November 30, 1999

BY FACSIMILE - (781) 270-1608

Planning Board
Burlington Town Hall
29 Center Street
Burlington, MA 01803

Re: Wireless Communications Public Hearings

- Testimony Regarding Health Effects

Dear Members of the Planning Board:

In the course of holding public hearings on applications for special permits or other approvals for wireless communications facilities, you anticipate that there will be testimony from members of the public on the subject of health effects of such facilities. You have asked how the Board should treat testimony of this nature.

As you know, the Telecommunications Act of 1996 prevents municipalities or their boards from regulating telecommunications facilities on the grounds of "environmental effects." The federal law states:

No State or local government or instrumentality thereof may regulate 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 regulations concerning such emissions.

47 U.S.C. 332 (c)(7)(B)(iv)
The reference to "environmental effects" is clearly intended to refer to health effects. While this language prevents the Board from making regulatory decisions on the basis of health issues, the Act does not, in my opinion, prevent the members of the public from expressing their concerns related to their perceptions of related health risks. Accordingly, I do not recommend that the Board attempt to prevent testimony on this topic.

I do, however, recommend that the Chairman or a member of the Board make a statement if and when such testimony is given. The testimony would be the following effect: The Planning Board is aware that there are residents of the Town who are concerned about the health or environmental effects of wireless telecommunications facilities. However, the federal Telecommunications Act of 1996 specifically prohibits local governments from regulating these facilities on the basis of the environmental effects of radio frequency emissions. We may only require that the facilities comply with applicable federal standards. In the event the Board decides to approve this application, I fully expect that the Planning Board will include, as a condition of approval, that the applicant provide evidence of ongoing compliance with all federal standards.

It is important to make a statement of this nature on the record so that an applicant cannot later argue that the Board illegally attempted to regulate on the grounds of health effects.

Very truly yours,

Joel B. Bard

JBB/das
cc: Town Administrator
    Board of Selectmen

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