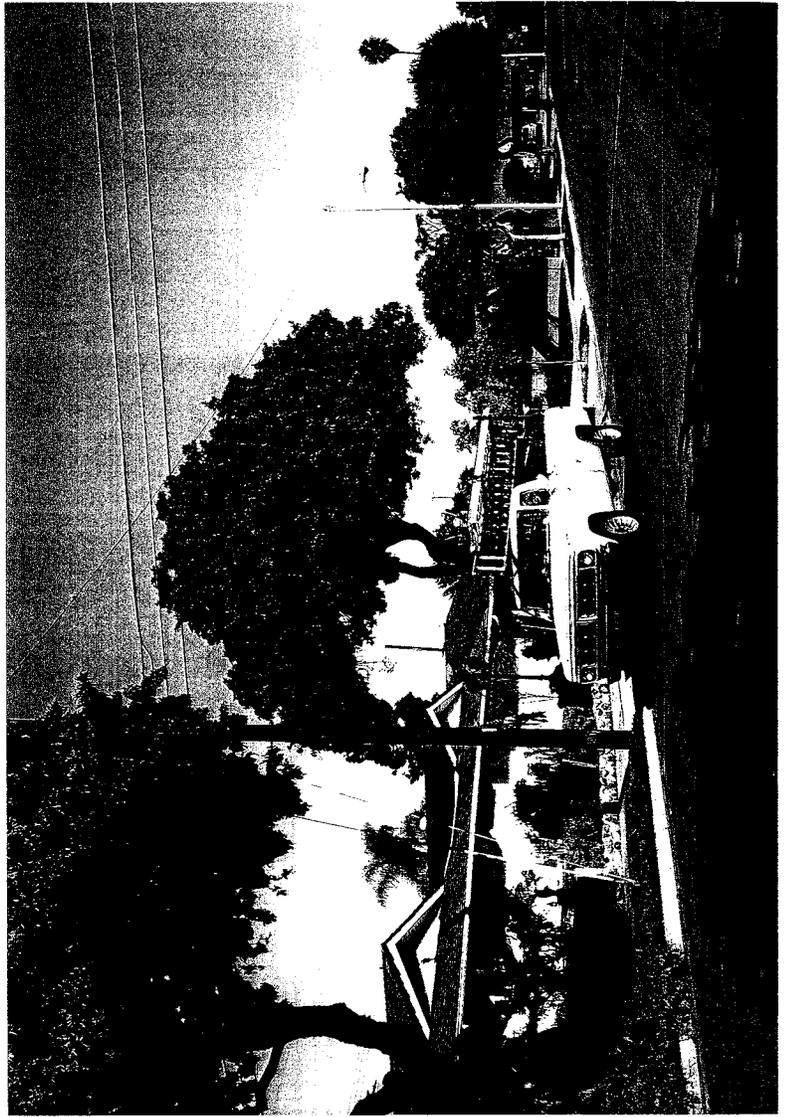
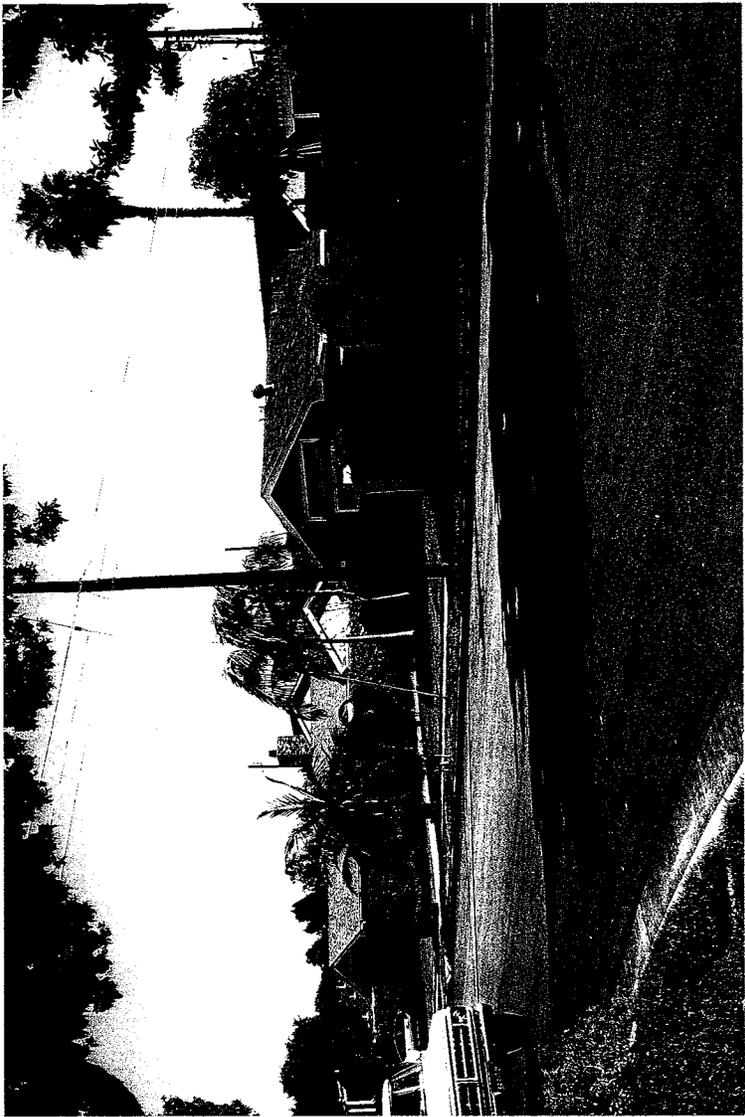




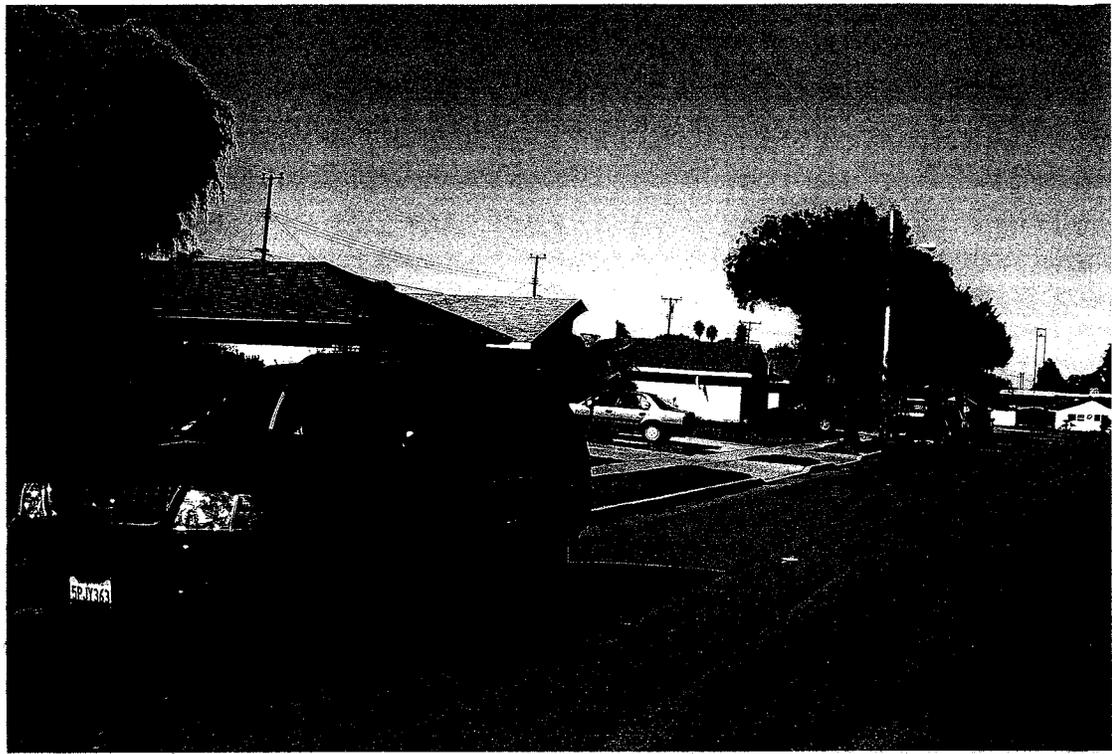
Mason Dr.
South of Church



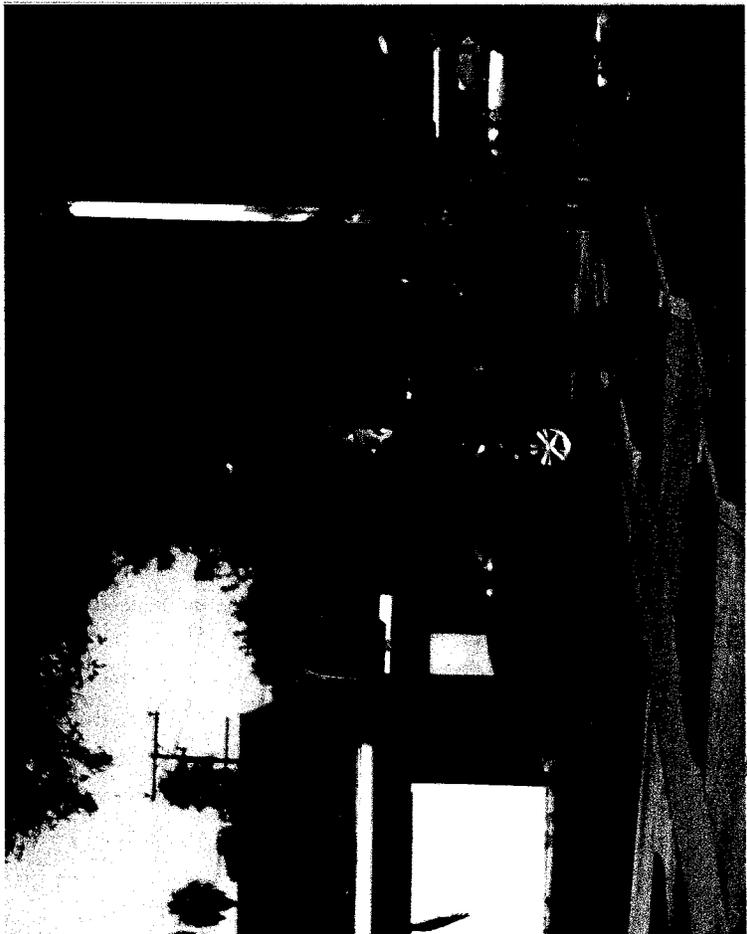
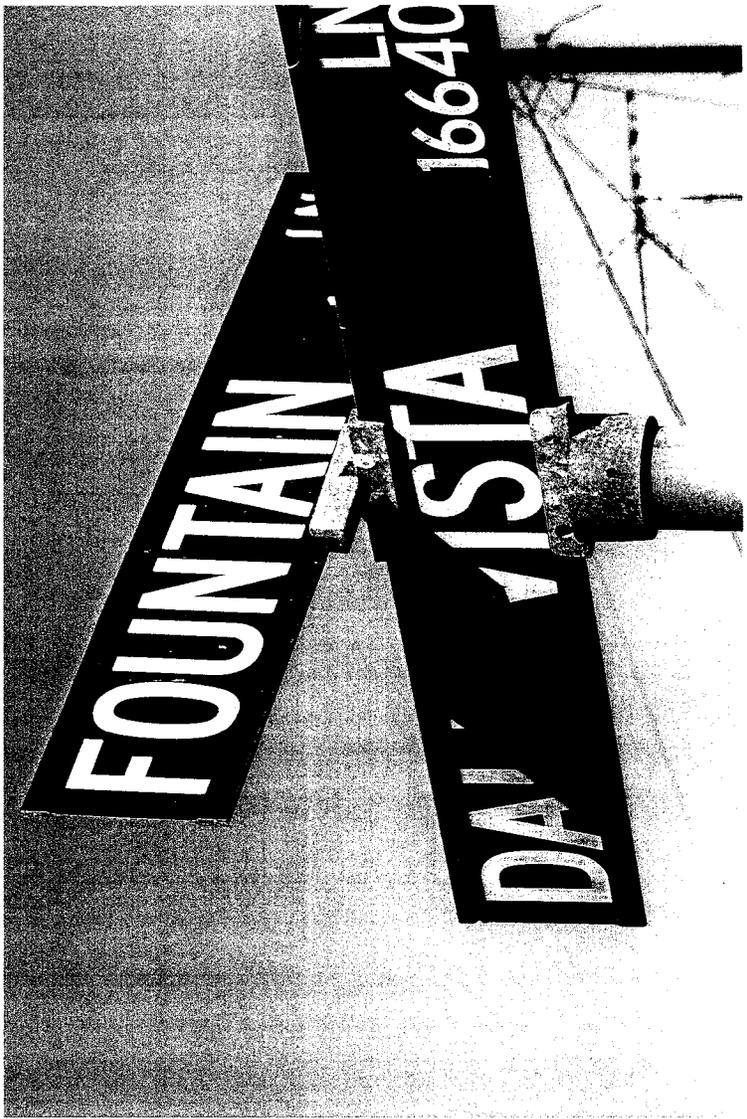
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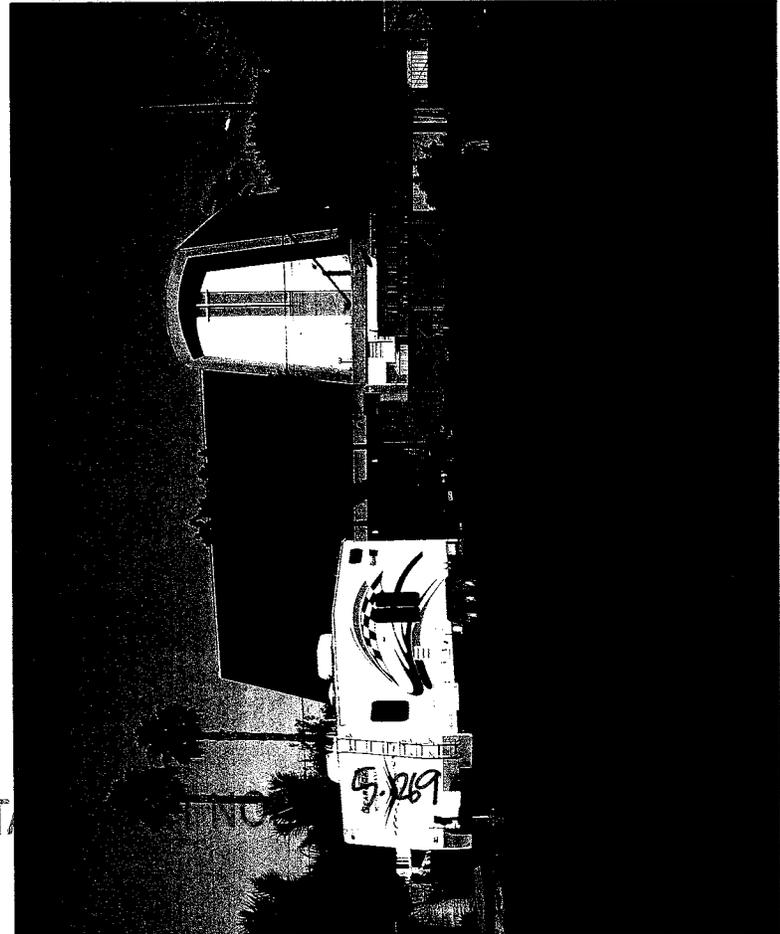
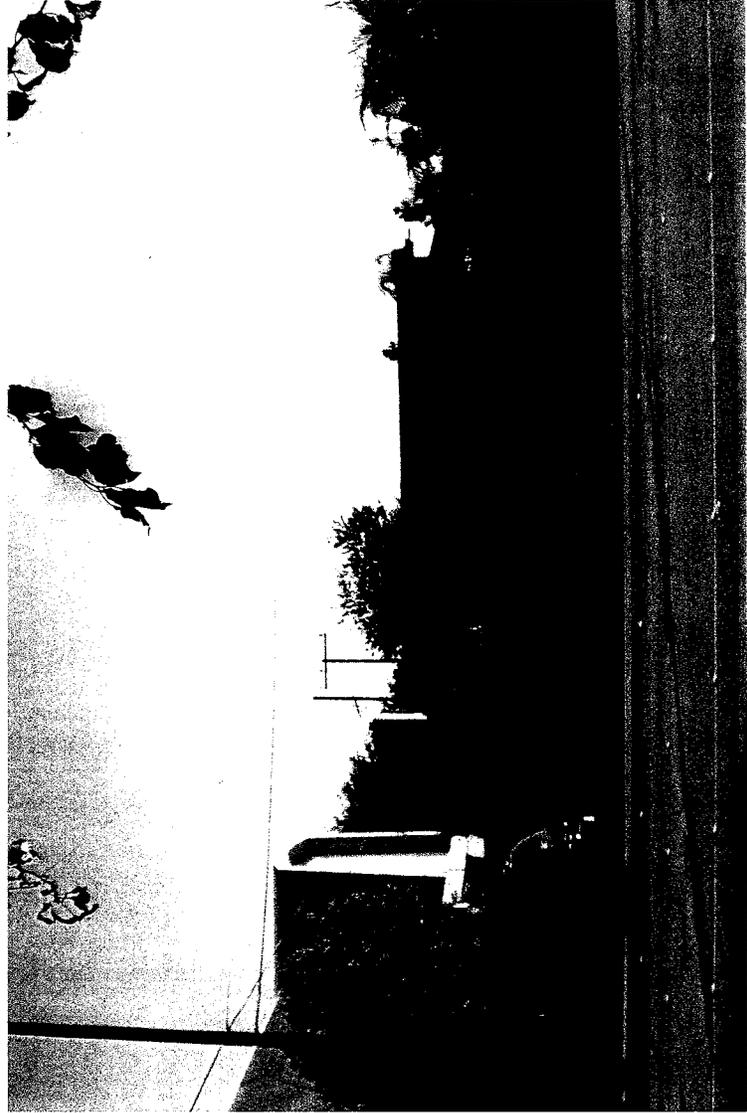


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South of Church

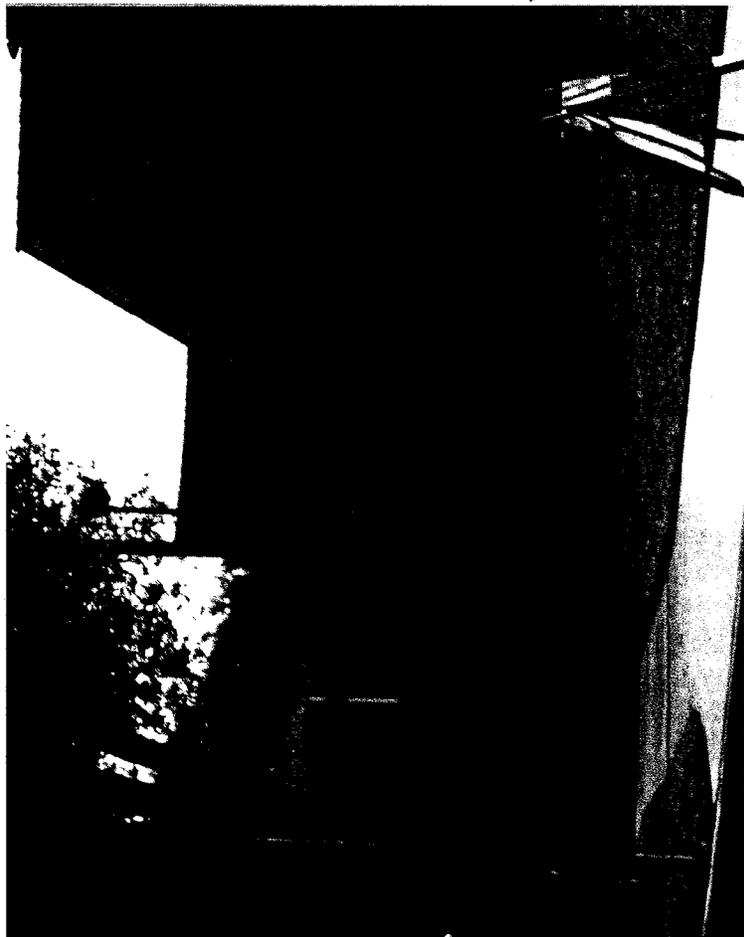
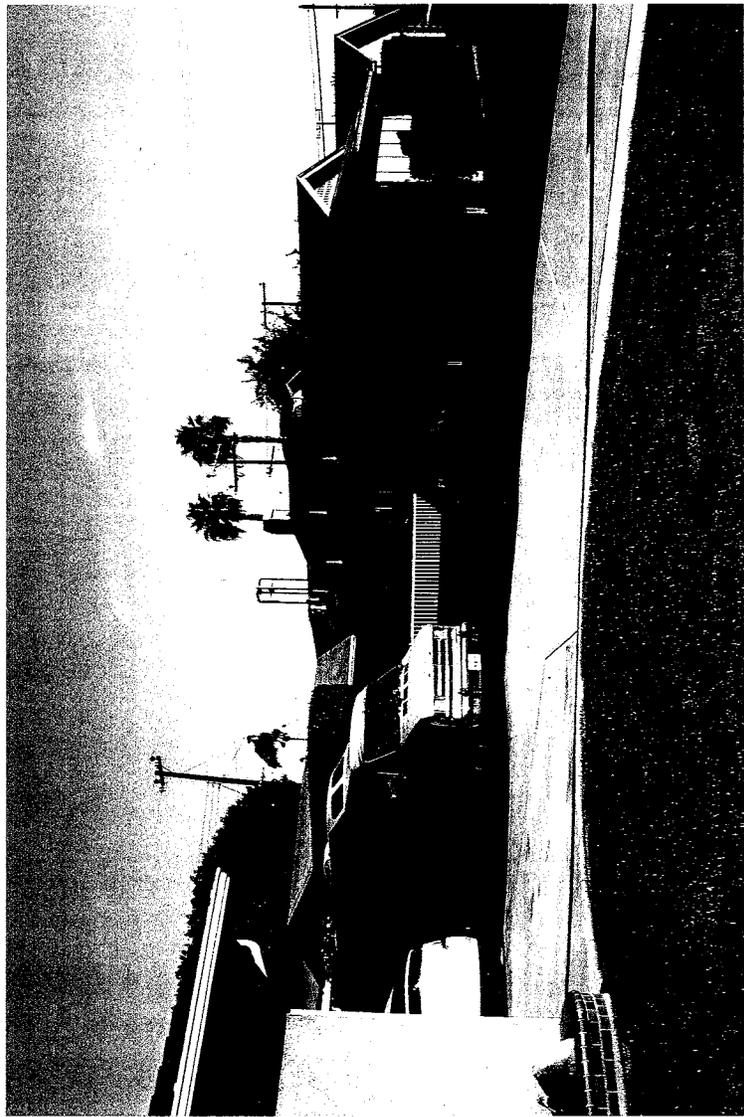


ATTACHMENT NO. 5267





Abbott/Cooper - West of Church

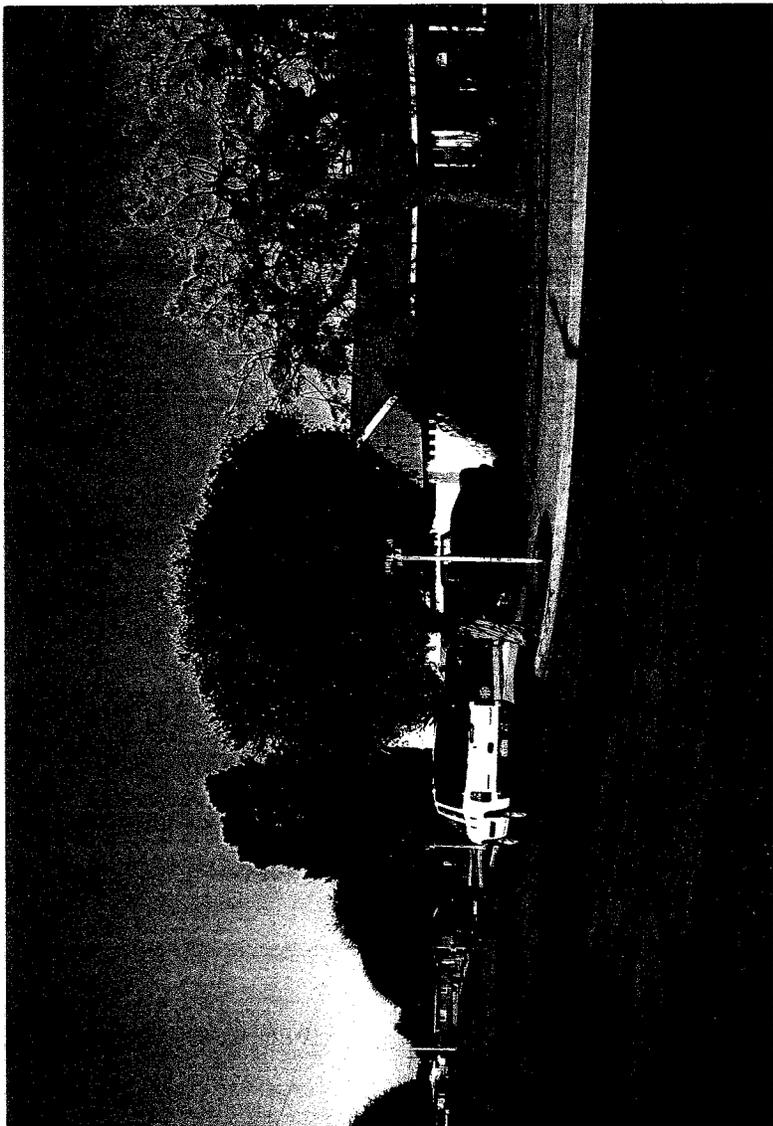
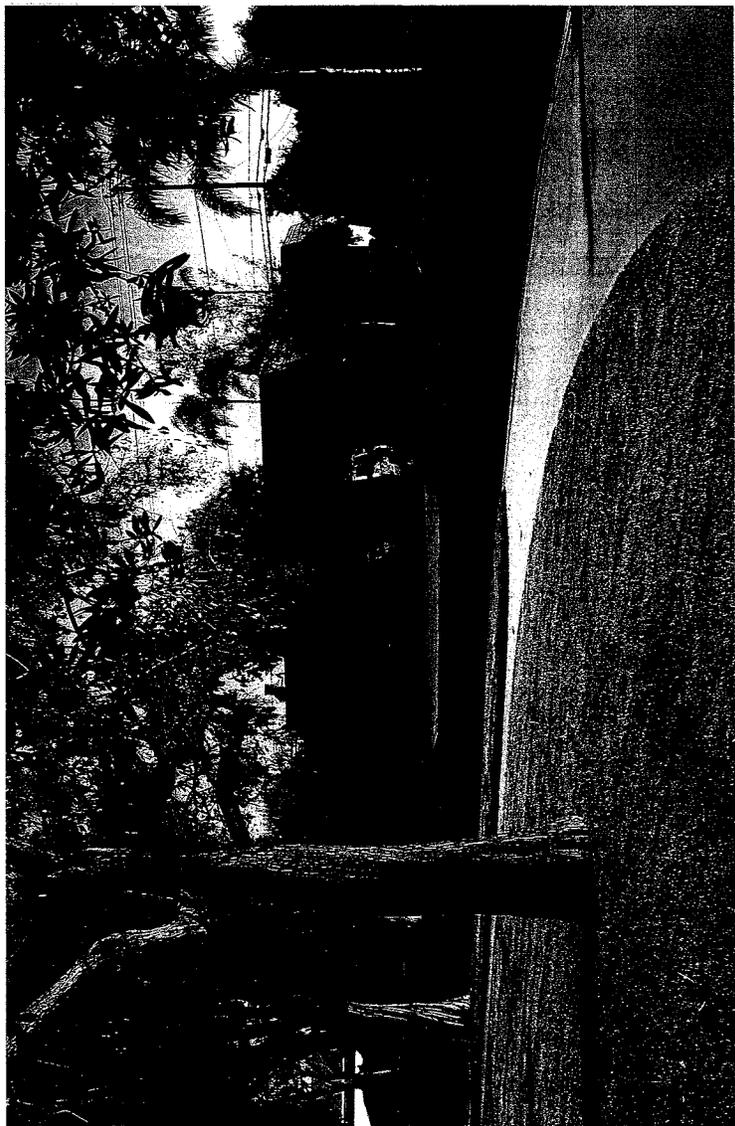


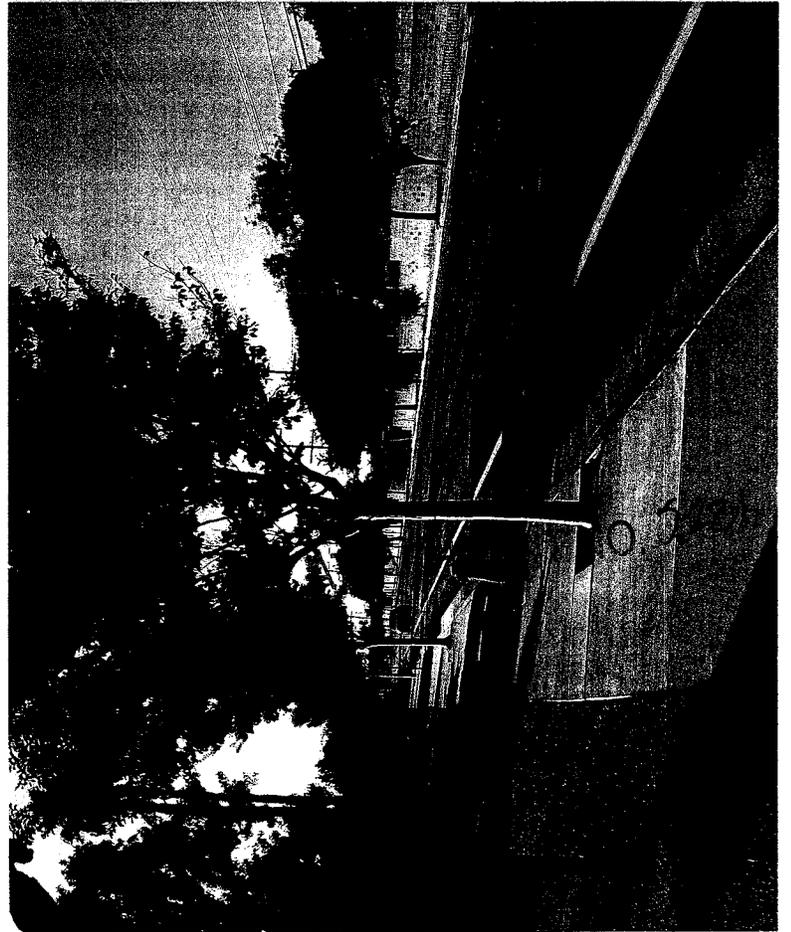
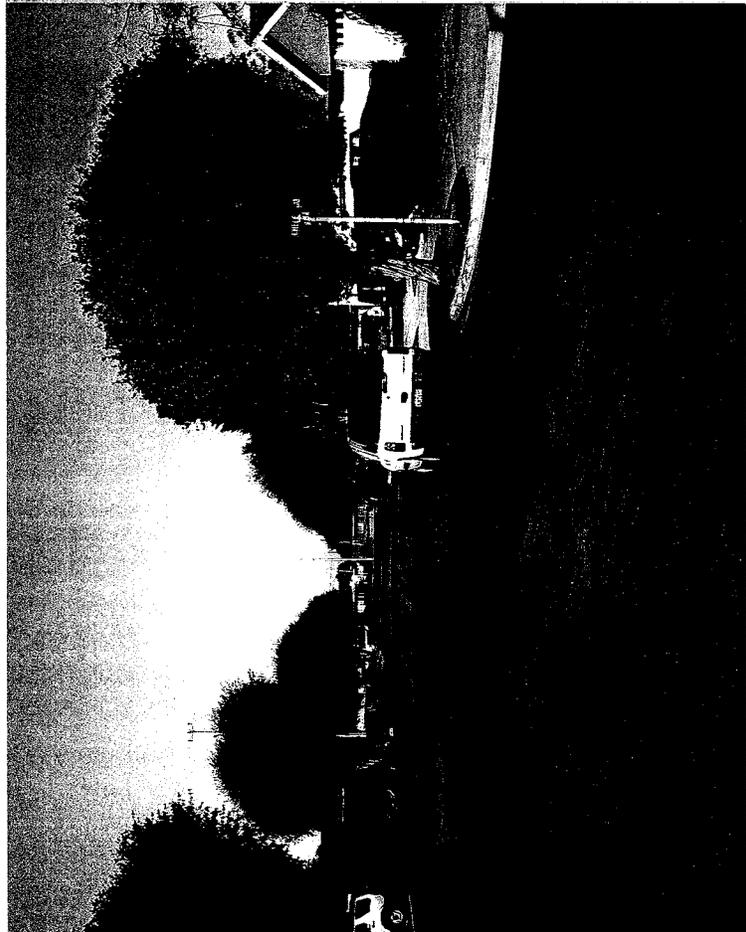
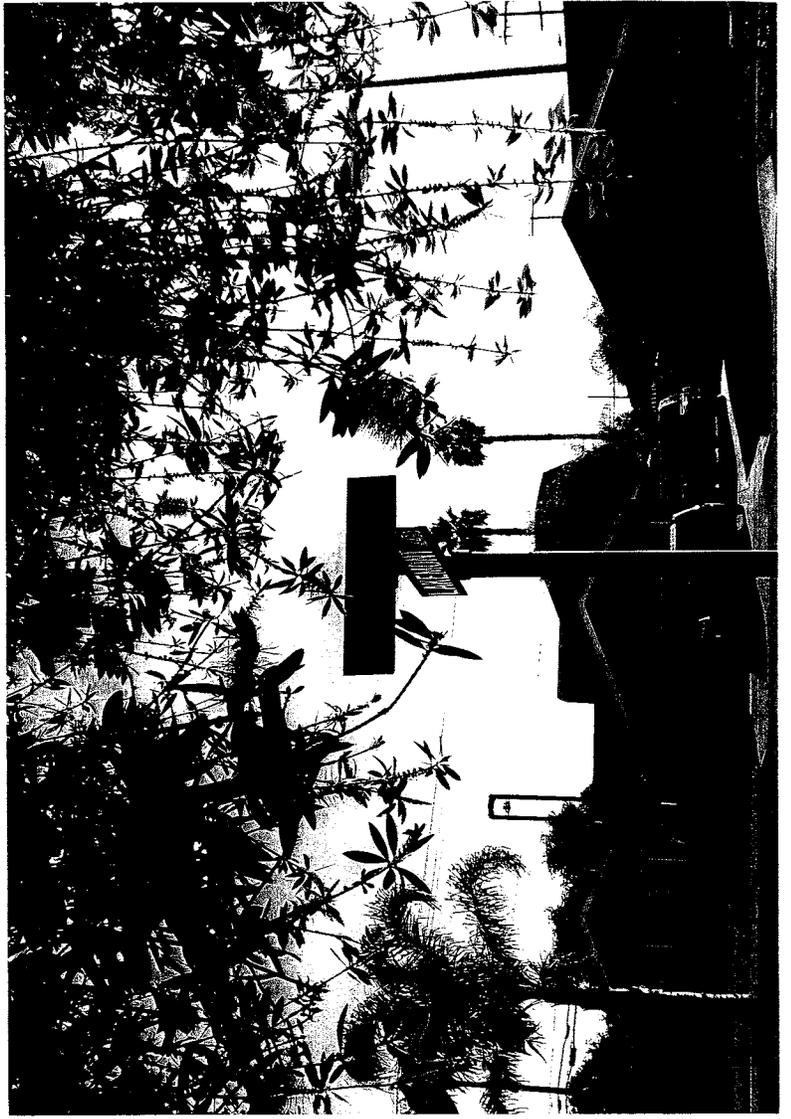
Oak Grove / Oakmont
North/West of Church

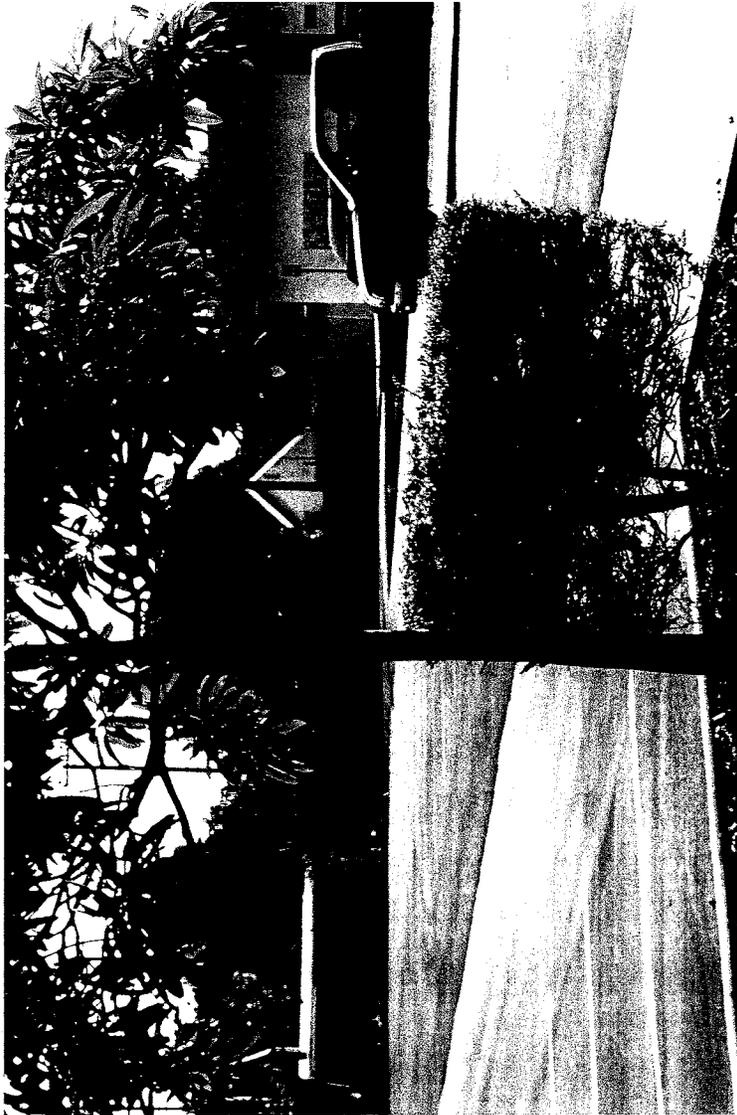
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Chele/Lakemont
North of Church

ATTACHMENT NO. 5.280



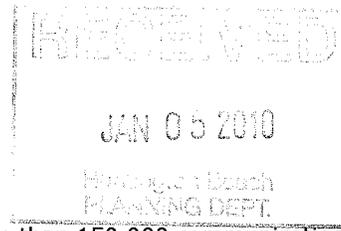




Church

ATTACHMENT NO. 5.282

Cell Communication Towers



According to the Center for Municipal Solutions, there have been more than 150,000 communication tower facilities erected in the last 5 years and industry estimates are that more than 1 million more will be needed in the next few years. CMS suggests that as many as 50% of the towers erected in the last 5 years don't need to exist, an even greater percentage don't need to be as tall as they are and many wireless facilities, including towers, don't need to be recognizable as such.

The FCC licenses Wireless Service Providers in every community in the nation. All these providers need towers and/or buildings for their services. As a result, communities need to take control of the siting of cell towers in their jurisdictions. Here are some of the key resources that we've found that will help your community stay ahead of the game and able to protect your citizenry from the unnecessary blight of cell tower proliferation. Without an ordinance, any resident could willingly lease land for a tower without any review or discussion with the community at large.

The issue of health impacts from wireless communications systems is an issue of concern for many people and organizations. The **EMR Policy Institute** is tracking developments in this area. They note that the "Telecommunications Act of 1996 prevents states and local governments from "regulating the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's [FCC's] regulations concerning such emissions."

More Information:

- **Towers and Wireless Facilities: What a Community Can Control** - this page by the Center For Municipal Solutions shows the wide range of things that local communities can control related to communication towers. From costs and height to lighting and security, this listing of 24 items shows that communities can have a great deal of control over the potential impacts of communication towers.
- **Dan Bricklin's Cell Tower's Resources** and **Extra Resources** - very nice pages with stories and pictures of towers. He also has a nice little section with links to companies that camouflage towers to reduce their visual impacts.
- **Scenic America's section on Telecommunications Towers**, a resource guide **Taming Wireless Telecommunications Towers**, and a **Model Telecommunications Tower Ordinance**
- **Federal Communication Commission's Tower and Antenna Siting Issues Site**
- **Federal Communication Commission's Radio Frequency Safety Site**
- **Canyon Area Residents for the Environment** - Colorado citizens fighting a 730 ft tall communication tower
- **EMR Policy Institute**
- **EMR Network: Citizens and Professionals for the Responsible Use of Electromagnetic Radiation**
- **Cellular Tower Zoning, Siting, Leasing and Franchising: Federal Developments and Municipal Interests** - John W. Pestle, Varnum, Riddering's Energy and Telecommunications Practice Group, September 2001
- **Cell-Phone Towers and Communities: The Struggle for Local Control** - by B. Blake Levitt, 1998
- **A Clear Call - America Unplugged: A Guide to the Wireless Issue** - by B. Blake Levitt, 1997
- **Wave-Guide: EMF/RF Bioeffects and Public Policy**

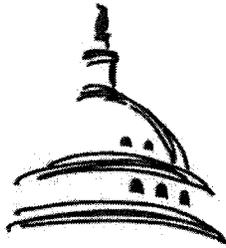
Comments

The New Rules Project exists to encourage policies that will increase the political and economic power of citizens and communities. Newrules.org will only approve comments that are relevant and, in our judgment, add a valuable contribution to the topic. We may edit comments to bring out key points. Abusive comments will not be tolerated.

Post new comment

Your name:

ATTACHMENT NO. 6.1



CRS Report for Congress

The Siting of Wireless Communications Facilities: An Overview of Federal, State, and Local Law

Kathleen Ruane
Legislative Attorney
American Law Division



Summary

The siting of wireless communications facilities has been a topic of controversy in communities all over the United States. Telecommunications carriers need to place towers in areas where coverage is insufficient or lacking to provide better service to consumers, while local governing boards and community groups often oppose the siting of towers in residential neighborhoods and scenic areas. The Telecommunications Act of 1996 governs federal, state, and local regulation of the siting of communications towers by placing certain limitations on local zoning authority without totally preempting state and local law. This report provides an overview of the federal, state, and local laws governing the siting of wireless communications facilities.¹

Federal Law Governing the Placement of Wireless Telecommunications Facilities

Section 704 of the Telecommunications Act of 1996 governs federal, state, and local regulation of the siting of “personal wireless service facilities” or cellular communication towers.² Under the 1996 Act, state and local governments are prohibited from unreasonably discriminating among “providers of functionally equivalent services.”³ This prohibition has been interpreted to provide state and local governments with the “flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even

¹ This report was originally written by Angie Welborn, formerly a Legislative Attorney, American Law Division.

² Codified at 47 U.S.C. 332(c)(7).

³ 47 U.S.C. 332(c)(7)(B)(i)(I).

if those facilities provide functionally equivalent services.”⁴ However, state and local governments cannot adopt policies that prohibit or have the effect of prohibiting the provision of personal wireless services.⁵ This provision not only applies to outright bans on tower siting, but also to situations where a state or local government’s “criteria or their administration effectively preclude towers no matter what the carrier does.”⁶ In these cases, the carrier must show “not just that this application has been rejected but that further reasonable efforts are so likely to be fruitless that it is a waste of time even to try.”⁷

The act also prescribes certain procedures that a state or local government must follow when reviewing a request to place, construct, or modify personal wireless service facilities. The state or local government must “act on any request for authorization to place, construct or modify personal wireless service facilities within a reasonable period of time after the request is duly filed.”⁸ If the state or local government denies the request, the denial must be in writing and supported by “substantial evidence contained in a written record.”⁹ Substantial evidence has been defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁰

Courts have found that aesthetics may constitute a valid basis for the denial of a wireless permit so long as there is substantial evidence of the adverse visual impact of the proposed tower.¹¹ In fact, according to one court, “nothing in the Telecommunications Act forbids local authorities from applying general and nondiscriminatory standards derived from their zoning codes, and ... aesthetic harmony is a prominent goal underlying almost every such code.”¹² Federal courts therefore have routinely upheld the denials of applications to construct wireless towers where the decisions of local entities were in writing and based on evidence that the tower would diminish property values, reduce the ability of property owners in the vicinity of the proposed tower to enjoy their property, or damage the scenic qualities of the proposed location.¹³ However, generalized aesthetic

⁴ *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630, 639 (2nd Cir. 1999).

⁵ 47 U.S.C. 332(c)(7)(B)(i)(II).

⁶ *Town of Amherst, New Hampshire v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9, 14 (1st Cir. 1999).

⁷ *Id.*

⁸ 47 U.S.C. 332(c)(7)(B)(ii).

⁹ 47 U.S.C. 332(c)(7)(B)(iii).

¹⁰ *Nextel Partners of Upstate New York, Inc. v. Town of Canaan*, 62 F.Supp.2d 691, 695 (N.D. N.Y. 1999), citing *Universal Camera v. NLRB*, 340 U.S. 474, 477 (1951).

¹¹ *See e.g., Preferred Sites, LLC v. Troup County*, 296 F.3d 1210 (11th Cir. 2002), *Southwestern Bell Mobile Sys. v. Todd*, 244 F.3d 51 (1st Cir. 2001), *Omnipoint Corp. v. Zoning Board*, 181 F.3d 403 (3d Cir. 1999), *AT&T Wireless PCS, Inc. v. Winston-Salem Bd. of Adjustment*, 172 F.3d 307 (4th Cir. 1999).

¹² *Aegerter v. City of Delafield*, 174 F.3d 886, 891 (7th Cir. 1999).

¹³ *See USCOC of Greater Iowa, Inc. V. Zoning Bd. of Adjustment*, 465 F.3d 817 (8th Cir. 2006) (upholding the denial of a permit to construct a tower based in part upon the fact that the tower would obstruct the view from the window of nearby residential property), *Omnipoint Commc’n*

(continued...)

concerns will not be considered “substantial evidence” to support the denial of a permit.¹⁴ For example, the Seventh Circuit upheld the reversal of a denial of a petition based on aesthetic concerns where the only evidence that the proposed tower would be unsightly was the testimony of a few residents that they did not like poles in general, and those residents admitted that they had no objection to flagpoles, the proposed disguise for the wireless tower.¹⁵ Blanket opposition to poles could not constitute “substantial evidence,” in the opinion of the court.¹⁶

Many community groups also oppose the siting of towers based on health and environmental concerns.¹⁷ However, the Telecommunications Act of 1996 prohibits state and local governments from regulating the placement of personal wireless service facilities on the basis of the effects of radio frequency emissions if the facility in question complies with the Federal Communications Commission’s regulations concerning such emissions.¹⁸ “As written, the purpose of the requirement is to prevent telecommunications siting decisions from being based upon unscientific or irrational fears that emissions from the telecommunications sites may cause undesirable health effects.”¹⁹ Courts have enforced this provision of the act and have noted that “concerns of health risks due to the emissions may not constitute substantial evidence in support of denial.”²⁰

The act also provides for the appeal of a state or local government’s denial of a request to place, construct, or modify a facility.²¹

Section 704(c) of the Telecommunications Act provided that within 180 days of the enactment of the act, “the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for

¹³ (...continued)

v. *City of White Plains*, 430 F.3d 529 (2nd Cir. 2005) (concluding that the zoning board was entitled to rely on aesthetic objections raised by members of the community that are familiar with the area); *Voicestream Minneapolis, Inc. v. St. Croix County*, 342 F.3d 818 (7th Cir. 2003) (holding that the county’s denial of a wireless tower permit was supported by substantial evidence that the proposed tower would mar an especially scenic stretch of land).

¹⁴ *New Par v. City of Saginaw*, 301 F.3d 390, 398 (6th Cir. 2002).

¹⁵ *Prime Co Personal Comm’n v. City of Mequon*, 352 F.3d 1147, 1151 (7th Cir. 2003).

¹⁶ *Id.*

¹⁷ Malcolm J. Tuesley, *Not in My Back Yard: The Siting of Wireless Communications Facilities*, 51 Fed. Comm. L. J. 887, 902.

¹⁸ 47 U.S.C. 332(c)(7)(B)(iv). Cellular Phone Task Force challenged the FCC’s RF radiation guidelines. *Cellular Phone Task Force v. FCC*, 205 F.3d 82 (2nd Cir. 2000). The Court upheld the FCC’s radiation guidelines, finding that they were not arbitrary and capricious under the circumstances. *Id.* at 96.

¹⁹ 51 Fed. Comm. L. J. at 902.

²⁰ *Telespectrum, Inc. v. Public Service Commission of Kentucky*, 227 F.3d 414 (6th Cir. 2000). See also *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F.Supp. 732, 745 (C.D. Ill. 1997).

²¹ 47 U.S.C. 332(c)(7)(B)(v).

the placement of new telecommunications services.”²² President Clinton issued a memorandum on August 10, 1995, directing the Administrator of General Services, “in consultation with the Secretaries of Agriculture, Interior, Defense, and the heads of such other agencies as the Administrator may determine, to develop procedures necessary to facilitate appropriate access to Federal property for the siting of mobile services antennas.”²³ The General Services Administration published procedures for the placement of commercial antennas on federal property in the Federal Register on March 29, 1996.²⁴ On March 14, 2007, the General Services Administration published updated procedures for the placement of commercial antennas on federal property in the Federal Register.²⁵ These replacement procedures shall remain in effect indefinitely.²⁶

State Statutory Provisions

Apart from the specific limitations set forth in the Telecommunications Act of 1996, federal law does not appear to affect state or local zoning authority with regard to the placement of wireless communications towers.²⁷ Most states delegate zoning authority to local bodies. However, some states offer guidance on what factors should be considered by the local entities when considering applications for permits to construct wireless communications facilities. For example, the State of New Hampshire has enacted a law concerning the visual effects of tall wireless antennas.²⁸ The law does not alter any municipal zoning ordinance or preempt the Telecommunications Act of 1996.²⁹ It does, however, recognize that the visual effects of tall antennas “may go well beyond the physical borders between municipalities,” and in doing so it encourages local governing bodies to address the issue “so as to require that all affected parties have the opportunity to be heard.”³⁰ The statute also provides that carriers, wishing to build personal wireless service facilities, should consider commercially available alternatives to the tall towers, such as lower antenna mounts, disguised or camouflaged towers, and custom designed facilities to minimize the visual impact on the surrounding area.³¹

An Illinois law sets forth guidelines for telecommunications carriers to consider when choosing a location for and designing a facility.³² The law specifically states that it does “not abridge any rights created by or authority confirmed in the federal

²² P.L. 104-104, § 704(c).

²³ *Facilitating Access to Federal Property for the Siting of Mobile Services Antennas*, 31 Weekly Comp. Pres. Doc. 1424 (August 10, 1995).

²⁴ 61 Fed. Reg. 14,100 (1996).

²⁵ 72 Fed. Reg. 11,881 (2007).

²⁶ 72 Fed. Reg. 11,881 (2007).

²⁷ 47 U.S.C. 332(c)(7)(A).

²⁸ R.S.A. 12-K:1, effective August 7, 2000.

²⁹ R.S.A. 12-K:1(I) and (VI).

³⁰ R.S.A. 12-K:1(II).

³¹ R.S.A. 12-K:1(III).

³² 55 ILCS 5/5-12001.1.

Telecommunications Act of 1996.”³³ Rather, the law offers a list of locations - from “most desirable” to “least desirable” - for the siting of telecommunications facilities, with non-residentially zoned lots as the most desirable and residentially zoned lots that are less than 2 acres in size and used for residential purposes as the least desirable.³⁴ The guidelines set forth for designing a facility include preserving trees in the area or replacing trees removed during construction, landscaping around the facility, and designing facilities that are compatible with the residential character of the area.³⁵

In addition to the alternatives listed above, states can encourage the use of existing infrastructure as opposed to the construction of new facilities in order to reduce the total number of towers in an area. For example, in Kentucky, state law allows the local planning commission to require the company applying for the construction permit “to make a reasonable attempt to co-locate” their equipment on existing towers if space is available and the co-location does not interfere with the structural integrity of the tower or require substantial alterations to the tower.³⁶ The statute gives the planning commission the authority to deny an application for construction based on the company’s unwillingness to attempt to co-locate.³⁷ Connecticut has also enacted a law which allows local entities to require the sharing of towers whenever it is “technically, legally, environmentally and economically feasible, and whenever such sharing meets public safety concerns.”³⁸

Local (Municipal or County) Law

Many local governments, through the use of their zoning authority, attempt to limit the impact cellular towers have on the surrounding environment. One county in Georgia, enacted a “Telecommunications Tower and Antenna Ordinance,” which set up a new permit system for the construction of cellular towers in an effort to encourage construction in nonresidential areas.³⁹ In commercial or light industrial areas, a wireless service provider can build a tower without review by the County Board of Commissioners as long as a certain set of specifications are met.⁴⁰ However, if a service provider wanted to construct a tower in a residential area, a hearing is held on the matter, and construction

³³ 55 ILCS 5/5-12001.1(b).

³⁴ 55 ILCS 5/5-12001.1(d).

³⁵ 55 ILCS 5/5-12001.1(e).

³⁶ K.R.S. § 100.987(6). Under federal law, utilities are required to provide telecommunications carriers “with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by [the utility].” 47 U.S.C. 224(f)(1).

³⁷ K.R.S. § 100.987(7).

³⁸ Conn. Gen. Stat. § 16-50aa.

³⁹ Robert Long, *Allocating the Aesthetic Costs of Cellular Tower Expansion: A Workable Regulatory Regime*, 19 Stan. Envtl. L. J. 373, 378. The full text of the ordinance is available at [<http://www.gwinnettcounty.com/departments/planning/pdf/tower.pdf>].

⁴⁰ *Id.*

permits are subject to denial if a set of nine criteria are not met.⁴¹ In an effort to reduce the number of facilities in the area, the City of Bloomington, Minnesota, enacted an ordinance that requires wireless facilities to be designed to accommodate multiple users.⁴²

In direct response to the limitations set forth in the Telecommunications Act of 1996, several communities enacted moratoria on permits for cellular towers in an effort to prevent or delay the construction of cellular communications towers.⁴³ Under the act, local governments cannot act to prohibit or have the effect of prohibiting wireless communication services in their communities.⁴⁴ Local governments justify the imposition of moratoria by claiming that they need time to study the problems with tower siting and how they should change their zoning ordinances to accommodate construction.⁴⁵ Courts have upheld moratoria that have a fixed length, such as six months.⁴⁶ However, they are less likely to uphold those that are for long periods of time or indefinite.⁴⁷

Recent Developments

The FCC's Wireless Telecommunications Bureau is seeking comment on a petition for a declaratory ruling filed by CTIA - The Wireless Association in July of 2008.⁴⁸ In its petition, CTIA expressed concerns about the delays many wireless providers face when applying to local and state zoning authorities to site wireless facilities. As a result, CTIA has asked the FCC (1) to clarify the time period in which a state or local zoning authority must act on a wireless facility siting request; (2) to declare that a failure by a state or local zoning authority to act on a siting request within that time shall result in the application being "deemed granted," or, alternatively, that the applicant is entitled to a court-ordered injunction granting the application, unless the zoning authority can justify the delay; (3) to clarify that Section 332(c)(7)(B)(i) prohibits zoning decisions that have the effect of prohibiting additional entrants from offering service in a given area (in other words, to declare that Section 332(c)(7)(B)(i) is not satisfied by the presence of a single wireless provider in an area); and (4) to preempt all ordinances and regulations that automatically require all wireless siting applications to obtain a variance.⁴⁹ Comments are due on September 15, 2008.

⁴¹ *Id.* The ordinance states that towers built in residential areas must comply with certain requirements, such as topography, height, setback, access driveways or easements, parking, fencing, landscaping, and adjacent uses. *Id.* at n. 35.

⁴² 51 Fed. Comm. L. J. at 909, citing Bloomington, Mn., Code 19.63.05(a)(1)-(4)(1996).

⁴³ David W. Hughes, *When NIMBY's Attack: The Heights to Which Communities Will Climb to Prevent the Siting of Wireless Towers*, 23 Iowa J. Corp. L. 469, 488.

⁴⁴ 47 U.S.C. 332(c)(7)(B)(i).

⁴⁵ 23 Iowa J. Corp. L. at 488.

⁴⁶ *See Sprint Spectrum L.P. v. City of Medina*, 924 F. Supp. 1036 (W.D. Wash. 1996).

⁴⁷ *See e.g. Sprint Spectrum L.P. v. Jefferson County*, 968 F. Supp. 1457 (N.D. Ala. 1997).

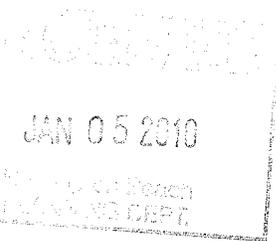
⁴⁸ Public Notice, Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling by CTIA, (released August 14, 2008).

⁴⁹ *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, WT Docket No. 08-165, July 11 2008.

**THE TELECOMMUNICATIONS ACT OF 1996:
§ 704 OF THE ACT AND PROTECTIONS
AFFORDED THE TELECOMMUNICATIONS
PROVIDER IN THE FACILITIES
SITING CONTEXT**

*Peter M. Degnan, Scott A. McLaren and T. Michael Tennant**

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I. FOREWORD

As the wireless telecommunications revolution has expanded, so has the demand for wireless communications facilities.¹ The number of cellular subscribers in the U.S. has exploded in the past fifteen years from zero to a current level of over 25 million.² In order to keep up with the demand for service, cellular providers have installed some 22,000 radio transmission sites nationwide during the past 15 years.³ Increasing

* Peter M. Degnan, Scott A. McLaren and T. Michael Tennant, all with Alston & Bird in Atlanta, Georgia, were the first to successfully litigate a claim on behalf of a telecommunications provider under Section 704 of the Telecommunications Act of 1996 ("Telecommunications Act" or "Act"). Upon filing suit under Section 704 of the Act, Degnan, McLaren and Tennant persuaded the United States District Court for the Northern District of Georgia, Judge G. Ernest Tidwell, to force a local county government to grant the cellular provider a permit to construct a cellular communications tower that had previously been denied by the county. *See BellSouth Mobility v. Gwinnett County, Georgia*, 944 F. Supp. 923 (N.D. Ga. 1996). Degnan, McLaren and Tennant have also advised GTE Mobilnet, Inc. and other wireless providers on Telecommunications siting issues outside the State of Georgia, specifically in Alabama, Florida, North Carolina, and Wisconsin.

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1. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (to be codified at 47 U.S.C. § 609 et. seq.) (stating that the Act seeks to in part "encourage the rapid deployment of new telecommunications technologies").

2. Microwave Journal, July 1, 1996, Vol. 39, No.7.

3. John J. Keller, *With Cellular Towers Sprouting All Over, Towns Begin to Rebel*, Wall St. J., Jul. 2, 1996, at A1.

demand for telecommunications services will require another 100,000 antennae installations in the coming years.⁴

The reason that increased consumer demand requires a corresponding increase in the number of cellular transmission sites is simple. A cellular network is much like a honeycomb. As a cellular user travels from one area to another, the transmission of a telephone call is shifted from one transmission site to the next. As demand increases, the area over which the site can effectively transmit shrinks, causing gaps between the sites, or gaps in the "honeycomb." In order to fill these gaps, cellular service providers must build additional sites to accommodate the increased demand without eroding the quality of service.

Across the U.S., this wireless telecommunications revolution has encountered significant resistance at the grassroots level.⁵ Although consumers enjoy the flexible advantages of mobile communications, they also express a "not in my backyard" attitude towards the infrastructural requirements associated with cellular telephone service. For example, in many localities, tower construction is bogged down in a quagmire of community complaints and politically motivated governmental reviews. Thus, cellular providers are saddled with increasing demands of customers and federal licenses that require the cellular company to provide adequate service⁶ in the face of increasing opposition to telecommunications siting.

The Telecommunications Act of 1996, signed into law by President Clinton in February, addresses, among many other important subjects, some of the technical problems that have arisen from the increasing popularity of mobile communications. This article will provide an overview of the Act and will focus specifically on the protections afforded a telecommunications provider in § 704 of the Act.

II. OVERVIEW AND BACKGROUND OF THE ACT

On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996. The Telecommunications Act of 1996 ("Telecommunications Act" or "Act") is "expansive legislation designed primarily to increase competition in the telecommunications

4. *Id.*

5. *Id.* See also *Spring Spectrum, L.P. v. City of Medina*, 924 F. Supp. 1036 (W.D. Wash. 1996) (resulting from City of Medina's enactment of a six-month moratorium on issuing permits for wireless communications facilities such as cellular towers).

6. FCC licenses for cellular providers typically grant a provider the privilege of providing wireless communications services, while at the same time *require* that quality services be provided by the licensee.

industry.”⁷ The legislative history of the Act evidences this competitive objective: “[t]he managers on the part of the House and Senate [intend] . . . to provide for a pro-competitive, de-regulatory, national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition”⁸ In fact, the House Report articulates that the “enormous benefits to American businesses and consumers from lifting the shackles of monopoly regulation will almost certainly earn the [Telecommunications Act] the distinction of being the most deregulatory bill in history.”⁹

III. SECTION 704 OF THE ACT: PROTECTIONS AFFORDED THE PROVIDER IN THE TELECOMMUNICATIONS FACILITY SITING CONTEXT

When attempting to locate a wireless telephone communications facility, such as a cellular transmission tower, a service provider typically has to apply for and receive either a permit to construct the tower or a rezoning of the land at issue to allow for such construction. Section 704 of the Act, to be codified at 47 U.S.C. § 332(c), provides certain statutory protections to an applicant who applies for such a permit or rezoning, provided the application involves the siting of a personal wireless service facility such as a cellular tower.¹⁰ These protections, of course, are in addition to the standard protections afforded by equal

7. *BellSouth Mobility*, 944 F. Supp. at 927.

8. H.R. Conf. Rep. No. 104-458, at 113 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124.

9. H.R. Rep. No. 104-204, at 47-48 (1996), *reprinted in* 1996 U.S.C.C.A.N. 10, 11. Section 253 of the Act accomplishes this purpose by removing barriers to entry. Section 253(a) states that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” § 253(a), 110 Stat. 70 (to be codified at 47 U.S.C. § 253(a)). As stated in the legislative history of section 253, this section is “intended to remove all barriers to entry in the provision of telecommunication services. [This new section] preempts any State and local statutes and regulations, or other State and local legal requirements, that may prohibit or have the effect of prohibiting any entity from providing interstate or intrastate telecommunications services.” H.R. Conf. Rep. No. 104-458, at 126 (1996), *reprinted in* 1996 U.S.C.C.A.N. 138.

10. The term “personal wireless service facility” is defined in the Act as a facility for the provision of “commercial mobile services, unlicensed wireless services, and common-carrier wireless exchange access services” which, of course, encompasses cellular transmission towers. § 704(c)(7)(C)(i-ii), 110 Stat. 152 (to be codified at 47 U.S.C. § 332(c)(7)(C)(i-ii)).

protection, due process, and applicable state law doctrines such as mandamus.¹¹

Without completely preempting the authority of local governments to make decisions regarding the placement of wireless communications facilities,¹² the Act provides five separate and substantial protections for the telecommunications facility applicant in the amended 47 U.S.C. § 332 (entitled National Wireless Telecommunications Siting Policy).¹³ Section 332 provides that:

(A) the regulation of placement, construction, and modification of personal wireless services facilities by any state or local government shall not unreasonably discriminate among providers of functionally equivalent services;

(B) the regulation of the placement, construction, and modification of personal wireless service facilities by any state or local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services;

(C) once an applicant files a request for authorization to place, construct, or modify a personal wireless service facility, the governmental entity shall act on the application “within a reasonable period of time after the request is duly filed”;

(D) no state or local governmental entity may regulate the placement, construction, or modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such emissions comply with FCC regulations; and

(E) any decision by a state or local governmental entity to deny an application to place, construct, or modify a personal wireless service facility shall be in writing and supported by substantial evidence contained in a written record.¹⁴

The application of these protections is, of course, dependent upon the context in which they are applied.

11. See *BellSouth Mobility*, 944 F. Supp. at 929 (granting relief under both the Act and state mandamus law).

12. See *id.*

13. § 704(a)(7)(B), 110 Stat. 151–52 (to be codified at 47 U.S.C. § 332(a)(7)(B)).

14. *Id.*

A. Governmental Action Shall Not Discriminate

The Act provides that the regulation of the placement, construction, and modification of a telecommunications facility shall not unreasonably discriminate among providers of functionally equivalent services.¹⁵ The term “functionally equivalent services” refers only to services that directly compete against one another.¹⁶ A governmental authority is prohibited from decisions that favor one telecommunications competitor over another, while it is allowed some flexibility to treat differently facilities that create different visual, aesthetic, or safety effect, at least to the extent permitted under generally applicable zoning requirements.¹⁷ For example, the Act does not contemplate that if a cellular tower is permitted in a commercial district, a tower of the same size and structure must also be allowed in a residential district.¹⁸ Accordingly, the articulated intent of this specific protection is to prohibit a land use decision or series of land use decisions that would decrease or deter competition in the telecommunications industry and thereby frustrate the purpose of the Act.

B. Governmental Action Shall Not Prohibit or Have the Effect of Prohibiting the Provision of Personal Wireless Services

Under 47 U.S.C. § 332(7)(B)(i)(II), governmental policies that explicitly or effectively ban personal wireless services or facilities violate of the Act, and governmental entities must treat each application to place or construct a facility independently.¹⁹ Although a state or local government may deny an application based on stated objective criteria, the criteria upon which the denial is based cannot have the effect of banning telecommunications facilities, nor will a pattern of unsubstantiated denials be tolerated under the Act.

Interestingly, in *Spring Spectrum, L.P. v. City of Medina*, a plaintiff/appellant cellular provider filed suit under the Act claiming that a six-month moratorium on the issuance of permits for wireless communications facilities enacted by the defendant/appellee city violated subsection (B)(i)(II) of the Act because the ordinance’s effect was prohibitory.²⁰ Because the moratorium was temporary in nature, however, the U.S. District Court for the Western District of Washington

15. *Id.* § 704(a)(7)(B)(i)(I) (to be codified at 47 U.S.C. § 332(a)(7)(B)(i)(I)).

16. H.R. Conf. Rep. No. 104-458, at 208 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 222.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Spring Spectrum*, 924 F. Supp. at 1039-1040.

held that the moratorium was “not a prohibition on wireless facilities, nor does it have a prohibitory effect. It is, rather, a short-term suspension of permit-issuing while the City gathers information and processes applications. Nothing in the record suggests that this is other than a necessary and *bona fide* effort to act carefully in a field with rapidly evolving technology. Nothing in the moratorium would prevent Sprint’s application, or anyone else’s, from being granted.”²¹

Although the *Medina* Court made it clear that temporarily suspending the granting of permits for telecommunications facilities does not violate the Act if it is of reasonable duration (six months), the Court suggested that if all applications would have been *denied* during this six-month period, the moratorium would have violated the Act.²² Of course, any extension of the moratorium might also be violative of the Act, constituting an unreasonable delay in processing the application under subsection (B)(ii).

*C. Upon Application for a Permit to Place, Construct, or Modify a
Wireless Facility, a Government Shall Act Upon the Application
Within a Reasonable Period of Time*

Subsection (B)(ii) prevents a governmental unit from sitting on, or refusing to rule on an application to place or construct wireless service facilities.²³ Under this requirement, the governmental entity must respond to the application within a reasonable time frame, “taking into account the nature and scope of each request.”²⁴ If the application involves a permitting procedure, a public hearing, or comment process, the “reasonable period of time” requirement is satisfied if the period for review of the application is the usual period under the applicable ordinance or statutory scheme.²⁵ It is not the intent of this provision to give preferential treatment to the wireless communications industry in the processing of requests, or to subject their requests to anything other than the generally applicable time frame for ruling on applications.²⁶ Thus, a governmental entity need not rule more quickly than it would for an applicant in a non-telecommunications context.

In *City of Medina*, the plaintiff/appellant challenged the city’s six-month moratorium on the issuance of permits for wireless communica-

21. *Id.* at 1040.

22. *Id.*

23. § 704(a)(7)(B)(ii), 110 Stat. 151 (to be codified at 47 U.S.C. § 332(c)(7)(B)(ii)).

24. H.R. Conf. Rep. No. 104-458, at 208 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 223.

25. *Id.*

26. *Id.*

tions facilities, alleging a violation of the “reasonable time” requirement.²⁷ Because the city’s moratorium did significantly prolong the approval process for a special use permit, and because the moratorium applied only to “wireless communications facilities”²⁸, plaintiff/appellant seemed to have a strong claim that a violation of subsection (B)(ii) had occurred.²⁹

The District Court for the Western District of Washington, however, held to the contrary:

[t]here is nothing to suggest that Congress, by requiring action “within a reasonable period of time,” intended to force local government procedures onto a rigid timetable where the circumstances call for study, deliberation and decision-making among competing applicants. The City is seeking to determine, among other things, whether tall antenna towers are still necessary for the purpose at hand. It is entitled to find that out. The “generally applicable time frames” for zoning decisions, in Washington, may include reasonable moratoria adopted in compliance with state law. To hold otherwise would afford telecommunications applicants the “preferential treatment” that Congress sought to avoid. Medina’s moratorium, coupled with its ongoing investigation and its processing of applications, is consistent with this part of the [Act].³⁰

In so holding, the *Medina* court relied heavily on a statement within the city’s moratorium indicating that the purpose of the moratorium was to study the Telecommunications Act, and the city’s ability to regulate wireless communications facilities in light of the Act.³¹ The court, therefore, left open the question as to what delays will be considered unreasonable under the Act.

D. State or Local Governments May Not Regulate Wireless Facilities on the Basis of Environmental Effects of Radio Frequency Emissions if the Applicant Demonstrates Compliance with FCC Regulations

From an applicant’s perspective, the key to enforcing this requirement, codified in subsection (B)(iv), is to provide the governmental decision-maker with evidence (field tests, engineering, specifications,

27. Spring Spectrum, 924 F. Supp. at 1040.

28. *Id.* at 1037.

29. *Id.*

30. *Id.* at 1040.

31. *Id.* at 1038.

etc.) demonstrating emissions from the protected facility are within FCC limits. This evidence must be provided, of course, prior to any decision on the application in question. The protection of subsection (B)(iv) is applicable once these tasks have been accomplished by the communication provider.

As written, the purpose of the requirement is to prevent telecommunications siting decisions from being based upon unscientific or irrational fears that emissions from telecommunications sites may cause undesirable health effects. In a surprising number of public hearings on the issue of cellular siting, individuals appear and complain of allegedly harmful health effects, although the authors know of no studies substantiating such claims.³²

E. Any Decision to Deny an Application to Place, Construct or Modify a Wireless Facility Must be in Writing and Supported by Substantial Evidence Contained in a Written Record

The protection that arguably has the most significant impact upon the telecommunications industry is the "substantial evidence" standard, which gives the telecommunications provider valuable protection in the facilities siting context.³³ The terms "in writing" and "contained in a written record" are somewhat vague, but at the very least they require some record upon which the decision to deny an application could be based.³⁴ As set forth in the legislative history of the Act, the "substantial evidence" standard set forth in subsection(B)(iii) "is the traditional standard used for judicial review of agency actions."³⁵ Substantial evidence, as used in this context, means "more than a mere scintilla. It

32. See, e.g., *BellSouth Mobility*, 944 F. Supp. at 926 (describing comments made at permit hearing by a homeowner, who spoke in opposition to the construction of the proposed cellular monopole and claimed that its emissions might cause adverse health effects).

33. See *BellSouth Mobility*, 944 F. Supp. at 926 ("[T]he critical question before the court is whether the board of commissioner's decision to deny plaintiffs' application is supported by 'substantial evidence contained in a written record.'" (Internal citations omitted.))

34. Given the intent of the Act to accelerate the development of telecommunications technologies, the language "in writing" and "contained in a written record" appear to mandate that a governmental entity, when denying an application to place wireless facilities, must articulate the reasons for the denial and the evidence upon which said denial is based. H.R. CONF. REP. NO. 104-458 at 113 (1996), reprinted in 1996 U.S.C.C.A.N. 124. Absent this interpretation, the "written record" and "in writing" language appears to be superfluous. A contrary interpretation would violate the maxim of statutory construction which presumes that each word contained in a statute is to be given meaning and effect whenever possible. See, e.g., *Weinberger v. Hinson, Wescott & Dunning, Inc.*, 412 U.S. 609 (1973); *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303 (1961); *D. Ginsberg and Sons v. Popkin*, 285 U.S. 204 (1931).

35. H.R. CONF. REP. NO. 104-458, at 208, reprinted in 1996 U.S.C.C.A.N. 124, 223.

means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”³⁶

In applying the substantial evidence standard, a court should not a merely rubber stamp a governmental entity’s denial of an application. A court is in fact obligated to ensure that the denial is supported by substantial evidence: “the [state or local government denying the application] cannot rest its conclusions on a scintilla of evidence or even on any amount of evidence that is less than substantial. Instead, the [denial of an application] can be enforced only if [the court] find[s] in the record ‘such relevant evidence as a reasonable mind might accept as adequate to support the conclusion.’”³⁷ Although a reviewing court is not free to substitute entirely its judgment for that of the governmental entity, it must overturn the denial of an application “under the substantial evidence test if it ‘cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the denial.’”³⁸

The stringent substantial evidence standard set forth in Section 704 of the Telecommunications Act must be distinguished from the much more lenient “arbitrary and capricious” standard set forth in the Administrative Procedure Act which also provides for judicial review of agency action.³⁹ The substantial evidence test requires the court to “take a harder look at [agency] action than [it] would if [the court] were reviewing the action under the more deferential arbitrary and capricious standard applicable to agencies governed by the Administrative Procedure Act.”⁴⁰

Another factor which may affect the level of scrutiny that the reviewing court will apply to an application to place or construct a wireless communications facility is the type of decision rendered by the state or local government—i.e., whether the denial is legislative, or whether it is administrative/quasi-judicial in nature. Determining whether governmental action is legislative or administrative/quasi-judicial turns on whether the governmental act involves policy-making

36. *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). See also *America Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 522 (1981); *Northport Health Servs., Inc. v. NLRB*, 961 F.2d 1547, 1550 (11th Cir. 1992); *Bickerstaff Clay Prods. Co. v. NLRB*, 871 F.2d 980, 984 (11th Cir. 1989); *BellSouth Mobility*, 944 F. Supp. at 924.

37. *Northport Health Servs., Inc. v. NLRB*, 961 F.2d 1547, 1550 (11th Cir. 1992).

38. *BellSouth Mobility*, 944 F. Supp. 923 (N.D.Ga. 1996) (quoting *Bickerstaff Clay Prods. Co. v. NLRB*, 871 F.2d 980, 984 (11th Cir. 1989)).

39. *Administrative Procedure Act*, 5 U.S.C. § 706(2)(A–E) (1988).

40. *Color Pigments Mfrs. Ass’n v. OSHA*, 16 F.3d 1157, 1160 (11th Cir. 1994) (quoting *Asbestos Info. Ass’n v. OSHA*, 727 F.2d 415, 421 (5th Cir. 1984)).

or constitutes mere administrative application of existing policies.⁴¹ If the governmental act involves policy-making, it is more likely legislative; if the act involves administrative application of existing policies, the decision is more likely quasi-judicial or administrative in nature.⁴² Additionally, if the facts utilized by the government in making a determination are specific, rather than general, the decision is more likely administrative or quasi-judicial. This is also true if the decision impacts specific individuals rather than the general population.⁴³

If the court determines that the governmental action in question is an administrative or quasi-judicial permitting decision, the court must conduct a more stringent analysis of the governmental denial than it would in the case of a decision involving legislative re-zoning. Courts are more reluctant to overturn local land use decisions by governmental entities when the decisions are legislative in nature. As stated by the Supreme Court in *New Orleans v. Dukes*, 427 U.S. 297 (1976), “the judiciary may not sit as a super-legislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect governmental rights nor proceed along suspect lines.”⁴⁴ It

41. *Minton v. St. Bernard Parish School Bd.*, 803 F.2d 129, 135 (5th Cir. 1986) (quoting *Hornsby v. Allen*, 326 F.2d 605, 608–09 (5th Cir. 1964); *Crymes v. DeKalb County*, 923 F.2d 1482, 1485 (11th Cir. 1991).

42. *Id.* See also *Front Royal & Warren County Indus. Park Corp. v. Town of Front Royal, Va.*, 865 F.2d 77 (4th Cir. 1989) (acts of zoning enforcement rather than rule-making are not legislative); *Smith v. Lomax*, 45 F.3d 402 (11th Cir. 1995) (firing of clerk involved the application of policy to a specific party and was not legislative in nature); *Triomphe Investors v. City of Northwood*, 835 F. Supp. 1036 (N.D. Ohio 1993), *aff'd*, 49 F.3d 198 (6th Cir.), *cert denied*, 116 S.Ct. 70 (1995) (city council was acting in administrative or quasi-judicial capacity in denying property owner’s application for a land use permit). *But see* *Corn v. City of Lauderdale Lakes*, 997 F.2d 1369 (11th Cir. 1993) (city council passed a new ordinance blocking plaintiff’s development, which was legislative in nature); *City of New Orleans v. Duke’s*, 427 U.S. 297 (1976) (city council acted legislatively in amending ordinance which prevented plaintiff from conducting her business); *Sprint Spectrum, L.P. v. City of Medina*, 924 F.Supp. 1036 (W.D. Wash. 1996) (in enacting ordinance declaring six-month moratorium on communications facilities, city acted in its legislative capacity); *Nasser v. City of Homewood*, 671 F.2d 432 (11th Cir. 1982) (rezoning of plaintiff’s property was legislative act); *South Gwinnett Venture v. Pruitt*, 491 F.2d 5 (5th Cir. 1974) (refusal to re-zone property was legislative act).

43. See generally *Developments in the Law-Zoning*, 91 Harv. L. Rev., 1427, 1510–11 (1978); *Cutting v. Muzzey*, 724 F.2d 259 (1st Cir. 1984); *Crymes v. DeKalb County, Ga.*, 923 F.2d 1482, 1485 (11th Cir. 1991).

44. See also *Corn v. City of Lauderdale Lakes*, 997 F.2d 1369, 1389 (11th Cir. 1993) (“The district court appears to have put itself in the place of the city council and made a *de novo* review of whether it would have taken the same action the city council did. Such scrutiny impinges upon the right and authority of municipalities to make land use decisions and would alter the allocation of functions between municipal governments and federal courts. This Court has admonished district courts not to usurp the role of city councils and zoning boards.”); *Spence v. Zimmerman*, 873 F.2d 256 (11th Cir. 1989) (holding that federal courts

remains to be seen, however, what level of scrutiny will be applied to a legislative zoning decision in the face of the stringent substantial evidence standard prescribed by the Act.

IV. FILING SUIT: § 332(C)(7)(B)(V) OF THE ACT AUTHORIZES A DIRECT APPEAL FROM THE DECISION OF A STATE OR LOCAL GOVERNMENT

Subsection (B)(v) states, in pertinent part, as follows:

Any person adversely affected by any final action or failure to act by state or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within thirty days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis.⁴⁵

A. Type of Action and Evidentiary Questions

Although the Act describes the action to be filed by a jilted applicant very generically, the legislative history of the Act makes clear that the action should be couched in the terms of an appeal.⁴⁶ Given the fact that the action is an appeal, the court, in reviewing the denial of the application, is limited to the evidence and argument presented to the state or local government below. Efforts to bolster the position of either the communications provider or the government subsequent to the denial of the application will be futile.⁴⁷ It is therefore imperative that the communications provider present the entirety of its evidence and argument during the application process below. Like the appeal of a civil trial, an

do not sit as zoning boards of review and should be most circumspect in determining that rights have been violated in quarrels over legislative zoning decisions).

45. 47 U.S.C. § 332(c)(7)(B)(v).

46. "The conferees intend that the court to which a party *appeals* a decision under § 332(c)(7)(B)(v) may be the Federal district court in which the facilities are located or in a State court of competent jurisdiction, at the option of the party making the *appeal* . . ." H.R. CONF. REP. NO. 104-458, at 209 (1996), *reprinted in* 1996 U.S.C.A.N. 124, 223 (emphasis supplied).

47. In *BellSouth Mobility*, the county that had denied plaintiffs/appellants' application for a permit to place a cellular tower attempted to file expert affidavits supporting its position *after* rendering the denial, and during the pendency of the appeal under the Act. The Court refused to consider the expert affidavits and based its decision only on the evidence presented to the governmental decision-maker below.

appeal under the Act will be decided solely on the basis of the record below.⁴⁸

B. Parties for Whom the Act Provides Protection

The specific language of the Act authorizes an appeal by numerous potential claimants. The Act specifically provides that any person adversely affected by a denial may file an appeal.⁴⁹ The Act, therefore, contemplates suits by appellants other than the individual/entity that filed for governmental approval of the proposed facility. For instance, a landowner's right to receive rentals for allowing a communication facility on his/her property may be foreclosed by a governmental denial. Such an individual is protected by the Act.⁵⁰ Although an interested party does not necessarily have to file the application in question in order to seek relief under the Act, if the party wants to ensure a successful appeal, attention to the amount and type of evidence presented during the application process is important.

C. Jurisdictional Issues

The Act authorizes appeal in "a court of competent jurisdiction." As stated in the legislative history, a court of competent jurisdiction "may be the Federal district court in which the facilities are located or a State court of competent jurisdiction, at the option of the party making the appeal"⁵¹ In determining which court is more advantageous to the

48. In *BellSouth Mobility*, a county ordinance authorized grant of a tall structure permit if certain criteria were met by the applicant. The plaintiff/appellant cellular provider submitted, with its application for a permit to construct a cellular monopole, overwhelming evidence which satisfied the stated criteria including: evidence showing that the proposed monopole posed no hazard to navigable airspace; evidence indicating that the monopole would have no adverse effect upon residential property values; evidence demonstrating that the cellular monopole's radio frequency emissions would be well within FCC limits; and that the structure would be aesthetically compatible with the surrounding landscape. Because of this overwhelming evidence submitted to the county, the court held that generalized concerns stated in an argument against the monopole were not sufficient to authorize the county's denial of the permit. *Id.*

49. 47 U.S.C. § 332(c)(7)(B)(v).

50. In *BellSouth Mobility*, the applicant was a cellular communications company that wished to construct a cellular monopole on a specific site in Gwinnett County, Georgia. The applicant entered into a lease agreement with individuals that owned the proposed site. This option and lease agreement authorized rental payments to the landowners should the monopole be constructed. Although the landowners never applied for any permit to construct the facility, when the cellular provider was denied its permit, the landowners filed suit under the Act along with the provider. The Court ruled in favor of both the provider and the landowners in ordering the county to grant them a permit to construct the monopole.

51. H.R. CONF. REP. NO. 104-458, at 209 (1996), *reprinted in* 1996 U.S.C.A.N. 124, 223.

potential plaintiff/appellant, an analysis of the political climate surrounding the governmental denial should be conducted. Telecommunications facilities are often controversial and if local judges are elected, the desires of local voters could play a major part in the judicial decision. Further, the potential claimant should consider whether local courts will be deferential to the actions of local governments with whom they may be, and often are, closely aligned. Finally, the potential plaintiff/appellant should take into consideration the sophistication of local judges and their ability to properly apply federal law.

D. Time for Judicial Review

The Act specifically requires that a court hearing an appeal under its provisions “shall hear and decide such action on an expedited basis.”⁵² No matter what forum is chosen, the plaintiff/appellant should attempt to forego any discovery period and request an immediate hearing. This request is not unreasonable because the appeal will be decided solely on the basis of the evidence presented below, and no discovery is necessary. Given the Congressional mandate of an expedited hearing *and decision*,⁵³ the plaintiff/appellant should be successful in getting a decision within a matter of months.⁵⁴

E. Ripeness: Filing an Appeal Within the Required Time Period

Finally, and very importantly, the plaintiff/appellant must determine when the appeal is ripe for consideration by the reviewing court. In order to be appealable, the Act requires that the governmental denial be a final action or failure to act⁵⁵ and that the plaintiff/appellant must commence the appeal within thirty days of such action or failure to act.⁵⁶ As stated in the legislative history, the term “final action” means “final administrative action at the State or local government level so that the

52. 47 U.S.C. § 332(c)(7)(B)(v).

53. H.R. CONF. REP. NO. 104-458, at 209 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 223 (emphasis supplied).

54. In *BellSouth*, the Appeal and Complaint was filed on May 21, 1996. A hearing on the issues was scheduled on an emergency basis and took place on August 1, 1996, at time in which almost all courts were closed during the Atlanta Olympic Games. Judge G. Ernest Tidwell certified his decision on August 13, 1996. Thus, the District Court, acting in its appellate capacity under the Act, rendered a final decision less than three months from the date the Appeal of Complaint was filed. See *BellSouth Mobility, Inc. v. Gwinnett County*, 944 F. Supp. 923, 925-926 (N.D.Ga. 1996).

55. § 704(a)(7)(B)(v), 110 Stat. 152.

56. *Id.*

party can commence action under the [Act] rather than waiting for the exhaustion of any independent State court remedy otherwise required.”⁵⁷

After the plaintiff/appellant receives notice that the application to place the communications facility has been denied, the plaintiff/appellant must exhaust all available state and local administrative remedies prior to filing an appeal under the Act. Once administrative relief is exhausted, the appeal is ripe even if the plaintiff/appellant has not utilized all available judicial remedies.⁵⁸ A plaintiff/appellant should, therefore, analyze the applicable ordinance or local statute governing the application to determine whether an administrative appeal is provided. If so, the plaintiff/appellant must exhaust the administrative remedies prior to filing suit under the Act. Once administrative remedies have been exhausted, the plaintiff/appellant must appeal within thirty days of a denial.

V. *BELLSOUTH V. GWINNETT COUNTY*: A CASE STUDY

BellSouth Mobility was the first case in which a claimant successfully obtained judicial relief under Section 704 of The Telecommunications Act of 1996. Because this case of first impression will have significant impact on future claims brought under the Act, a brief analysis of the decision is important.

In *BellSouth*, plaintiff/appellant BellSouth Mobility Inc. (“BellSouth”) sought to construct a cellular communications monopole upon a designated site in Gwinnett County, Georgia.⁵⁹ The height of the tower required that BellSouth obtain a tall structure permit prior to construction.⁶⁰ The county ordinance governing the issuance of tall structure permits authorized the county to deny an application for a tall structure

57. H.R. Conf. ep. No. 104-458, at 9 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 223.

58. Determining whether or not administrative remedies have been exhausted can be quite tricky. For instance, if a party is aggrieved by a decision of a local zoning board in Alabama, Section 11-52-81 of the Alabama Code authorizes a direct appeal to a state circuit court. Alabama decisional law interpreting this remedy holds that the appeal is purely administrative in nature. *See City of Gadsden v. Entrekin*, 387 So.2d 829 (Ala. 1980) where party was required to pursue and exhaust the administrative remedy contained in Section 11-52-81, prior to seeking judicial relief. Arguably, then, this remedy must be exhausted prior to filing suit under the Act. However, § 11-52-81 by requiring de novo review requires full-blown discovery and authorizes a jury trial to review the decision of the local zoning board. Given this fact, the Alabama scheme for reviewing a decision of a local zoning board in the telecommunications context very well may violate the Supremacy Clause as it is directly in conflict with the expedited treatment to be given applications for telecommunications facilities articulated by the Act. *See* Ala. Code § 11-52-81; § 704(a)(7)(B)(v), 110 Stat. 152.

59. *Bellsouth Mobility*, 944 F. Supp. at 923.

60. *Id.* at 924-925.

permit when: (1) the proposed structure could interfere with air facilities located within the county; (2) the structure could endanger person or property within the county, or (3) the structure would not be compatible from an aesthetic viewpoint with surrounding area.⁶¹

In preparing to construct the monopole, BellSouth leased the subject property from the owners of the site and filed their application for a tall structure permit with the county.⁶² The application was supported by numerous evidentiary exhibits indicating that: (1) the monopole would not interfere with navigable airspace in the area; (2) the monopole would not endanger persons or property nearby; and (3) the structure would be compatible from an aesthetic viewpoint with the existing facilities.⁶³ No exhibit or documentary evidence was submitted in opposition to the application.

A hearing was scheduled before the county's board of commissioners and each side presented a five-minute argument. In opposition to the application, a representative from a surrounding neighborhood voiced concerns that the monopole would pose a safety threat to children, that the monopole might cause damage during a storm, and that the monopole would be aesthetically incompatible with existing structures in the area. BellSouth also presented a five-minute argument which was based primarily upon the documentary evidence previously submitted in support of the application.⁶⁴ At the conclusion of the argument, and without further discussion, the county board of commissioners voted to deny the application.⁶⁵ BellSouth subsequently received a letter informing it of the permit denial, but the letter did not give any reasons therefor, nor did it specify any evidence upon which the denial had been based.⁶⁶

Because the ordinance in question did not authorize an administrative remedy if an application was denied, BellSouth, along with the owners of the site upon which the monopole was to be constructed,

61. *Id.*

62. *Id.* at 925.

63. *Id.* at 924-926. The documentary evidence filed by BellSouth in support of its application included line-of-sight photographs illustrating the view of the proposed monopole from various surrounding locations; an appraisal report evidencing that the monopole would have no adverse effect upon property values; a report indicating that the monopole would present no hazard to navigable airspace in the area; and boundary survey and site plans which demonstrated the nature of the proposed structure and which evidenced the distances from the proposed site to adjacent parcels of land and residential dwellings.

64. *Bellsouth Mobility*, 944 F. Supp. at 925-926.

65. *Id.* at 926.

66. *Id.* at 926 (quoting letter formally notifying plaintiffs that their "application for a Tall Structure Permit was denied at the Board of Commissioners meeting on April 23, 1996").

filed an appeal from the county's decision in the Federal District Court in which the monopoly was to be constructed.⁶⁷ In bringing the Telecommunications Act claim, plaintiffs/appellants relied exclusively on the requirement of 47 U.S.C. § 332(c)(7)(B)(iii) [§ 704c(7)(B)(v), 110 Stat.], mandating that any denial "shall be in writing and supported by substantial evidence contained in a written record."⁶⁸ Along with the appeal under the Telecommunications Act, plaintiffs/appellants prosecuted the action under a state-law mandamus theory, arguing that the county's board of commissioners abused its discretion in denying the permit because the evidence clearly supported approval of the application.⁶⁹

In limiting its review to the evidence and argument presented to the county below, the court ruled as follows on plaintiffs'/appellants' "substantial evidence" claims under the Telecommunications Act:

[T]he court cannot conscientiously find that the evidence supporting the board's decision to deny the plaintiffs a tall structure permit is substantial. On the contrary, the court finds that the record evidence supports plaintiffs' application.⁷⁰

The critical issue, however, was not whether the county had violated the Telecommunications Act, but the relief that would be granted to plaintiffs/appellants. Fearing that remand of the application to the county would result in an attempt by the county to bolster their decision by hearing additional evidence from the opposition, plaintiffs/appellants argued vehemently that the Act prohibited remand because it would frustrate Congressional intent to provide an aggrieved party full relief on an expedited basis.⁷¹ Additionally, plaintiffs/appellants argued that remanding the case to the county would frustrate the purpose of the Act because the board of commissioners would still be influenced by the impermissible factors that caused them to deny the application in the first instance—community opposition and political pressure.

The county contended that the Court should simply remand the matter to the county and allow it to make a decision supported by substantial evidence.⁷² The county argued that it was improper for Federal

67. *BellSouth Mobility*, 944 F. Supp. at 926. *See also* H.R. Conf. Rep. No. 104-458, at 209 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 223 authorizing an appeal in the Federal District where the facility is to be constructed.

68. *BellSouth Mobility*, 944 F. Supp. at 928. (internal citations omitted).

69. *Id.* at 929. *See also* O.C.G.A. § 9-6-20 ("whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance . . .").

70. *Bellsouth Mobility*, 944 F. Supp. at 928.

71. *Id.* at 929.

72. *Id.*

courts to usurp local government authority by directing issuance of a permit, and that the Act did not authorize the Court to issue such an order.

The Court held as follows:

Section 704(a) of the [Telecommunications Act] does not speak to the issue of what relief a court may grant to remedy violations of the [Act]. Although it permits any person who has been adversely affected by actions that are inconsistent with its provisions to 'commence an action in any court of competent jurisdiction,' it does not specify an appropriate remedy. The [Telecommunications Act], however, does mandate that '[t]he court shall hear and decide such action on an expedited basis.' Indeed, the legislative history of the [Telecommunications Act] makes it clear that its drafters intended that 'the court to which a party appeals a decision under section 332(c)(7)(B)(v) may be the Federal district court in which the facilities are located or a State court of competent jurisdiction, at the option of the party making the appeal, and that the courts act expeditiously in deciding such cases.'

In the court's view, simply remanding the matter to the board of commissioners for their determination would frustrate the [Telecommunications Act's] intent to provide aggrieved parties full relief on an expedited basis. Therefore, defendants' abstention argument notwithstanding, the court finds that the [Telecommunications Act] vests the court with sufficient authority to grant plaintiffs' request for mandamus relief if such relief would be warranted under the circumstances.⁷³

Accordingly, the *BellSouth* Court not only found that defendants'/appellees' decision violated the Act because it was not based upon substantial evidence, but also specifically ordered the county to grant the application for the permit in question.⁷⁴

VI. CONCLUSION

There can be no doubt that the Telecommunications Act of 1996 will have a significant impact upon facility siting decisions made by local governments. The requirements set forth in the Act give a telecommunications provider protection from the sometimes mercurial

⁷³. *Id.* (internal citations omitted).

⁷⁴. *Id.*

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temperaments of local governments as they relate to zoning and planning. The *BellSouth* decision provides additional protection because it indicates that the judiciary should be aggressive in carrying out the articulated Congressional desire to reduce barriers to entry and increase competition in the telecommunications industry.