Scott Carey

From:	Steven Hart <steven.hart@attorneymail.ch>
Sent:	Sunday, October 30, 2022 10:46 PM
To:	Scott Carey
Subject:	NTRPA Governing Board, November 3, 2022 2:00 p.m. Meeting ****Public Comment***Item 2
Attachments:	Eugene Fisher—Letter.pdf; Law Office of L. Mark Bissonnette—Submittal.pdf; Gregory Garmong v. Tahoe Regional Planning Agency, No. 18-16824 (9th Cir. 2020).pdf; Michael Keith Johnson—Brief_08-06-2019 City Council_Item 7_Attachment_13.pdf

Good afternoon Governing Board of the Nevada Tahoe Regional Planning Agency,

Lake Tahoe Attorneys have had a long and proud history uniting against **the dangers of cell towers** in our sensitive basin. Dangers which are now taught in medical textbooks! Real leadership is demonstrated by those who foresee, get ahead, and prevent serious dangers before they ever get a chance to occur. We would like to first honor, **Eugene Fisher** (#42478):

EUGENE FISHER
Attorney At Law
201 Ocean Avenue
Suite 301-B
Santa Monica, California 90402
Off: (310) 621-2977 Fax: (310) 395-5733

July 6, 2018

Planning Commission Secretary, Amanda Nolan
1052 Tata Lane
South Lake Tahoe, CA 96150

Dear Planning Commission Secretary:

I have received your Notice of a Public Hearing
2018 and am responding in writing because I will
to appear to contest the permit to allow a wirel
telecommunications facility located less than 30
from my Town & Country Shopping Center property.

I had the same situation come up in Sherman Oaks
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The reasons were as follows:

The radiation from the wireless telecommuni
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on the property, whose customers to not to
to the radiation.

The telecommunications company may argue th
have a cover hiding the dangerous condition
is only a red herring and does not help.

The wireless telecommunication has a duty t

Next, we would like to honor Tahoe's **L. Mark Bissonnette** (#165236):

L. MARK BISSONNETTE, CBN 165236
LAW OFFICES OF L. MARK BISSONNETTE
2520 Lake Tahoe Blvd., Suite 2
South Lake Tahoe, CA 96150-7744
Telephone: (530) 544-5092
Facsimile: (530) 544-5095

Attorneys for Appellant L. MARK BISSONNETTE

SOUTH LAKE TAHOE CITY COUNC

L. MARK BISSONNETTE

Appellant,

vs.

CITY OF SOUTH LAKE TAHOE PLANNING COMMISSION,

Respondent,

_____/

File No. 18-058

HEARING BRI

Hearing: **De**
Time: **9:(**
Place: **19(**
La

Comes now appellant, L. Mark Bissonnette, who hereby appeals Planning Commission approval of Special Use Permit #18-058, propo located adjacent to 3674 Woodbine Road. This appeal is based on the p herein, on the papers and documents attached hereto, on the Council's matter, and on such other argument and evidence as may be presented In short appellant argues that the City Council should overrule the Plan instant application because: 1) the proposed project causes an undue

Deserving mention is a truly brilliant and mistreated Tahoe patent attorney **Gregory Otis Garmong** (#80078) (University of California at Los Angeles, J.D., 1977; University of California at Los Angeles, M.B.A., 1977; Massachusetts Institute of Technology, MA, 1969; Massachusetts Institute of Technology, S.B., 1966) who recently won a 9th Circuit Appeal against the TRPA:

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY GARMONG, Plaintiff-Appellant, v. TAHOE REGIONAL PLANNING AGENCY; et al., Defendants-Appellees, and TIM CARLSON; E. CLEMENT SHUTE, Jr., Defendants.	No. 18-16824 D.C. No. 3:17-cv-00444-RC MEMORANDUM

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted March 26, 2020**

Also deserving honor is Tahoe attorney **Michael Keith Johnson** (#199021) who wrote the below brief and submitted it to the SLT City Record:

ROLLSTON, HENDERSON & JOHNSON, LTD
ATTORNEYS
LICENSED IN NEVADA AND CALIFORNIA

ROBERT M. HENDERSON
MICHAEL K. JOHNSON

KENNET

July 30, 2019

South Lake Tahoe City Council and Mayor
1901 Lisa Maloff Way
South Lake Tahoe, CA 96150

Re: Address: 1360 Ski Run Boulevard
File No.: 19-026
Special Use Permit for New 112' Verizon Wireless Tower and Equipment
Hearing Date: Tuesday, August 6, 2019
Appellant: Monica Eisenstecken

Dear Mayor and City Council Members:

Please be advised the undersigned represents Monica Eisenstecken with to the City Council of the Planning Commission's approval of the above-des Eisenstecken is a full-time resident (with her two young children) and owner of t (3605 Needle Peak Road) which would be dramatically, if not catastrophic project. Please consider the following as reasons for denying the requested S

1. Ms. Eichenstecken Was Unaware Of The Application Until Commission Meeting Was Held.

Ms. Eisenstecken's property is adjacent to the property for which a p indeed well within a three hundred foot (300') radius of the location for the p In fact, the property where she and her elementary school age children live is feet from the base of the proposed tower.

And last, *but certainly not least*, is Tahoe attorney Gregg Richard Lien (#69620):

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Julian Gresser, California Bar #50656
Of Counsel, Swankin & Turner
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Santa Barbara, CA 93130
805-563-3226, juliangresser77@gmail.com

Gregg Lien, California Bar #69620
Attorney at Law
P.O. Box 7442
Tahoe City, CA 96145
530-583-8500, lakelaw@sierratahoe.net

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MONICA EISENSTECKEN, TAHOE STEWARDS, LLC, DAVID BENEDICT, TAHOE FOR SAFER TECH, ENVIRONMENTAL HEALTH TRUST Plaintiffs, vs. TAHOE REGIONAL PLANNING AGENCY, JOANNE MARCHETTA, in her official and individual capacities, MARSHA BERKBIGLER	**No. 2:20-CV-02349-TL** THIRD AMENDED COMPLAINT, PETITIC WRIT OF MANDATE, RELIEF, INJUNCTIVE DAMAGES **JURY TRIAL REQUE ALL ISSUES SO TRIA**

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Attorneys for Plaintiffs
MONICA EISENSTECKEN,
TAHOE STEWARDS, LLC,
TAHOE FOR SAFE TECH,
ENVIRONMENTAL HEALTH TRUST

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

MONICA EISENSTECKEN, et al., Plaintiffs, vs. TAHOE REGIONAL PLANNING AGENCY, et al., Defendants.	Case No. 2:20-cv **PLAINTIFF'S M** **LAW IN OPPOS** **TRPA DEFEND** **MOTION TO D** **THIRD AMENI** The Honorable T Hearing Date: Oc

We also thank all non-Tahoe area attorneys who have put much time and effort into averting the cell tower crisis (*e.g.,* Robert J. Berg, Julian Gresser, Mark S. Pollock, and Campanelli & Associates, P.C.).

Sincerely,

Steven Hart

The purpose of copyright law is "to Promote the Progress of Science and useful Arts" (U.S. Const. art. I, § 8, cl. 8). The House Committee on the Judiciary explicitly listed "reproduction of a work in legislative or judicial proceedings or reports" as an example of a fair use (H.R. Rep. No. 94-1476, 65 (1976)). Introducing entire copyrighted works in official governmental proceedings is generally fair use (*Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 449-50 (1984) ("the fact that the entire work is reproduced…does not have its ordinary effect of militating against a finding of fair use"); *Jartech, Inc. v. Clancy*, 666 F.2d 403 (9th Cir. 1982) (holding that the city councils use of copyrighted material in the legal proceedings was not "the same intrinsic use to which the copyright holders expected protection from unauthorized use"); *Stern v. Does*, 978 F. Supp. 2d 1031, 1044-49 (C.D. Cal. 2011) (reproduction of copyrighted material for use in litigation or potential litigation is generally fair use, even if the material is copied in whole); *Ty, Inc. v. Publications Intern. Ltd.*, 292 F.3d 512 (7th Cir. 2002) (reproducing copyrighted works for litigation is an example of the fair use doctrine); *Healthcare Advocates, Inc. v. Harding, Earley, Follmer & Frailey*, 497 F.Supp. 2d 627, 638 (E.D. Pa. 2007) (holding that law firm's copying of an entire set of copyrighted web pages was justified where the web pages were relevant evidence in litigation); *Hollander v. Steinberg*, 419 Fed.Appx. 44 (2d Cir. 2011) (affirming dismissal of a copyright case by an attorney, where opposing counsel in an earlier civil action had appended that attorney's blog entries to a motion); *Religious Tech. v. Wollersheim*, 971 F.2d 364 (9th Cir. 1992) (holding that providing copies of the plaintiff's copyrighted documents to the defendant's expert witness was fair use); *Porter v. United States*, 473 F. 2d 1329 (5th Cir. 1973) (rejecting a claim by the widow of Lee Harvey Oswald that she was entitled to compensation because the publication of Oswald's writings in the Warren Commission Report diminished the value of the copyright in those works); *Kulik Photography v. Cochran*, 975 F. Supp. 812 (E.D. Va. 1997) (dismissing on jurisdictional grounds of a copyright infringement suit brought by the author of a photograph that was used without permission in the O.J. Simpson murder trial); *Levingston v. Earle*, No. 3:2012cv08165 (D. Ariz. 2014) (holding that appending a full copy of an author's book to a pleading, in a harassment proceeding against that author, was fair use); *Grundberg v. the Upjohn Co.*, 140 F.R.D. 459 (D. Utah 1991) (rejecting the defendant's attempt to register a copyright in its document production in order to restrict the plaintiff's use and public dissemination of those documents); *Shell v. City of Radford*, 351 F.Supp.2d 510 (W.D. Va. 2005) (dismissing a copyright infringement suit by a photographer whose photographs were copied and used by detectives investigating the murder of the photographer's assistant); *Denison v. Larkin*, 64 F. Supp. 3d 1127 (N.D. Ill. 2014) (dismissing with prejudice Plaintiff attorney's suit against defendants for using portions of her copyrighted Blog as evidence against her in an attorney disciplinary proceeding); *Carpenter v. Superior Court (Yamaha Motor Corp., USA)*, 141 Cal.App.4th 249 (2006) (holding the plaintiff in a personal injury action could gain access to certain standardized neurological tests over an objection that the tests were protected by, *inter alia*, copyright law)).

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July 6, 2018

Planning Commission Secretary, Amanda Nolan
1052 Tata Lane
South Lake Tahoe, CA 96150

Dear Planning Commission Secretary:

I have received your Notice of a Public Hearing on July 12, 2018 and am responding in writing because I will be unable to appear to contest the permit to allow a wireless telecommunications facility located less than 300 feet from my Town & Country Shopping Center property.

I had the same situation come up in Sherman Oaks, California where I also own a commercial building and the protests were so enormous that the permit use was defeated.

The reasons were as follows:

The radiation from the wireless telecommunication will cause a health problem to all persons within its radius.

It will effect my tenants, especially the restaurants on the property, whose customers to not to be exposed to the radiation.

The telecommunications company may argue that it will have a cover hiding the dangerous condition but this is only a red herring and does not help.

The wireless telecommunication has a duty to explore other areas in South Lake Tahoe which are plentiful to put up its wireless telecommunications facility which will not be close enough to harm people. I bet it never presented any alternate locations to you.

I pay my taxes to the City of South Lake Tahoe and I would like to think it has my interests at heart as well as other people in the immmediate area to be free of radiation danger.

Very truly yours,

Eugene Fisher

EUGENE FISHER
Owner of Town & Country Shopping Center

FILED

MAR 30 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY GARMONG, Plaintiff-Appellant, v. TAHOE REGIONAL PLANNING AGENCY; et al., Defendants-Appellees, and TIM CARLSON; E. CLEMENT SHUTE, Jr., Defendants.	No. 18-16824 D.C. No. 3:17-cv-00444-RCJ-WGC MEMORANDUM[*]

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted March 26, 2020[**]
Las Vegas, Nevada

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: W. FLETCHER, BYBEE, and WATFORD, Circuit Judges.

Plaintiff Gregory Garmong filed this action in district court, challenging a decision by the defendant Tahoe Regional Planning Agency ("TRPA") to issue a permit allowing a cell tower to be built in a mostly undeveloped area under the agency's purview. The district court dismissed Garmong's complaint due to his failure to establish Article III standing to bring his claims, but granted him leave to amend. Garmong filed a first amended complaint, which the district court again dismissed for lack of Article III standing. The district court dismissed with prejudice and ordered the case closed. Garmong urges that this was error, on both substantive and procedural grounds. We have jurisdiction under 28 U.S.C. § 1291, and we reverse.

1. We review de novo a district court's conclusion that a plaintiff lacks Article III standing. *Braunstein v. Ariz. Dep't of Transp.*, 683 F.3d 1177, 1184 (9th Cir. 2012). To satisfy Article III standing, a plaintiff must first show an injury in fact that is (a) concrete and particularized and (b) actual or imminent. *Bernhardt v. County of Los Angeles*, 279 F.3d 862, 868 (9th Cir. 2002) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000)). Plaintiffs alleging a statutory violation must still establish a concrete injury. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016).

Garmong's first amended complaint was in part based on alleged procedural violations committed by the TRPA. Environmental plaintiffs like Garmong can establish an injury in fact "by showing a connection to the area of concern sufficient to make credible the contention that the person's future life will be less enjoyable . . . if the area in question remains or becomes environmentally degraded." *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1149 (9th Cir. 2000). Garmong alleged that in the past he has used the area around the cell tower for personal fitness, recreation, and nature-study, and that he plans to continue doing so in the future. He further alleged that the cell tower will "interrupt the view path for one of [his] primary locations to enjoy Lake Tahoe vistas in peaceful contemplation." The TRPA's own documents support the plausibility of this allegation.

Having satisfied the injury requirement, Garmong must also show that his injury is fairly traceable to the challenged conduct of the TRPA and that it is likely his injury will be redressed by a favorable decision of a court. *Bernhardt*, 279 F.3d at 868–69. However, "[w]here, as here, claims rest on a procedural injury, the causation and redressability requirements are relaxed." *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803, 817 (9th Cir. 2017) (internal quotation marks omitted). Garmong has cleared these low barriers. He alleges that the TRPA has

failed to consider its own regulations, and asks that a court prohibit the permit from being "legally . . . maintained." Accordingly, we hold that Garmong alleged facts sufficient to establish Article III standing.

Our inquiry does not end there. We must also ask whether a statute confers standing on Garmong to bring his claims. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1175 (9th Cir. 2004). The TRPA Compact, by which the agency is governed, allows "[a]ny aggrieved person [to] file an action in an appropriate court of the States of California or Nevada or of the United States alleging noncompliance with the provisions of [the] compact or with an ordinance or regulation of the agency." An "aggrieved person" includes anyone who appeared in person before the agency at an appropriate administrative hearing to object to the action being challenged. Garmong attended the public hearing on the cell tower proposal and gave public comment, as well as appealed the resultant decision to the TRPA Board of Directors, which unanimously denied the appeal. Accordingly, we hold that Garmong had statutory standing to bring his claim.

2. Garmong's amended complaint alleged thirty-four claims for relief. When the district court dismissed Garmong's amended complaint for lack of Article III standing, it did so without conducting a claim-by-claim analysis. This was error. *See Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008)

("Standing is not dispensed in gross." (internal quotation marks omitted)); *Allen v. Wright*, 468 U.S. 737, 752 (1984) ("[T]he standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted."), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). Upon remand, the district court need not repeat its standing analysis for claims that rely on the same underlying injury, but should analyze whether Garmong has standing for each category of claims asserted in his amended complaint. *See Valley Outdoor, Inc. v. City of Riverside*, 446 F.3d 948, 952–53 (9th Cir. 2006) (analyzing categories of claims on a claim-by-claim basis).

3. In a hearing prior to its dismissal of Garmong's complaint for the second and final time, the district court assured Garmong that it would grant him leave to further amend his complaint. However, it entered its dismissal without waiting for an amended complaint. This was an abuse of discretion. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Federal Rule of Civil Procedure 15(a)(2) provides that courts "should freely give leave when justice so requires." More important, the district court reneged on an explicit assurance without explanation. In similar situations we have previously granted relief. *See, e.g.*, *United States v. Buchanan*, 59 F.3d 914, 918 (9th Cir. 1995) ("Litigants need to be

able to trust the oral pronouncements of district court judges."). Accordingly, upon remand, the district court should give Garmong the option of further amending his complaint.

4. Finally, Garmong appeals the district court's denial of his motion for a preliminary injunction. The district court did not conduct a standalone analysis for the preliminary injunction; rather, it relied on its reasoning from an earlier decision denying a temporary restraining order requested by Garmong. Furthermore, the district court denied Garmong's motion for a preliminary injunction in the same sentence that it concluded that he lacked standing, making it difficult to determine the extent to which its standing determination factored into the denial. We therefore vacate the district court's denial and instruct the district court to conduct an appropriate analysis of the request for a preliminary injunction.

REVERSED and REMANDED. Costs are taxed against the defendants. *See* FED. R. APP. P. 39(a)(3).

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Attorneys for Appellant L. MARK BISSONNETTE

SOUTH LAKE TAHOE CITY COUNCIL

L. MARK BISSONNETTE

Appellant,

vs.

CITY OF SOUTH LAKE TAHOE PLANNING COMMISSION,

Respondent,

_____/

File No. 18-058

HEARING BRIEF

Hearing: **December 11, 2018**
Time: **9:00 am**
Place: **1901 Airport Road, South Lake Tahoe, California**

Comes now appellant, L. Mark Bissonnette, who hereby appeals the City of South Lake Tahoe Planning Commission approval of Special Use Permit #18-058, proposal for small cell facility to be located adjacent to 3674 Woodbine Road. This appeal is based on the points and authorities contained herein, on the papers and documents attached hereto, on the Council's Agenda Packet regarding this matter, and on such other argument and evidence as may be presented at the hearing on this matter. In short appellant argues that the City Council should overrule the Planning Commission and deny the instant application because: 1) the proposed project causes an undue adverse visual impact; 2) the proposed project would constitute an unlawful taking; 3) the proposed project does not need to be placed on this pole, and; 4) the approval and hearing process has been unfair and prejudicial to appellant.

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STATEMENT OF FACTS

1. On or about May 3, 2018 the City received a special use and design review application, File #18-058 for a cell facility to be located adjacent to 3764 Woodbine Road. Also at about this time the City received approximately twenty three (23) other special use applications. Two of the other twenty three towers were proposed to be located at 969 Bigler Ave., File #18-055 and at 3565 Needle Peak Road, File #18-057.

2. On or about June 21, 2018, the City Planning Commission was scheduled to hold a hearing of the cell facility #18-055 proposed for 969 Bigler Ave., South Lake Tahoe, California, Prior to the hearing L. Mark Bissonnette submitted a letter and supporting documentation to the Planning Commission opposing the installation of the cell facility #18-055. A copy of this letter is attached hereto as Exhibit No. 1.

3. On June 21, 2018, Courtney Weiche wrote "Thank You for your comment. A copy will be provided to the Commission at today's Hearing. In light of the issues you have raised, staff will recommend the Special Use Permit application, adjacent to 969 Bigler Avenue, be continued to further investigate your concerns. Any future consideration for a proposal at this site will require the same noticing." A copy of this e-mail is attached hereto contained in Exhibit 2. Appellant is informed and believes that the application for this permit has been withdrawn.

4. The proposed cell facilities at 3764 Woodbine Road would be located twenty (27) feet from the living room window of Larry and Donna Reid, who reside at 3764 Woodbine Road.

3. Larry and Donna Reid are long time South Lake Tahoe residents and have resided at 3764 Woodbine Road for over twenty 25 years. Larry, who is eighty four years old is a retired airplane mechanic for United Airlines. Donna, who is eighty one years old, is also retired and is active in the local community through the Tahoe Art League. See, Letter of Larry & Donna Reid, attached hereto as Exhibit 3.

2. On or about August 9, 2018, the Planning Commission approved the Special Use Permit #18-058.

3. Prior to the August 9, 2018, Planning Commission meeting Mr. Bissonnette submitted a letter

and supporting documentation to the Planning Commission opposing the installation of the cell facility. A copy of Mr. Bissonnette's August 9, 2018, letter to the Planning Commission is attached hereto as Exhibit 4 (without duplicate attachment).

4. At the August 9, 2018, Plaining Commission meeting "Commissioner Ongoy noted that this letter is the second received by this attorney and asked whether staff has responded yet, John Hitchcook, Planning Manger, responded that we had not. Commissioner Ongoy requested that staff respond and to clarify whether this is a "cell tower" and whether the date [sic][data] he provided can be applied to the projects. Mark Lobaugh, Epic Wireless, agreed that the letter referenced cell towers, and this equipment does not classify as a tower. Commissioner Ongoy requested [staff] to explain that to the attorney. John Hitchcock noted that City staff would respond and include the City Attorney in the response." See, Planning Commission Minutes, attached as Exhibit 6 to the Report to the City Council "Appeal of the Planning Commission decision to approve a Special Use and Design Review Application (File #18-058 for Verizon Wireless Telecommunication Facility (Published 11/30/2018)."

5. On or about August 27, 2018, L. Mark Bissonnette, owner of 3740 Woodbine Road filed an appeal with the City Clerk. A copy of the Appeal is attached hereto as Exhibit 5.

6. On October 2, 2018, Mr. Bissonnette, wrote Mr. Hitchcock, regarding Special Use Permit #18-058, stating "Ms. Weiche had indicated that I could expect a written explanation of the Commission's decision on this matter. I would appreciate receiving such an explanation." A copy of this e-mail is attached hereto contained in Exhibit 6.

7. On November 9, 2018, Mr. Bissonnette, e-mailed Mr. Hitchcock stating "Thank you for your assistance in this matter. I would like to submit written material to the Council prior to the hearing on this matter. Please advise of the appropriate manner of submitting such information." A copy of this e-mail is attached hereto contained in Exhibit 6.

8. On November 27, 2018, Mr. Bissonnette again e-mailed Mr. Hitchcock: "Please advise as to whether this matter was continued to December 11, 2018." A copy of this e-mail is attached hereto contained in Exhibit 6.

9. On November 27, 2018, Mr. Hitchcock e-mailed Mr. Bissonnette stating "Yes, it is scheduled

for Dec. 11 Council agenda." A copy of this e-mail is attached hereto contained in Exhibit 6.

10. To date Mr. Bissonnette has not received any response or explanation from Mr. Hitchcock or staff regarding the Commissions August 9, 2018 approval or the content of his August 9, 2018 letter.

11. On December 6, 2018, Mr. Bissonnette obtain a copy of the Report to the City Council "Appeal of the Planning Commission decision to approve a Special Use and Design Review Application (File #18-058) for Verizon Wireless Telecommunication Facility (Published 11/30/2018)" herein after referred to as the "Report." The Report was obtained from the City Counsel Website when it was made available on that date.

12. At no time between November 30, 2018 and December 6, 2018 was a copy of the Report forwarded to Mr. Bissonnette.

13. The Report states that "the proposed project includes the installation of telecommunications equipment within existing public right of way and on an existing wood utility Pole ... adjacent to 3764 Woodbine Road ... The poll is currently 37'7" tall. With the proposed 7' wood pole top extension ... and the 4' cantenna extension, the pole would reach approximately 50' in height." Report, p. 2. The Report continues that "the associated cabinet (height: 61," width 24", deep: 30") is proposed adjacent to the pole with two bollards (3'6"tall and 4" in diameter)." Report, p. 2.

14 The Report goes on to an "Issues and Discussion" section. This section will be addressed herein below, under Points and Authorities, issues shall be addressed in the same order as they are addressed in the Report.

15. Mr. Bissonnette is not alone in opposing the approval of the proposed project. Other local property owners also oppose this instant application. See letter From Donna and Larry Reid, attached hereto as Exhibit 3, and the Letter of Jay and Rachel Becker, attached hereto as Exhibit 7.

POINTS AND AUTHORITIES

The Report states:

"Review of wireless facilities is governed by Federal Telecommunications Act of 1986, which

preempts significant review elements from local governments for the installation of wireless communication facilities. The Act preserves local government zoning authority as it relates to location and siting, but include three key protections for wireless providers: 1) local ordinances may not "unreasonably" discriminate among providers of functionally equivalent services; 2) local government may not impose a blanket prohibition against the placement of telecommunication towers; 3) local ordinances may not impose more stringent "environmental effects" limits on radio frequency emission than those adopted by the Federal Commission." Report, p. 2.

None of this language cited by the Report has any application in the present matter. Appellant merely requests that the city deny the instant application #18-058. Denying the instant application: 1) wound not "discriminate among carriers" as there is only one carrier involved ; 2) it would not "impose a blanket prohibition' as appellant only request the denial of the instant application, and 3) it would not "impose more stringent 'environmental effects'" as appellant makes no arguments based on "environmental effects."

The Report continues that: "Proposed wireless facilities can be denied by local government only when a denial is '...in writing and supported by substantial evidence and a written record' and supportive findings are not in violation of the Telecommunication Act. A review of case law indicates that substantial evidence can include adverse scenic or visual impacts that cannot be mitigated, potential impacts to cultural or historical resource ..." Report, p. 3. No cites to actual cases are provided by the report.

Mr. Bissonnette's August 27, 2018, appeal states four basis for the appeal 1) Aesthetics, 2) Loss of Property Value, 3) the Need for the Project and 4) The Approval of the Tower Violates the Principle of Equal Justice. The Report responded to each of appellant's reasons for appeal (verbatim):

1. Aesthetics

Appellant argued in his appeal that "The placement of the proposed tower on Woodbine Road is not in keeping with the aesthetics of this neighborhood. This is a meadow area with conservancy lots adjacent to the proposed location and the proposed tower would detract from the natural beauty of the area. Moreover, the proposed tower is within cite of untold thousands of visitors to Tahoe who travel

on Pioneer Trail just above the proposed installation site."

The Report responds: "The Planning Commission considered the aesthetics impacts in the review and permitting of the project. Permit conditions require all equipment to be painted and approved earth-toned colors to visually blend with the surrounding environment. ... The pole mounted equipment will be painted a dark brown earth tone color to match existing utility pole and the ground based battery cabinet will be painted the City standard "Midnight Green." A diagram of the proposed tower, contained in Attachment 5 to the Report and attached hereto as Exhibit 8, reveals the proposed project to be an 11 foot wood and metal tampon shaped antenna. This tampon shaped antenna is to be perched upon a 37 foot, seven inch (37'7") pole. Attached hereto is a photograph of the pole in question so the Council may ponder the aesthetics of an eleven foot tall, brown, wood and metal tampon shaped antenna silhouetted against the blue Tahoe sky. See, Exhibit 13 attached hereto. Regarding the accompanying "Midnight Green" 5'1' x 2'6" x 2' box that is to be placed within 27 feet of the Reid's living room window, this type of installation has been referred to as "particularly egregious." See, "Impact of Communication Towers and Equipment on Nearby Property Values" prepared by Burgoyne Appraisal Company, March 7, 2017, Sec. V.A., a copy of which is attached hereto as Exhibit 9. Regarding aesthetics the Report also notes "Due to distance from the nearest scenic corridor, approximately 250 feet from Pioneer Trail, and use of existing pole, the cell facility will be minimally, if at all, visible to travelers along the Pioneer Trail." This argument strains credulity. Firstly, a measuring tape reveals that the pole is approximately 231 feet from Pioneer Trail. Secondly, we are discussing an ll foot tall wood and metal tampon shaped antenna less than a football field (77 yards) away from the roadway. The antenna will obviously be visible from Pioneer Trail and its thousands and thousands of travelers.

As noted above the Report states that an application may be denied by a written statement citing substantial evidence and that substantial evidence can include "adverse scenic or visual impacts that cannot be mitigated ..." Report, p. 3. The visual impact of this 11 foot tall tampon shaped antenna perched atop a thirty seven foot seven inch (37'7") tall pole, cannot be mitigated by paint. Similarly, another diagram contained in Attachment 5 to the Report, and attached hereto as Exhibit 10, shows before and after images of the pole regarding this proposed project. Mr. Bissonnette submits to the

judgment of the Council the "adverse scenic or visual impact" of the proposed project demonstrated by this diagram. Considering the foregoing this Council can and should deny the instant application based on aesthetic grounds.

2. Loss of Property Value

Appellant argued in the appeal that:

"Multiple studies, including but not limited to the Bond Hue - Proximate Impact Study of 2004, the Bond and Wang - Transaction Based Market Study and the Bond and Beamish - Opinion Study, have found that the close proximity of cell towers lowers property values by 15% to 20%. Licensed Real Estate Broker Lawrence Oxman has stated "As a licensed real estate broker with over 30 years of experience, it is my professional opinion that the installation of a Cellular Tower can significantly reduce the value of neighboring residential properties." See Campanelli & Associates, P.C. website AntiCellTowerLawyers.com, questions and answers "Does the installation of a Cell Tower reduce the values of nearby properties?

The Fifth Amendment to the United States Constitution declares in pertinent part that "No person shall be held to answer for a capital crime...unless on a presentment or indictment of a Grand Jury... Nor shall private property be taken for public use, without just compensation" (emphasis provided). Devaluing my property value without just compensation for the diminished property value amounts to an unconstitutional taking in violation of the Fifth Amendment.

The Report responds: "The two Studies cited are between 14 and 16 years old (from 2002 and 2004) and focus solely on the impact of traditional "macro" cellular towers and not micro cellular facilities, as proposed. Technological demands and advancements have vastly increased since the early 2000's. The expectation for higher broad ban and wireless telecommunication speeds, in combination with advancements in wireless infrastructure, may deem these studies less relevant today." Report p. 4. This statement is demonstrably untrue. Firstly, many modern studies continue to find that cell phone towers and antennas, including so called "micro cellular facilities" adversely effect property value. A visit to the National Association of Realtors website www.nar.realtor.com alone references many modern articles and studies, all standing for the proposition that cell facilities of all types adversely affect

nearby residential property values. Simply search this site for cell towers and click on references and you will be provided with links to the following information, articles and studies among others:

- "Property Values, Desirability and Cell Towers" (emfza, July 2018). Finding among other things that: "The results revealed that proximity to cell phone towers negatively affects house values, decreasing as the distance from the tower increases"; "A survey conducted in June 2014 by the National Institute for Science, Law and Public Policy (NISLAPP) in Washington, D.C. 'Neighborhood Towers and Antennas-Do They Impact a Property's Desirability?' shows home buyers and renters are less interested in properties located near cell towers and antennas, as well as properties where a cell tower or group of antennas are placed on top of or attached to a building"; of 1000 survey respondents "94% said a nearby cell tower or group of antennas would negatively impact interest in a property or price they would be willing to pay for it"; "79% said under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or antennas." A copy of this article is attached hereto as Exhibit 11.
- "The Cost of Convenience: Estimating the Impact of Communication Antennas on Residential Property Values, Stephen L. Locke and Glenn C. Blomquist, Land and Economics, February 2016. Finding, among other things, that the "best estimate of the impact is that a property with a visible antenna located 1000 feet away sells for 1.82% ... less than a similar property located 4,500 feet away." A copy of this article is attached hereto as Exhibit 12.
- "Impact of Communication Towers and Equipment on Nearby Property Values" prepared by Burgoyne Appraisal Company, March 7, 2017, finding among other things that: "as a general matter, visible utility structures do adversely affect property values"; "The impact will generally be related to the size of the facility, the characteristics of the facility, its location(including proximity), and visibility"; "studies uniformly indicate that there is a significant impact on residential property values from installation of cell phone towers. Not surprisingly, the studies that show little or no impact are universally commissioned by and paid for by the telecommunications industry"; "As to 'small cell' .... small cell and DAS installations are often directly within the line of site (midway up a 40 foot pole, for example) and even include ground cabinets, which are particularly egregious. Even if the individual impact of small cell s is lesser

than for larger towers (which is by no means a given), this may be offset or partially offset by location, close proximity..." A copy of this report is attached hereto as Exhibit 9. Considering the foregoing there is no reasonable doubt that the proximity of cell phone antennas and towers adversely affect property values. Secondly, as demonstrated by the dates of the cited material this statement is as true today as it was at the time of the previous studies cited to the Planning Commission.

The Report goes on to state "Though there may be concerns a reduction in property values may occur, objective research seems to indicate otherwise." This statement is directly contradicted by the Burgoyne Appraisal Company report stating "studies uniformly indicate that there is a significant impact on residential property values from installation of cell phone towers. Not surprisingly, the studies that show little or no impact are universally commissioned by and paid for by the telecommunications industry." Moreover, Appellant has now provided copies and cited this Counsel and the Planning Commission to no less than five (5) articles, studies and reports all standing for the proposition that cell phone towers and antennas adversely affect property values. Staff has failed to provide even one cite or article to support the claim that nearby cell phone towers and antennas do not adversely affect nearby property values. The weight of evidence before the Council on this issue is completely one sided and overwhelming.

The Report completely fails to address appellant's Fifth Amendment takings clause argument. The Fifth Amendment to the United States Constitution and Article I, § 19 of the California Constitution prohibit the taking of private property for public use without just compensation. The takings clauses of the United States and California Constitutions protect not only tangible property, but also intangible trade secret property rights protected by state law. (*Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1003-1004; see *City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 67-68). Further, *Horne vs. Department of Agriculture* (2015) __ U.S. __ , 135 S.Ct. 2419, states that the Fifth Amendment requires that the Government pay just compensation when it takes personal property, just as when it takes real property.

To obtain compensation, the property owner may bring an action for inverse condemnation. (*United States v. Clarke* (1980) 445 U.S. 253, 257,) Inverse condemnation is an

action to recover compensation for taking of property by means other than condemnation proceedings. In an inverse condemnation action, the property owner has the burden of alleging and proving the owner's property right and its infringement. (*Gilbert v. State of California* (1990) 218 Cal.App.3d 234, 249-250; *People ex rel. Dept. Pub. Wks. v. Romano* (1971) 18 Cal.App.3d 63, 72, fn. 4). As noted by the California Supreme Court in *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 774, a government action may effect a taking even if it leaves the owner some economically beneficial use of the property. Considering the foregoing, granting the instant permit amounts to an unconstitutional taking under both the United States and California Constitution and the application should be denied.

3. There is No Need for the Proposed Tower

Appellant argues that: "I question the need for the instant tower. I am unsure what is the purpose of the tower. Verison should be required to prove that there is a need for this tower in this location." The Report completely fails to address the argument as to why this tower is needed in this location, 27 feet from the Reid's living room, on this pole. Considering the discussion herein above it is undeniable that the instant tower will disproportionately affect the value of the Reid's home given that it is only 27 feet from there living room and only 25 feet from their foundation. Certainly, there must be a location that does not so disproportionately place the burden of this supposed public good on select individual citizens of South Lake Tahoe.

On a related point, a review of the August 9, 2018, Planning Commission Minutes and the Report, reveals an attempt to assert that appellant's appeal is misguided because appellant is under the mis-impression that the instant application is for a "tower" when the instant application is not for a "tower." A "tower" is defined as "a building or structure high in proportion to its lateral dimensions, either isolate or forming part of a building." Webster's New Universal Unabridged Dictionary, Barnes & Noble Publishing Inc., (2003). The proposed structure, if this permit is approved, will be approximately 48 feet seven inches (48'7") tall, freestanding and its lateral dimension will be less than one foot, absent appendages. Therefore, the structure is high in proportion to its lateral dimensions (approximately 4950 to 1) and is by any reasonable definition of the word a "tower."

4. The Approval of the Tower Violates the Principle of Equal Treatment Under the Law

The appeal argues:

"The commission has arbitrarily discriminated against appellant by treating different special use applications differently, thereby denying appellant of equal treatment under the law as guaranteed by the Fourteenth Amendment to the United States Constitution. For example the Commission has not approved a permit for a tower at the intersection of Ski Run and Needle Peak Road due to its visible to visitors traveling to Heavenly Ski Resort but the Commission has approved the instant permit despite its being visible to all visitors to Lake Tahoe who travel on Pioneer Trail. Moreover, the Commission has not subject all applications to the same approval process choosing not to approve or deny all applications in open meeting but influencing applicant to withdraw or change applications, thereby denying appellant of his due process rights as guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution."

At the August 9, 2018, Commissioner Ongoy noted that Mr. Bissonnette's August 9, 2018 letter was the second letter received by the Commission from Mr. Bissonnette and asked whether staff had responded. John Hitchcook, Planning Manager, responded that staff had not. Commissioner Ongoy then requested that staff respond and clarify whether this is a "cell tower" and "whether the date [sic][data] he provided can be applied to the projects." Mark Lobaugh, from applicant Epic Wireless, agreed that the letter referenced cell towers, and this equipment does not classify as a tower. Commissioner Ongoy requested that be explain to Mr. Bissonnette. John Hitchcock noted that City staff would respond and include the City Attorney in the response." See, Planning Commission Minutes, dated August 9, 2018, attached to the Report as Attachment 6. On October 2, 2018, Mr. Bissonnette, wrote Mr. Hitchcock, regarding Special Use Permit #18-058, stating "Ms. Weiche had indicated that I could expect a written explanation of the Commission's decision on this matter. I would appreciate receiving such an explanation." To date Mr. Bissonnette has not received any explanation from Mr. Hitchcock. Therefore, despite being requested to explain the Commission's decision by a Commissioner, despite being requested to explain the Commission's decision by Mr. Bissonnette and despite promising to explain the Commission's decision, Mr. Hitchcock and staff failed to ever provide such an explanation.

The Report in this matter is states "(Published 11/30/208)." Therefore, staff and Mr. Hitchcock had an explanation of the Commission's decision in hand on November 30, 2018. Despite having a written explanation in their possession on November 30, 2018, staff and Mr. Hitchcock failed to ever forward that explanation to Mr. Bissonnette. Therefore, despite being requested to provide an explanation to Mr. Bissonnette by a Commissioner, despite being requested to explain the Commission's decision by Mr. Bissonnette and despite promising to explain the Commission's decision, staff and Mr. Hitchcock failed to forward an explanation even when they had an explanation in hand..

Appellant is curious why Mr. Hitchcock and staff did not forward the Report. Did Mr. Hitchcock simply forget to forward an explanation or the Report to Mr. Bissonnette. This seems unlikely since Mr. Hitchcock was in contact with Mr. Bissonnette on November 27, 2018, only three (3) days before the Report was published. See e-mail of Mr. Hitchcock confirming that the Council hearing was scheduled for December 11, 2018, contained in Exhibit 6 attached hereto. Appellant wonders whether Mr. Hitchcock and remembered to forward a copy of the Report to the City Attorney.

Margaret Thatcher once said "Even a dog knows the difference between being kicked and being tripped over." In the present situation appellant can think of only one reason why staff and Mr. Hitchcock would not forward any explanation to Mr. Bissonnette and why staff and Mr. Hitchcock did not forward the Report to Mr. Bissonnette, despite being requested by Commission Ongoy to forward an explanation, despite being requested by Mr. Bissonnette to forwarded an explanation and despite having promised to do so. That reason is that staff and Mr. Hitchcock hoped that by not supplying any explanation to Mr. Bissonnette, they could prejudice Mr. Bissonnette by deny him the ability to respond to their explanation prior to hearing on the matter. This is malicious, arbitrary and capricious behavior, that amounts to a clear violation of appellant's due process rights. Mr. Hitchcock and staff would impose a Kafkaesque process where appellant is not aware of the Commission's reasoning for decision appealed from prior to hearing on the appeal. In short Mr. Hitchcock and staff have attempted to ambush appellant and ensure that he have insufficient opportunity to respond to the Report, in order that they might railroad this application through this Council. This is malicious, arbitrary and capricious behavior, that amounts to a clear violation of appellant's due process rights.

This type of conduct by Commission staff is inappropriate. The Commission and its staff should be concerned with having fair and open hearings in these matters where all sides have the opportunity y to be heard and the Commission sits as a disinterested administrative judge of the parties before it. In other words the Commission and its staff should not have a dog in this fight. Instead, the Commission through its staff, appears to have a policy that it will only approve and not deny these Verizon applications for small cell towers. Whenever, there is sufficient opposition to an application that might result in a denial the Commission continues the matter or encourages the applicant to withdraw the application.

As noted herein above, the instant application #18-058, is not the only one of these small cell towers Mr. Bissonnette has objected to. The hearing on application #18-055 was held on June 21, 2018. Prior the hearing L. Mark Bissonnette submitted a letter and supporting documentation to the Planning Commission opposing the installation of the cell facility #18-055. A copy of this letter is attached hereto as Exhibit No. 1. In that letter Mr. Bissonnette raised three of the exact same three objections, Aesthetics, Loss of Property Value and No Need for the Proposed Tower, as raised in his August 9, 2018, letter regarding the instant application. Copies of these letters to the Commission are attached hereto as 1 &4 respectively. In the matter of application #18-055, instead of approving or denying the application, staff recommended the matter be continued. See, August 9, 2018, e-mail from Courtney Weiche to Mr. Bissonnette stating "Thank You for your comment. A copy will be provided to the Commission at today's Hearing. In light of the issues you have raised, staff will recommend the Special Use Permit application, adjacent to 969 Bigler Avenue, be continued to further investigate your concerns. Any future consideration for a proposal at this site will require the same noticing." A copy of this e-mail is contained in Exhibit 2 attached hereto. Mr. Bissonnette is informed and believes this application has now been withdrawn. Similarly, regarding application #18-057, at 3565 Needle Peak Road. The Report states that at the August 9, 2018 hearing on this matter the Planning Commission "expressed concern ... because of possible aesthetic impacts" and "continued the proposed project to future Planning Commission meeting... Subsequently, the applicant has withdrawn the application for this particular location." Report pp. 5-6. Both of these applications demonstrate the Planning Commission and it's staff's policy of not denying any applications. Mr. Bissonnette is informed and

believes that these actions of the Commission are motivated by Mr. Hitchcock and Commission staff's desire to push these applications through to approval with as little publicity as possible, because they fear that denying applications will encourage other members of the public to oppose the installation of these cell towers. A blanket policy of not denying any application violates appellant's due process rights and is a disservice to the public who are denied the benefits of a fair and open hearing on the merits of these applications.

Approval of this application is arbitrary and capricious to the extent that the Commission based its August 9, 2018, decision on an alleged distinction between the effect of macro v. micro cell towers. As discussed herein all cell towers and antennas have an adverse effect on property values. Staff states "there may be concerns a reduction in property value may occur, objective research seems to indicate otherwise." This statement appears to be disingenuous as the Burgoyne Appraisal Company, report found "studies uniformly indicate that there is a significant impact on residential property values from installation of cell phone towers. Not surprisingly, the studies that show little or no impact are universally commissioned by and paid for by the telecommunications industry." Exhibit 9. Moreover, considering that the Report fails to site any of the alleged "objective research" appellant wonders whether the Report intends to intentionally mislead this Council. Considering the foregoing, to the extent that the Commission's based it's decision to approve this application because it was not a "tower" that decision was incorrect because the proposed project is a "tower" by any reasonable definition of that word and because "tower," or not, this cellular phone facility will cause a decrease in property values for nearby residential property. Also attempting to distinguish the proposed project as not being a "tower" is arbitrary and caprisious and violates appellant's due process right.

Approval of this application amounts to unequal treatment under the law. As noted herein above this project disproportionately imposes a burden, decreased property values, on nearby homeowner. Most specifically it imposes a burden on the Reid's. Common sense will inform this Council that a 48'7" tall tower with an 11 foot tall wood and metal tampon shaped antenna on top, along with a 5'1" x 2'6' x2' metal box, 27 feet from the living room window of the Reid's house will cause a potential buyer to ask "what is that?" and adversely affect the desirability of the property. All of the articles before the Council and the Commission confirm common sense that the proposed project will

adversely effect nearby property values and the Reid's property value most of all because of their proximity. Therefore, even if the Commission and this Council have the ability to force the installation of this tower over the objections of appellant, the Becker's and especially to the Reid's, in justice and fairness it should not do it. There is not reason this tower cannot be placed on another telephone pole where its adverse visual effects would not be as great and where its adverse financial effects would not be so disproportionately born by individual citizens of South Lake Tahoe, like the Reids.

CONCLUSION

The City Council should overrule the Planning Commission and deny the instant application because: 1) the proposed project causes an undue adverse visual impact; 2) the proposed project would constitute an unlawful taking; 3) the proposed project does not need to be placed on this pole, and; 4) the approval and hearing process has been unfair and prejudicial to appellant.

Dated: December 10, 2018

LAW OFFICES OF L. MARK BISSONNETTE

By: _____
L. MARK BISSONNETTE

EXHIBIT 1

Law Offices of

L. MARK BISSONNETTE

L. MARK BISSONNETTE J.D., M.A.
lmb@bissonnettelaw.com

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2520 LAKE TAHOE BLVD. SUITE 2
SOUTH LAKE TAHOE, CALIFORNIA 96150
TELEPHONE (530) 544-5092
FACSIMILE (530) 544-5095

City of South Lake Tahoe Planning Commission
Attn: Amanda Nolan
1052 Tata Lane
South Lake Tahoe, California 96150

Via E-mail (anolan@cityofslt.us)

June 21, 2018

Re: Verison Special Use Permit Application to Allow Installation of Small Cell Towers

Dear Commission Members,

My name is L. Mark Bissonnette, I am a local attorney and I am writing representing the interests of my wife Darcie Park-Bissonnette, owner of 968 Bigler Ave., where we both live. One of the proposed towers is to be placed directly in front of Mrs. Bissonnette's property on the other side of the street 969 Bigler Ave. Mrs. Bissonnette opposes the installation of the proposed tower and towers for all of the following four (4) reasons:

1. Aesthetics

As noted in the attached letter of Charlie Vance, the Al Tahoe neighborhood has an "Old Tahoe Feel." A copy of Mr. Vance's June 20, 2018 letter is attached hereto as Exhibit 1. The placement of the proposed tower is not in keeping with the aesthetics of this neighborhood.

2. Loss of Property Value

Multiple studies, including but not limited to the Bond Hue - Proximate Impact Study of 2004, the Bond and Wang - Transaction Based Market Study and the Bond and Beamish - Opinion Study, have found that the close proximity of cell towers lowers property values by 15% to 20%. Licensed Real Estate Broker Lawrence Oxman has stated "As a licensed real estate broker with over 30 years of experience, it is my professional opinion that the installation of a Cellular Tower can significantly reduce the value of neighboring residential properties." See Campanelli & Associates, P.C. website AntiCellTowerLawyers.com, questions and answers "Does the installation of a Cell Tower reduce the values of nearby properties?"

The Fifth Amendment to the United States Constitution declares in pertinent part that "No person shall be held to answer for a capital crime...unless on a presentment or indictment of a Grand Jury... Nor shall private property be taken for public use, without just compensation" (emphasis provided). Devaluing Mrs. Bissonnette's property value without just compensation

for the diminished property value amounts to an unconstitutional taking in violation of the Fifth Amendment.

3. There is no Need for the Proposed Tower or Towers

Mrs. Bissonnette has Verison service and has no problems with service in her neighborhood. In short there are no significant gaps in service and the tower or towers are unnecessary.

4. Safety

No less than 4 trees within 100 feet of the proposed tower at 969 Bigler Ave., have been struck by lightning, many repeatedly. Last year a large pine across the street from Mrs. Bissonnette was struck by lightning sending a 60 foot long limb crashing into the power lines below. Mrs. Bissonnette fears that this tower will act as a lightning rode endangering anyone nearby.

Conclusion

The city has the power to deny the instant application. Please see April 24, 2018 letter to EMF Network from Best, Best & Kreiger, attached hereto as Exhibit 2. For all of the reasons stated herein, Mrs. Bissonnette request that the city deny the instant application of Verison to install the proposed cell tower at 969 Bigler Ave., South Lake Tahoe, California.

Kindest Regards,

L. Mark Bissonnette

cc: Client
Enclosure(s)(as stated)

June 20, 2018

To: City of South Lake Tahoe Planning Commission

From: Charlie Vance, 969 Bigler Ave. South Lake Tahoe

RE: Proposed Verizon Cell Tower adjacent to 969 Bigler

Commission:

I am writing to express my family's protest to the proposed cell tower to be placed in front of our property at 969 Bigler Ave. The Vance Family has owned this property since 1940 and have worked hard to maintain the property in its historical condition for those 78 years.
We feel strongly that the placement of this tower adds to the destruction of our cherished "old Tahoe" feel, and greatly diminishes the historical nature of this Al Tahoe neighborhood in general.
There are much more appropriate sites close to Highway 50 in commercial or school areas that wont take away from the classic, authentic surroundings that the residents of Al Tahoe have long tried to preserve.
Please consider relocating the project to a more consistent location.
Help us preserve historic Al Tahoe for future generations.

Thank you,

Charlie Vance and the Vance Family
969 Bigler Ave.
South Lake Tahoe, CA

Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Manhattan Beach
(310) 643-8448
Ontario
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File No. 51134.00005

April 24, 2018

Ms. Sandi Maurer
Director
EMF Safety Network
EMFsafe@sonic.net

Re: Local Authority Over Wireless Facilities in Public Rights-of-Way

Dear Ms. Maurer:

You have asked for a general summary regarding the scope of authority of a California municipality to deny applications for placement of wireless communications facilities in public rights-of-way which can be presented to the City of Sebastopol on behalf of the EMF Safety Network. To understand the scope of municipal authority to deny such applications, it is necessary to take into account the legal limitations on such authority, which are also outlined in this letter. In preparing this summary, we examined state and federal law but we did not review the City of Sebastopol's municipal code or any wireless communications facility applications which may be pending before the City. Thus, we note that the City of Sebastopol's code may contain further requirements and restrictions regarding the city's authority over public rights-of-way not addressed in this memo. In addition, the facts and circumstances related to individual wireless applications would also impact this analysis as applied to individual applications. Finally, we note that this is an area where laws are somewhat uncertain and subject to potential change in pending court cases, as well as through pending federal proceedings.

1) Telephone Companies Have State Franchise Rights to Use Public Rights-of-Way.

Under California law, telephone companies have state franchise rights to use public rights-of-way pursuant to Pub. Util. Code Section 7901 ("Section 7901"). Section 7901 has long been interpreted as a statutory grant of a franchise to telephone companies to use and place "telephone lines" in public rights-of-way, and "to erect poles, posts, piers, or abutments for

supporting the insulators, wires, and other necessary fixtures of their lines…".[1] Pub. Util. Code Section 233 defines "telephone line" broadly to include "all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had *with or without the use of transmission wires*." (*emphasis added*). The courts have held that the statutory definition of "telephone line" is sufficiently broad to include a wide range of technologies including facilities and equipment installed by carriers in connection with or to facilitate both wireless and landline telecommunications services.[2] Thus, the statutory franchise right to use public rights-of-way has been interpreted in case law to benefit both wireline companies, that typically hold a Certificate of Public Convenience and Necessity ("CPCN"), issued by the California Public Utilities Commission ("CPUC"), as well as wireless providers, who typically have registered with the CPUC and obtained a Wireless Identification Registration ("WIR").

2) Limitations on State Franchise Rights & Scope of Local Discretionary Authority.

The right of telephone companies to use public rights-of-way to deploy facilities under the state franchise is, however, not unfettered. Specifically, Section 7901 provides that such use must be "in such manner and at such points as not to incommode the public use of the road…". The phrase "incommode the public use" in Section 7901 means "to unreasonably subject the public use to inconvenience or discomfort; to unreasonably trouble, annoy, molest, embarrass, inconvenience; to unreasonably hinder, impede, or obstruct the public use."[3] A recent state appellate court decision in *T-Mobile West LLC v. City and County of San Francisco* has confirmed that cities may apply discretionary review processes to requests under Section 7901 for placement of permanent wireless installations in the public rights-of-way by telephone companies, and those requests may be decided based on a consideration of aesthetics, as well as other factors.[4] "Incommode" is "broad enough 'to be inclusive of concerns related to the appearance of a facility'", and therefore, Section 7901 does not prohibit local governments from conditioning the approval of a particular permanent siting permit on aesthetic concerns.[5] Thus, there is precedent for not only requiring discretionary review and conditioning approvals, but also even denying applications for facilities in particular locations in the public rights-of-way under Section 7901, for example due to aesthetic concerns regarding pole heights or underground

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[1] *County of Los Angeles v. General Tel. Co.* (1967) 249 Cal.App.2d 903, 904.
[2] *City of Huntington Beach v. Public Utilities Com.* (2013) 214 Cal.App.4th 566, 587-8 ; *GTE Mobilenet of Cal. Ltd. V. City of San Francisco* (N.D. Cal. 2006) 440 F.Supp.2d 1097, 1103 .
[3] *T-Mobile West LLC v. City and County of San Francisco* (2016) 3 Cal.App.5th 334 at 355, quoting *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates* (9th Cir. 2009) 583 F.3d 716, 723.
[4] *T-Mobile West LLC*, 3 Cal.App. at 356-358.
[5] *Id.* at 344.

districts.[6] However, we note that the *T-Mobile* case is currently under appeal to the California Supreme Court.

In addition to Section 7901, Pub. Util. Code Section 2902 also protects a local government's right "to supervise and regulate the relationship between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets…within the limits of the municipal corporation." This provision is a further basis for a local government to restrict the location of proposed facilities due to public safety reasons or other local concerns or even deny applications in appropriate circumstances.

Further, a local government has the right under Section 7901.1 "to exercise reasonable control as to the time, place, and manner in which roads…are accessed [by telephone companies]."[7] The "time, place and manner" of temporary access refers to "when, where, and how telecommunications service providers gain entry to the public rights-of-way."[8] This includes a requirement for obtaining encroachment permits.

3) Federal and State Limitations On Local Discretionary Authority.

Local authority to regulate and even deny requests for placement of wireless facilities in public rights-of-way is also not unfettered. There are numerous provisions of state and federal law that limit the scope of local authority.

A. Local Denials Cannot Defeat Section 7901 Franchise Rights

As noted earlier, telephone companies have state franchise rights but those rights are limited in that installations cannot "incommode" the public. Where franchise rights and local regulatory authority balance out, particularly for wireless facilities which cannot be placed underground, is somewhat uncertain. For example, if a city were to ban or deny all wireless applications in the public rights-of-way, no matter where located or how they were designed, a telephone company may argue that its Section 7901 franchise rights have unlawfully been denied.

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[6] *Id. See also, NextG Networks of Cal., Inc. v. City of Newport Beach*, 2011 U.S. Dist. LEXIS 17013 (C.D. Cal. Feb. 18, 2011); *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 724 (9th Cir. Cal. 2009); *Western Union Tel. Co. v. Visalia* (1906) 149 Cal. 744.

[7] See *Huntington Beach,* at 569, fn. omitted.

[8] *T-Mobile West LLC,* 3 Cal.App. at 358, *quoting Palos Verdes Estates,* 583 F.3d at 725.

B. CPUC Action May Preempt Local Authority

The CPUC may have authority to invoke the statewide interest in telecommunications services to take action to preempt a local ordinances for particular telecommunications projects.[9] In that instance, there may be no scope for denial of related local permit applications.

C. Denials Cannot Be Based on Concerns About RF Emissions

A local decision to deny a wireless facility application cannot be based on concerns about RF emissions if the applicant has demonstrated that its facilities will comply with FCC standards.[10] The FCC in 1997 issued OET Bulletin 65, which provides technical guidelines for evaluating compliance with the FCC RF safety requirements.[11]

D. Local Governments Cannot "Prohibit" Personal Wireless Services

Under 47 U.S.C. Section 332 ("Section 332"), a local government cannot regulate the "placement, construction, and modification of personal wireless service facilities" where such regulation has the effect of actually or effectively prohibiting service. In the Ninth Circuit, a regulation, or application denial, prohibits or has the effect of prohibiting the provision of personal wireless services within the meaning of federal law if it: (1) bans the provision of personal wireless services outright or (2) has actually effectively prohibited the provision of such services.[12] Showing the mere potential for prohibition is not sufficient to overcome local discretionary review power.[13]

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[9] *City of Huntington Beach*, 214 Cal.App.4th at 592, citing Newpath Networks LLC v. City of Irvine (C.D.Cal., Dec. 23, 2009, No. SACV 06-550-JVS (ANx)) 2009 U.S.Dist. Lexis 126178 [finding no preemption by PUC under circumstances of the case, but stating that PUC can specifically preempt local regulations through §§ 762 & 1001 powers].

[10] 47 U.S.C. Section 332(c)(7)(B)(iv); see *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation,* Report and Order, ET Docket No. 93-62, FCC 96-326, para. 166 (F.C.C. 1996), https://transition.fcc.gov/Bureaus/Engineering_Technology/Orders/1996/fcc96326.pdf. On August 1, 1996, the FCC adopted the National Council on Radiation Protection and Measurements' recommended Maximum Permissible Exposure limits for field strength and power density for those transmitters operating at frequencies of 300 kHz to 100 GHz. The FCC adopted the specific absorption rate (SAR) limits for devices operating within close proximity to the body as specified within the ANSI/IEEE C95.1-1992 guidelines. *Id.*

[11] https://www.fcc.gov/general/oet-bulletins-line#65.

[12] *Sprint Telephony PCS, L.P. v. Cnty. Of San Diego* (9th Cir. 2008) 543 F.3d 571, at 579 ("*Sprint II*"); *Metro PCS*, 400 F.3d at 730-31.

[13] *Sprint II*, 543 F.3d at 579. Examples of regulations that "effectively prohibit the provision of service" include, e.g., an ordinance requiring that all facilities be underground when, to operate, wireless facilities must be above ground, or, an ordinance mandating that no wireless facilities be located within one mile of a road, where, because of the number and location of roads, the rule constituted an effective prohibition. *Id.* at 580.

A denial can "prohibit" personal wireless services if it prevents a wireless services provider from closing a "significant gap" in its own service coverage.[14] There is no bright-line rule regarding when a coverage gap is "significant," and the determination is based on a fact-specific analysis.[15] To support the contention that a site is necessary to close a coverage gap, the provider must in the application process demonstrate that the requisite gap exists, and that the manner in which it proposes to fill the significant gap in service is the "least intrusive" means.[16] To do so the provider must be able to show that it has made a good faith effort to identify and evaluate less intrusive alternatives, such as consideration of less sensitive sites, alternative system designs, alternative tower designs, placement of antennae on existing structures, etc.[17] Although a municipality is not compelled to accept the provider's representations, in order to reject them, it must show that there are some potentially available and technologically feasible alternatives, and the provider must have an opportunity to dispute the availability and feasibility of the alternatives favored by the locality.[18]

Further, 47 US.C. Section 253(a) provides that: "No 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." Generally speaking, this provision applies to wireline facilities. Under Section 253(b), local governments may "impose, on a competitively neutral basis…requirements necessary to preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications service," and Section 253(c) protects state and local authority to "manage the public rights of way" and "require fair and reasonable compensation from telecommunications providers" for public right-of-way use on a competitively neutral and nondiscriminatory basis. As a matter of statutory interpretation, subsections (b) and (c) are "safe harbors" to subsection (a), allowing certain regulations that would otherwise "prohibit" deployment.[19] In the Ninth Circuit, a plaintiff suing a municipality under allegations that it has "prohibited" service under either Section 253 or 332 "must show actual or effective prohibition, rather than the mere possibility of prohibition."[20]

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[14] *Metro PCS*, 400 F.3d at 731.
[15] *Id.*; *City of Palos Verdes Estates*, 583 F.3d at 727.
[16] *Metro PCS*, 400 F.3d at 734.
[17] *City of Anacortes*, 572 F.3d at 996, fn. 10.
[18] *Id.* at 999.
[19] *BellSouth Telecomns., Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1188 (11th Cir. 2001) (quoting *In re Missouri Municipal League*, 16 FCC Rcd. 1157, 2001 (2001) ("it is clear that subsections (b) and (c) are exceptions to (a), rather than separate limitations on state and local authority in addition to those in (a)."); *In re Minnesota*, 14 FCC Rcd. 21,697, 21,730 (1999); *In re American Communications Servs., Inc.*, 14 FCC Rcd. 21,579, 21,587-88 (1999); *In re Cal. Payphone Ass'n*, 12 FCC Rcd. 14,191, 14,203 (1997).
[20] *Sprint II*, 543 F.3d at 578; *id.* at 579 ("Because Sprint's suit hinges on the statutory text that we interpreted above—"prohibit or have the effect of prohibiting"—we need not decide whether Sprint's suit falls under § 253 or § 332. As we now hold, the legal standard is the same under either.").

E. Local Decisions Must Be Timely or Face "Deemed Granted" Remedies

Local authorities must comply with federal law that constrains application review timelines. The FCC has established three "shot clocks" for local government action on certain wireless facilities applications. Section 332 provides that local authorities must make a final decision regarding whether to approve or deny an application within a "reasonable period of time" after the request is filed, taking into account the nature and scope of the request.[21] In 2009, the FCC established "presumptively reasonable periods" for local action on a wireless communications facility siting application—typically referred to as the "shot clocks."[22] The shot clocks only applies to wireless facilities used for the provision of "personal wireless services" – that includes only "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services." Applications that propose a "collocation" must be approved or denied within 90 days; applications for all other facilities must be approved or denied within 150 days.

In California, Gov. Code Section 65964.1 provides that if a local government fails to act within the time required by either of the above two FCC shot clocks, the applicant may be in a position to pursue a "deemed approval" of its application by providing notice to the local government, and the local government would have to go to court within 30 days to try to challenge the deemed grant assertion.

A third wireless shot clock was established by the FCC in an order interpreting a law enacted by Congress in 2012 and codified as 47 U.S.C. section 1455(a). Commonly known as "Section 6409(a)," this law provides in part that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." Further, the term "eligible facilities request" refers to "any request for modification of an existing wireless tower or base station that involves…collocation of new transmission equipment;…removal of transmission equipment; or…replacement of transmission equipment." The FCC has provided guidance as to the interpretation of this statute in a Report and Order released October 21, 2014.[23] There, the FCC laid out the criteria for determining whether or not an application qualified for treatment as an "eligible facilities request" that *must* be approved, and established a 60-day shot clock for approval of these applications.

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[21] 47 U.S.C. Section 332(c)(7)(B)(ii).

[22] See *In re Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(b)*, 25 FCC Rcd 11157 (F.C.C. 2010); *In re Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, 24 FCC Rcd 13994 (F.C.C. 2009).

[23] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-238, et al., 30 FCC Rcd. 31 (WTB 2014), https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-153A1.pdf .

F. Other Federal and State Restrictions on Local Authority.

Other federal and state restrictions on local government authority over wireless facility applications include the following:

- Denials must be "in writing" and based on "substantial evidence" contained in a written record.[24]
- A local government may not "unreasonably discriminate" in its siting decisions with respect to providers of "functionally equivalent services."[25]
- No escrow deposit can be required for removal of a wireless telecommunications facility or any component thereof. (a performance bond or other surety or another form of security can be required so long as the amount of the bond security is rationally related to the cost of removal considering information provided by the permit applicant regarding the cost of removal).[26]
- The duration of any permit granted for a wireless telecommunications facility cannot be less than 10 years unless there are public safety reasons or substantial land use reasons. However, a build-out period for the site can be established.[27]
- No requirement can be imposed that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the reviewing authority.[28]
- If a monopole is approved as a "wireless telecommunications collocation facility" in accordance with the requirements of Gov. Code Section 65850.6, then future collocation facilities applications must only go through a ministerial process for approval.

4) Summary and Conclusions.

This memorandum broadly summarizes applicable law as it stands today, but the climate is one of regulatory uncertainty. State and federal law creates a framework under which local governments may review wireless facilities in public rights-of-way. While there is discretion to deny applications on a variety of grounds, in certain instances, local authority is entirely preempted by federal or state law. The leading case upholding local government's power of

[24] 47 U.S.C. Section 332(c)(7)(B)(iii).
[25] 47 U.S.C. Section 332(c)(7)(B)(i)(I).
[26] Gov. Code § 65964(a).
[27] Gov. Code § 65964(b).
[28] Gov. Code § 65964(c).

discretionary review, including a consideration of aesthetics of installations by telephone companies in the public rights-of-way, *T-Mobile West LLC v. City and County of San Francisco*, is under appeal to the California Supreme Court. Further, the FCC is considering several pending proceedings in which it may issue new rules. In addition, both the particulars of a local government's code, as well as the facts and circumstances surrounding a particular wireless facility application, will come to bear on any local decision to deny. As noted at the outset, we did not review the City of Sebastopol's code or any individual applications. The code may contain further requirements and restrictions regarding the city's authority over public rights-of-way not addressed in this memo. In addition, the facts and circumstances related to individual wireless applications would also impact this analysis as applied to individual applications.

If you have any questions, let me know.

Sincerely,

Gail A. Karish
BEST BEST & KRIEGER LLP

EXHIBIT 2

L. Mark Bissonnette

From: Amanda Nolan [anolan@cityofslt.us]
Sent: Thursday, June 21, 2018 2:20 PM
To: L. Mark Bissonnette
Subject: RE: Letter to SLT Planning Commission Regarding Small Cell Towers

Good afternoon,

Please see the below reply from the project planner

AMANDA NOLAN
Administrative Clerk
Development Services Department
City of South Lake Tahoe
1052 Tata Ln
South Lake Tahoe, CA 96150
530.542.7427
anolan@cityofslt.us

From: Courtney Weiche
Sent: Thursday, June 21, 2018 1:21 PM
To: Amanda Nolan
Subject: Public Comment Response

Thank you for your comment. A copy will be provided to the Commission at today's Hearing. In light of the issues you have raised, staff will be recommending the Special Use Permit application, adjacent to 969 Bigler Avenue, be continued to further investigate your concerns. Any future consideration for a proposal at this site will require the same noticing. If you have any further questions please feel free to contact myself.

Courtney Weiche
City of South Lake Tahoe
Planning Division
1052 Tata Lane
South Lake Tahoe, CA 96150
530-542-6022
www.cityofslt.us

From: L. Mark Bissonnette [mailto:lmb@bissonnettelaw.com]
Sent: Thursday, June 21, 2018 2:17 PM
To: Amanda Nolan
Subject: Letter to SLT Planning Commission Regarding Small Cell Towers

Dear Ms. Nolan,

Please see attached letter.

Kindest regards,

L. Mark Bissonnette
LAW OFFICES OF L. MARK BISSONNETTE
2520 Lake Tahoe Blvd., Suite 2
South Lake Tahoe, CA 96150
(530) 544-5092
(530) 544-5095 Fax

EXHIBIT 3

Larry & Donna Reid
3764 Woodbine Road
South Lake Tahoe, CA 96150

South Lake Tahoe City Counsel
1902 Airport Road
South Lake Tahoe, CA 96150

Re: Verizon Application #18058, 3764 Woodbine Road

Dear South Lake Tahoe City Council,

We are Larry and Donna Reid. We are long time South Lake Tahoe residents and have resided at 3764 Woodbine Road for over twenty 25 years. Larry, is eighty four years old is a retired airplane mechanic for United Airlines. Donna, is eighty one years old, and is also retired. Donna is active in the local community through the Tahoe Art League. We have recently become aware of the City Planning Commissions approval of a cell phone facility no the telephone pole that is directly in front of our house 27 feet from our Livingroom window and only 25 feet from our foundation. We object to the installation of this cell phone facility on three grounds: 1) the proposed facility is ugly and not in keeping with the aesthetics of the area; 2) the proposed facility will adversely affect our property value and constitutes an unlawful taking and, 3) approval of the propose tower will place an unjust and disproportional burden on us as the proximity of the proposed project to our residence will more negatively effect our property value than any other persons. If we need better cell phone coverage, it does not have to be done so specifically at our expense. We ask the City Counsel to please stop this injustice from being done to us and deny the application for this cellular facility.

Sincerely,

Larry & Donna Reid

Donna Reid

EXHIBIT 4

Law Offices of

L. MARK BISSONNETTE

L. MARK BISSONNETTE J.D., M.A.
lmb@bissonnettelaw.com

SWISS CHALET VILLAGE
2520 LAKE TAHOE BLVD. SUITE 2
SOUTH LAKE TAHOE, CALIFORNIA 96150
TELEPHONE (530) 544-5092
FACSIMILE (530) 544-5095

City of South Lake Tahoe Planning Commission
Attn: Amanda Nolan
1052 Tata Lane
South Lake Tahoe, California 96150

Via E-mail (anolan@cityofslt.us)

August 9, 2018

Re: Verison Special Use Permit Application to Allow Installation of Small Cell Towers

Dear Commission Members,

My name is L. Mark Bissonnette, I am writing the owner of 3740 Woodbine Road, South Lake Tahoe, California. One of the proposed towers is to be placed approximately 150 feet from my property at 3674 Woodbine Road. I opposes the installation of the proposed tower and towers for all of the following three (3) reasons:

1. Aesthetics

The placement of the proposed tower on Woodbine Road is not in keeping with the aesthetics of this neighborhood. This is a meadow area with conservancy lots adjacent to the proposed location and the proposed tower would detract from the natural beauty of the area.

2. Loss of Property Value

Multiple studies, including but not limited to the Bond Hue - Proximate Impact Study of 2004, the Bond and Wang - Transaction Based Market Study and the Bond and Beamish - Opinion Study, have found that the close proximity of cell towers lowers property values by 15% to 20%. Licensed Real Estate Broker Lawrence Oxman has stated "As a licensed real estate broker with over 30 years of experience, it is my professional opinion that the installation of a Cellular Tower can significantly reduce the value of neighboring residential properties." See Campanelli & Associates, P.C. website AntiCellTowerLawyers.com, questions and answers "Does the installation of a Cell Tower reduce the values of nearby properties?"

The Fifth Amendment to the United States Constitution declares in pertinent part that "No person shall be held to answer for a capital crime...unless on a presentment or indictment of a Grand Jury... Nor shall private property be taken for public use, without just compensation" (emphasis provided). Devaluing my property value without just compensation for the diminished property value amounts to an unconstitutional taking in violation of the Fifth Amendment.

3. There is no Need for the Proposed Tower or Towers

I question the need for the instant tower. I am unsure what is the purpose of the tower. I urge the Committee to require Verison to prove that there is a need for this tower in this location.

Conclusion

The city has the power to deny the instant application. Please see April 24, 2018 letter to EMF Network from Best, Best & Kreiger, attached hereto as Exhibit 1. For all of the reasons stated herein, I request that the city deny the instant application of Verison to install the proposed cell tower on Woodbine Road, South Lake Tahoe, California.

Kindest Regards,

L. Mark Bissonnette

Enclosure(s)(as stated)

EXHIBIT 5

Law Offices of

L. MARK BISSONNETTE

L. MARK BISSONNETTE J.D., M.A.
lmb@bissonnettelaw.com

SWISS CHALET VILLAGE
2520 LAKE TAHOE BLVD. SUITE 2
SOUTH LAKE TAHOE, CALIFORNIA 96150
TELEPHONE (530) 544-5092
FACSIMILE (530) 544-5095

City of South Lake Tahoe Planning Commission
South Lake Tahoe, California 96150

Hand Delivered

August 27, 2018

NOTICE OF APPEAL

Re: Verison Special Use Permit #18-058 small cell tower at 3674 Woodbine Road

Dear Commission Members,

My name is L. Mark Bissonnette, I hereby appeal the approval of the above referenced special use permit. The basis for the appeal is as follows:

1. Aesthetics

The placement of the proposed tower on Woodbine Road is not in keeping with the aesthetics of this neighborhood. This is a meadow area with conservancy lots adjacent to the proposed location and the proposed tower would detract from the natural beauty of the area. Moreover, the proposed tower is within cite of untold thousands of visitors to Tahoe who travel on Pioneer Trail just above the proposed installation site.

2. Loss of Property Value

Multiple studies, including but not limited to the Bond Hue - Proximate Impact Study of 2004, the Bond and Wang - Transaction Based Market Study and the Bond and Beamish - Opinion Study, have found that the close proximity of cell towers lowers property values by 15% to 20%. Licensed Real Estate Broker Lawrence Oxman has stated "As a licensed real estate broker with over 30 years of experience, it is my professional opinion that the installation of a Cellular Tower can significantly reduce the value of neighboring residential properties." See Campanelli & Associates, P.C. website AntiCellTowerLawyers.com, questions and answers "Does the installation of a Cell Tower reduce the values of nearby properties?"

The Fifth Amendment to the United States Constitution declares in pertinent part that "No person shall be held to answer for a capital crime...unless on a presentment or indictment of a Grand Jury... Nor shall private property be taken for public use, without just compensation" (emphasis provided). Devaluing my property value without just compensation for the diminished property value amounts to an unconstitutional taking in violation of the Fifth Amendment.

3. There is No Need for the Proposed Tower

I question the need for the instant tower. I am unsure what is the purpose of the tower. Verison should be required to prove that there is a need for this tower in this location.

4. The Approval of the Tower Violates the Principle of Equal Treatment Under the Law

The commission has arbitrarily discriminated against appellant by treating different special use applications differently, thereby denying appellant of equal treatment under the law as guaranteed by the Fourteenth Amendment to the United States Constitution. For example the Commission has not approved a permit for a tower at the intersection of Ski Run and Needle Peak Road due to its visible to visitors traveling to Heavenly Ski Resort but the Commission has approved the instant permit despite its being visible to all visitors to Lake Tahoe who travel on Pioneer Trail. Moreover, the Commission has not subject all applications to the same approval process choosing not to approve or deny all applications in open meeting but influencing applicant to withdraw or change applications, thereby denying appellant of his due process rights as guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution.

Conclusion

The city should reverse its approval of Special Use Permit #18-058 for a small cell tower at 3674 Woodbine Road and deny said Special Use Permit #18-058.

Kindest Regards,

L. Mark Bissonnette

EXHIBIT 6

L. Mark Bissonnette

From: John Hitchcock [jhitchcock@cityofslt.us]
Sent: Tuesday, November 27, 2018 3:52 PM
To: L. Mark Bissonnette
Subject: Re: Special Use Permit #18-058 Appeal

Yes, it scheduled for the Dec. 11 Council agenda.

Regards,

John Hitchcock

Sent from my iPhone

On Nov 27, 2018, at 3:25 PM, L. Mark Bissonnette <lmb@bissonnettelaw.com> wrote:

> Dear Mr. Hitchcock,
>
> Please advise as to whether this matter was continued to December 11, 2018.
>
> Kindest regards,
>
> L. Mark Bissonnette

From: John Hitchcock [mailto:jhitchcock@cityofslt.us]
Sent: Friday, November 09, 2018 9:23 AM
To: L. Mark Bissonnette
Subject: Re: Special Use Permit #18-058 Appeal

Please forward your information to Sue Blackenship, Assistant City Clerk. Her email is sblankenship@cityofslt.us.

Regards,

John Hitchcock

Sent from my iPhone

On Nov 9, 2018, at 8:38 AM, L. Mark Bissonnette <lmb@bissonnettelaw.com> wrote:

> Dear Mr. Hitchcock,
>
> Thank you for your assistance in this matter. I would like to submit written material to the Council prior to the hearing on this matter. Please advise me of the appropriate manner for submitting such information.
> Kindest regards,
>
> L. Mark Bissonnette
> LAW OFFICES OF L. MARK BISSONNETTE
> 2520 Lake Tahoe Blvd., Suite 2

South Lake Tahoe, CA 96150
(530) 544-5092
(530) 544-5095 Fax

From: John Hitchcock [mailto:jhitchcock@cityofslt.us]
Sent: Thursday, November 01, 2018 8:05 AM
To: L. Mark Bissonnette
Subject: RE: Special Use Permit #18-058 Appeal

Mr. Bissonnette,

Staff will be requesting a continuance of this item to the December 11, 2018 meeting. Can you send me a quick email also requesting the continuance?

Regards,

John Hitchcock

From: L. Mark Bissonnette [mailto:lmb@bissonnettelaw.com]
Sent: Wednesday, October 31, 2018 4:41 PM
To: John Hitchcock
Subject: RE: Special Use Permit #18-058 Appeal

Dear Mr. Hitchcock,

The purpose of this e-mail is to follow-up on our telephone conference of last week wherein I requested to continue the hearing on this matter to a subsequent Council meeting. Please advise if this will be possible. If there are some other steps I should take to obtain such a continuance please advise me of those steps.

Kindest regards,

L. Mark Bissonnette
LAW OFFICES OF L. MARK BISSONNETTE
2520 Lake Tahoe Blvd., Suite 2
South Lake Tahoe, CA 96150
(530) 544-5092
(530) 544-5095 Fax

From: John Hitchcock [mailto:jhitchcock@cityofslt.us]
Sent: Tuesday, October 23, 2018 4:22 PM
To: L. Mark Bissonnette
Subject: Re: Special Use Permit #18-058 Appeal

Mr. Bissonnette,

The 3 pm start time are for Planning Commission meetings. City Council begins at 9 am. I'll ask the City Clerk to put the appeal towards the end of the agenda.

Sincerely,

John Hitchcock

Sent from my iPhone

On Oct 23, 2018, at 4:18 PM, L. Mark Bissonnette <lmb@bissonnettelaw.com> wrote:

> Dear Mr. Hitchcock,
>
> My son has a scheduled oral surgery in Reno, NV at 9:00 AM, on November 13, 2018. In the past I believe these hearings have been at 3:00 PM. I would appreciate that time frame in order that I may attend to family matters and the hearing. Please advise if that will be possible.
>
> Kindest regards,
>
> L. Mark Bissonnette
>
> ---
>
> **From:** John Hitchcock [mailto:jhitchcock@cityofslt.us]
> **Sent:** Tuesday, October 23, 2018 3:19 PM
> **To:** L. Mark Bissonnette
> **Cc:** Sue Blankenship
> **Subject:** RE: Special Use Permit #18-058 Appeal
>
> Good afternoon Mr. Bissonnette,
>
> Attached, please find a City Council Notice of Appeal Hearing for Project File #18-058, Special Use Permit and Design Review Permit application to allow a wireless telecommunications facility, and related equipment, on an existing wood utility pole within the public right of way, adjacent to 3674 Woodbine Road (SC SLT 073, Latitude: N 38°56'14.70" & Longitude: W 119°57'18.41" NAD83).

The appeal hearing is scheduled for November 13, 2018. The meeting starts at 9 am. Once the City Clerk publishes the agenda I'll have a better idea whether the appeal will be considered in the morning or the afternoon.

Please do not hesitate to call or email me if you have any questions.

Sincerely,

John Hitchcock
Planning Manager

From: L. Mark Bissonnette [mailto:lmb@bissonnettelaw.com]
Sent: Tuesday, October 2, 2018 11:40 AM
To: John Hitchcock
Subject: RE: Special Use Permit #18-058 Appeal

Dear Mr. Hitchcock,

November 13, 2018 works better for me. Also, Ms. Weiche had indicated that I could expect a written explanation of the Commission's decision on this matter. I would appreciate receiving such an explanation.

Kindest regards,

L. Mark Bissonnette
LAW OFFICES OF L. MARK BISSONNETTE
2520 Lake Tahoe Blvd., Suite 2
South Lake Tahoe, CA 96150
(530) 544-5092
(530) 544-5095 Fax

From: John Hitchcock [mailto:jhitchcock@cityofslt.us]
Sent: Tuesday, October 02, 2018 10:44 AM
To: L. Mark Bissonnette
Subject: Special Use Permit #18-058 Appeal

Good morning Mr. Bissonnette,

Can you confirm that you can attend the October 16, 2018 City Council meeting? If not the next City Council meeting will be held on November 13th.

Sincerely,

John Hitchcock
Planning Manager

From: Courtney Weiche
Sent: Wednesday, August 22, 2018 5:20 PM
To: 'L. Mark Bissonnette'
Cc: 'Bazzano, Denise S.'; John Hitchcock; Nira Doherty
Subject: Follow Up on Special Use Permit #18-058

Good Afternoon Mr. Bissonnette,

Thank you for your comments regarding the Planning Commission's public hearing to consider approval for Special Use Permit #18-058; proposal for a small cell facility to be located adjacent to 3674 Woodbine Road: Link to Agenda Packet . On August 9, 2018, the Planning Commission did approve the Special Use Permit. Your comments were considered and included as part of the record. In response to our earlier conversation, I would like to provide you the link to South Lake Tahoe City Code Section 2.35 Administrative Appeals: Click Here. Section 2.35 governs the procedures relating to appeals from Planning Commission decisions to City Council. The 15 day appeal period for this application ends on August 27th.

Regarding your request for documents related to property owner notification of all approved micro cell facilities, I would direct you to the City's webpage describing how to request copies of public records http://www.cityofslt.us/90/Public-Records-Requests. If you have further questions, please feel free to contact myself or John Hitchcock, City Planning Manager at 530-542-7472 or jhitchcock@cityofslt.us.

Courtney Weiche
City of South Lake Tahoe
Planning Division
1052 Tata Lane
South Lake Tahoe, CA 96150
530-542-6022
www.cityofslt.us

EXHIBIT 7

Jay & Rachel Becker
1931 Marta Drive
Pleasant Hill, CA 94523

South Lake Tahoe City Counsel
1902 Airport Road
South Lake Tahoe, CA 96150

Re: Verizon Application #18058, 3764 Woodbine Road

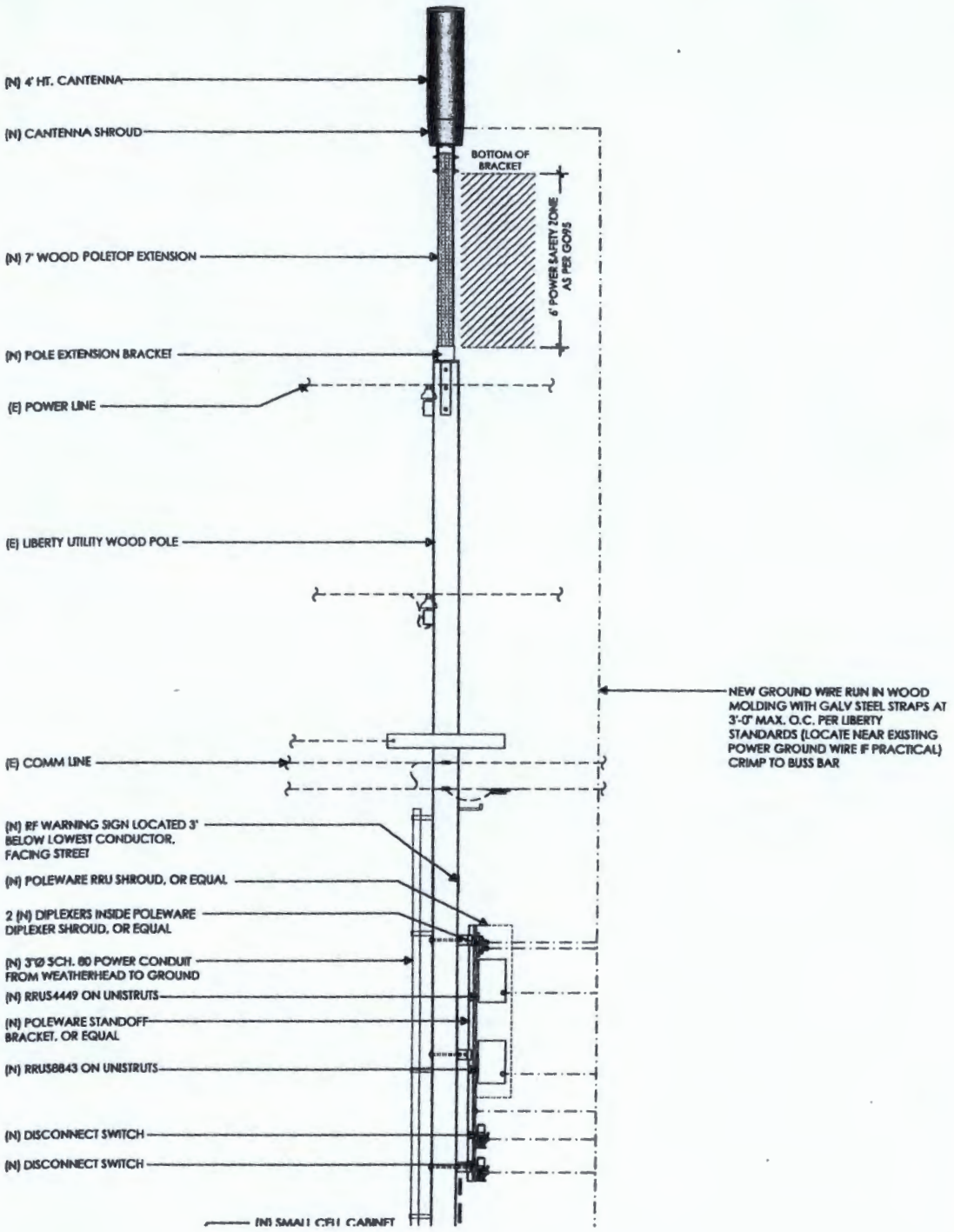
Dear South Lake Tahoe City Council,

We are Jay & Rachel Becker. We own the certain real property commonly known as 3775 Woodbine Road, South Lake Tahoe, California. We have recently become aware of the City Planning Commissions approval of a cell phone facility at 3764 Woodbine Road, which is across the street from our residence on Woodbine. We object to the installation of this cell phone facility on three grounds: 1) the proposed facility is ugly and not in keeping with the aesthetics of the area; 2) the proposed facility will adversely affect our property value and constitutes an unlawful taking and, 3) approval of the propose tower will place an unjust and disproportional burden on us as the proximity of the proposed project to our residence will more negatively effect our property value than any other persons. If we need better cell phone coverage, it does not have to be done at our expense. We ask the City Counsel to please stop this injustice from being done to us and deny the application for this cellular facility.

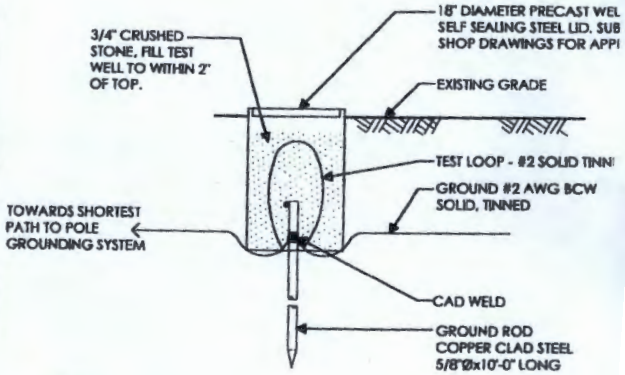
Sincerely,

Jay & Rachel Becker

EXHIBIT 8



EXOTHERMIC WELD CONNECTION



NOTE:
TOTAL OF TWO WELL PER SITE - VERIFY LOCATION WITH PROJECT MANAGER.

GROUND TEST WELL

EXHIBIT 9

"Impact of Communication Towers and Equipment on Nearby Property Values"

Prepared by

Burgoyne Appraisal Company

Executed March 7, 2017

Exhibit Presented as evidence in Comments of the Smart Communities Citing Coalition on the Mobilitie Petition for Declaratory Ruling on Streamlining of Small Cell Infrastructure By Improving Wireless Facilities Siting Policies.

WT Docket No. 16-421.

For the full comments of the Smart Communities Siting Coalition please see

https://ecfsapi.fcc.gov/file/1030998488645/COMMENTS_SMART%20COMMUNITIES%20SITING%20COALITION.pdf

BURGOYNE
APPRAISAL COMPANY

DAVID E. BURGOYNE ASA SR/WA
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MICHIGAN, INDIANA, NORTH AND SOUTH CAROLINA
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RICHARD J. ANTIO
GOKHAN ANDI

Burgoyne Appraisal Company has investigated the impact of communication towers and communication equipment on nearby property values, including residential properties, commercial properties, and properties in historically designated areas. Our report on such impacts is based upon our more than thirty years of professional appraisal experience and drawing upon literature search of other articles and appraisal papers.

Please note that due to the nature of the report our investigation is general in nature and is not specifically related to any given location.

IMPACT OF COMMUNICATION TOWERS AND EQUIPMENT

ON NEARBY PROPERTY VALUES

I. Executive Summary

- The Burgoyne Appraisal Company ("Burgoyne"), drawing upon its thirty-two (32) years of experience as a Real Estate Appraiser specializing in detrimental conditions, takings, adverse impacts and right-of-way, finds that:

- As a general matter, assuming two generally comparable areas, aesthetics will have the most significant impact on property values. If, for example, I assume two houses of equal age, size and condition in the same residential area, the relative value of one home will be most affected by the aesthetics in the immediate vicinity of that home.

- As a general matter, visible utility structures do adversely affect property values. This is reflected in the fact that, as a general matter property values are higher in areas where there are no aboveground utility facilities (other than lighting) than in areas where utilities are aboveground.

- The impact will generally be related to the size of the facility, the characteristics of the facility, its location (including proximity), and visibility. That is to say, I would expect a tower or other structure that is larger than existing structures to have a greater impact on property values than a structure that is similarly sized and in keeping with other structures. I would expect that installation of equipment that is widely visible to have a more significant impact than equipment that is not (so, for example, a transformer at the top of a pole would have less of an impact than a box of similar size that is within a normal site line, or on the

ground). The characteristics of the facility are also important. An unorganized conglomeration of various boxes and wires would have a greater impact than a streamlined and contained single cabinet.

The literature does not tell us the impact of various iterations of DAS designs on residential properties; there is more information about towers of the sort imposed by Mobilitie. Nonetheless, based on my experience, it would be unwise to assume that the impact of additional ground cabinets, or of structures of the sort that entities would be entitled to install under the FCC's Section 6409 rules is zero or so near to zero. Just looking at the literature on property values in underground v. non-underground areas, there are reasons for concern that justify maintenance of significant latitude at the local level over siting and compensation.

While it is certainly recognized that DAS systems and Cellular antennas are an important part of our nation's infrastructure, and that it is inevitable that new antennas will need to be installed as we move into the future, it is important for municipalities (and property owners, in the case of right-of-way easements) to retain significant control over the size, location, scope, expansion, and characterization of the installations. This is because adverse impacts from negative externalities vary considerably with the size, location, scope, expansion, and characterization of the installations.

Hidden, smaller, and neatly mounted "small cells," will have an impact, but that impact will be lesser than other alternatives. Likewise, there needs to be control over future growth of installed facilities. It is my opinion that the Commission needs to analyze those impacts in detail before considering additional rules. It is also my opinion that municipalities need to retain some regulatory control over these installations in order to minimize impacts and protect the health, welfare, and safety of their residents in the same way that other regulations and the exercise of reasonable police powers do.

II. Qualifications

David E. Burgoyne, ASA, SR/WA, is a native of Ann Arbor, Michigan and attended Greenhills School in Ann Arbor. He graduated in 1981 from Colgate University in Hamilton, New York with a Bachelor of Arts Degree in Liberal Arts with a concentration in Physics-Astronomy. He also served as a graduate instructor at the University of Wyoming as a Doctoral Candidate in Astrophysics.

Mr. Burgoyne is an independent fee appraiser currently licensed as a Certified General Real Estate Appraiser by the States of Michigan, Indiana, North and South Carolina. Mr. Burgoyne is a Senior Member of the American Society of Appraisers holding the ASA Designation for Real Property. Mr. Burgoyne is currently re-accredited as an ASA through June 10, 2017. He is also a senior member holding the SR/WA designation and is a Past Chapter President of the International Right of Way Association. Mr. Burgoyne is currently re-certified as an SR/WA through June 15, 2018.

Mr. Burgoyne is an AQB certified USPAP instructor #44603 (expiring March 31, 2018) and is also a CLIMB Certified Instructor of right-of-way appraisal and other courses for IRWA, including courses on the appraisal of partial takings, easement valuation, appraisal review, ethics and standards, USPAP, adult education, and the valuation of contaminated properties. In 2015, Mr. Burgoyne was awarded the 2014 W. Howard Armstrong International Instructor of the Year Award by the International Right of Way Association.

Mr. Burgoyne has qualified as an expert witness in the United States Court of Claims, the United States District Courts for the Eastern and Western Districts of Michigan; the Michigan Circuit Courts of Allegan, Barry, Cass, Eaton, Genesee, Grand Traverse, Huron, Ingham, Jackson, Kent, Lapeer, Leelanau, Lenawee, Macomb, Montmorency, Muskegon, Oakland, Ottawa, Tuscola, Washtenaw, Wayne, and Wexford Counties; Hamilton and Marion Counties in Indiana, The Michigan Public Service Commission, and The Michigan Tax Tribunal. He has also been appointed as an independent appraiser by the U. S. District Court, Eastern District of Michigan.

FORMAL EDUCATION

Greenhills School - Ann Arbor, Michigan (1976)

Colgate University - Hamilton, New York: BA in Liberal Arts - concentrating in Physics-Astronomy (1981)

Courses included Architecture, Economics, Mathematics, Statistics and Economic Geography.

University of Wyoming - Laramie, Wyoming: Ph.D. candidate in Astrophysics. (1981-1982)

III. Introduction

Our analysis and the literature we reviewed is focused on single family residential units, and does not take into account any location-specific analysis. For example, we do not consider whether there are special impacts of an installation on particular historic properties, or commercial properties. Burgoyne understands that this report will be contained in a filing by Smart Communities Siting Coalition in response to the Federal Communications Wireless Telecommunications Bureau request for public input[1] including, but not limited to suggestions offered by Mobilitie in its Petition for Declaratory Ruling.[2]

Burgoyne provides the following analysis following a literature scan on appraiser research on communications towers impact and on Mr. Burgoyne's more than 32 years in business.

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[1] Public Notice, *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421 (released Dec. 22, 2016)("Public Notice").

[2] *See* Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (filed Nov. 15, 2016)(Mobilitie Petition).

IV. Background

The FCC Notice focuses on small cells and DAS systems. It is our understanding that the placement of these systems could involve:

- Erection of a new tower or monopole 100 to 120 feet in height in public right-of-way. This in fact appears to be proposed by applicant Mobilitie.

- Placement of new base station equipment on existing utility poles in the rights of way, which may involve an initial extension of anywhere between 3-15 feet to that pole for placement of an antenna at the top of the pole, and addition of equipment cabinets, plus additional utility infrastructure (meters and disconnect boxes). It is our understanding that the wireless industry is seeking authority in several states to place equipment cabinets as large as 28 cubic feet on the poles, which could then be expanded significantly as of right under the FCC's Section 6409 rules. In addition, there may be ground cabinets for back-up power or for equipment that might otherwise be placed on the poles of up to 50 cubic feet. Under Section 6409, the placement of these facilities could result in up to three additional ground cabinets being added in the right of way in front of a residential unit.

- Erection of new utility poles, sometimes exceeding 40 feet in height, in the public right-of-way for placement of the above referenced equipment

- Please note that public road rights-of-way are often owned in fee by the municipality but are also not uncommonly easements over private property owned in fee by a private citizen or company. This can be common in areas served by the Government Survey System (outside of the original 13 colonies as well as portions of Ohio, Kentucky and Tennessee). As a result, in these cases, neither the municipality, nor the utility, have complete authority to dictate what is permitted within the right of way.[3]

- From the point of view of sound appraisal practice, it is necessary to presume and consider full utilization of rights granted by virtue of a particular authorization. That is, one must consider the impact of a 120 foot pole if a 120 foot is allowed as of right (even if only a 100 foot pole is installed in the instant case at this time). Likewise, in assessing whether the impact of the authorization of a DAS in a residential neighborhood, one would consider the additions and expansions that would be permitted as of right under the Commission's Section 6409 rules.

---

[3] "... "[a]ctivities by the owner of the dominant estate [easement holder] that go beyond the reasonable exercise of the use granted by the easement may constitute a trespass to the owner of the servient estate." Schadewald v Brule, 225 Mich App 26, 40; 570 NW2d 788 (1997)... p.2

....we decline to infringe on the private property rights of a landowner through unsupported implication, particularly when there is a complete absence of any legislative intent in the LDA to give a public utility free reign to build on an easement as it pleases. ... AT&T provided no legal basis, facts, or documentary evidence to establish that the city or county has the legal authority to decide on the nature, size, or scope of equipment a utility may install in a utility easement or whether the city or county actually considers said questions when they issue a building permit...p.3. 289 Mich App 70 (2010)

Thus, unless a provider can agree otherwise, if a DAS cabinet is not subject to concealment elements, it appears an appurtenance up to 6 feet could be attached horizontally to the same pole, and that appurtenance would only be subject to the limits that might be imposed by the owner of the pole.

- In this case, I have attempted to consider the impacts of various "small cell" and "DAS" installations by Mobilitie and others, both in light of, and without considering the impact of the FCC Section 6409 rules. I have also looked at state legislation and considered possible impacts if facilities of the permitted size were installed.

V. Areas of Concern

The following areas of concern have been considered and investigated. The most significant are discussed in the following sections.

- Market resistance (or stigma) in general.
- Aesthetics.
- Underground Utilities.
- Changes in the highest and best use of properties.
- Wireless infrastructure and service providers' history of paying for the right to place towers on private property.
- Perceived safety risks from potential failure of a structure.
- Right of way easements

A. Market Resistance

Market resistance (or stigma) in general is quantified in scholarly articles and peer-reviewed journal publications as it relates to the impact of communication towers and equipment on nearby property values. Hedonic studies and surveys generally address market resistance to the placement of new towers or equipment without regard to the cause of said market resistance.

There has been significant research regarding the question of the impact on residential property values from construction of cell phone towers in neighborhoods. The results of these studies vary but they commonly indicate that there is a significant impact. While the magnitude of the impact varies, the studies uniformly indicate that there is a significant impact on residential property values from installation of cell phone towers. Not surprisingly, the studies that show little or no impact are universally commissioned by and paid for by the telecommunications industry.

Most studies have dealt with more conventional, larger towers and not DAS installations. These studies would nevertheless be directly applicable to the proposed 100 to 120 foot monopole referenced on the previous page. As to "small cell" and DAS

installations, it should be noted that "small cell" references the size of the coverage area and not necessarily the size of the equipment. Furthermore, small cell and DAS installations will generally be located much closer to nearby properties and they will be installed in hundreds of locations ubiquitously. The FCC Public Notice dated December 22, 2106 states "Although the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – *i.e.,* in many more location – to function effectively (Page 1).

In addition, to numbers that exceed the location of larger towers by orders of magnitude, small cell and DAS installations are often directly within the line of site (midway up a 40 foot pole, for example) and even include ground cabinets, which are particularly egregious. Even if the individual impact of small cells is lesser than for larger towers (which is by no means a given), this may be offset or partially offset by the location, closer proximity and the numbers that exceed tower installations by orders of magnitude. Some of the studies are briefly discussed below.

Sandy Bond and Ko-Kang Wang performed a 2005 study in New Zealand where they support a 15% diminution in residential property value within 300 Meters of communication antennas. Their Summer 2005 publication in the Appraisal Journal (as published by the Appraisal Institute, Summer 2005, Pages 256 – 277) summarizes this study. They indicate survey results ranging from 10% to over 20% diminution, which is supported by multiple regression analysis (a hedonic study) indicating 21% diminution in residential property values.

Sandy Bond also performed and presented a study from December 2003 in Florida that supported just over 2% diminution.

Stephen L. Locke and Glenn C. Blomquist published "The Cost of Convenience: Estimating the Impact of Communication Antennas on Residential Property Values" in *Land Economics in* February 2106. This is the most current study. They conclude that a visible antenna up to 1,000 feet away (vs 4,500 feet as the control) results in a market diminution of 1.82% for residential homes ($3,342 per home in the market studied). While this seems like a relatively small percentage, they correlate this to an Aggregate impact of a reduction of market value of Ten Million Dollars when applied to all of the homes around a single tower in their study area.

While there have not been any scientific studies of the impact on property values from small cell and DAS deployments, there are many anecdotal examples indicating both a negative market perception and adverse impacts on property values. (Of course, negative market perception is precisely what causes an adverse impact on property values). These include published articles and petitions from Real Estate Professionals ranging from Manhattan to Burbank indicating negative impact, reduced property value, and market resistance. From an August 10, 2010 article in the New York Times...

"TINA CANARIS, an associate broker and a co-owner of RE/MAX Hearthstone in Merrick, has a $999,000 listing for a high ranch on the water in South Merrick, one of a handful of homes on the block on the market. But her listing has what some consider a disadvantage: a cell antenna poking from the top of a telephone pole at the front of the 65-by-100-foot lot. "Even houses where there are transformers in front" make "people shy away," Ms. Canaris said. "If they have the opportunity to buy another home, they

do." She said cell antennas and towers near homes affected property values, adding, "You can see a buyer's dismay over the sight of a cell tower near a home just by their expression, even if they don't say anything."

B. Aesthetics and Underground Utilities

In 32 years of experience as a Real Estate Appraiser specializing in detrimental conditions, takings, adverse impacts and right-of-way, I have found that aesthetics (or rather the adverse impact on aesthetics) of externalities routinely has the largest impact on property values. As a result, proximity to towers of all types (cell, wind turbine, and electric transmission) has an impact on property values. The same is true with all sorts of surface installations such as pump stations and communication equipment boxes. This would apply to new small cell and DAS equipment, although again, one would expect that the less intrusive the facility, the less significant the impact. Small cell and DAS installations can be unsightly, bulky, inconsistent, and even noisy. A few demonstrative photos are included on Page 10.

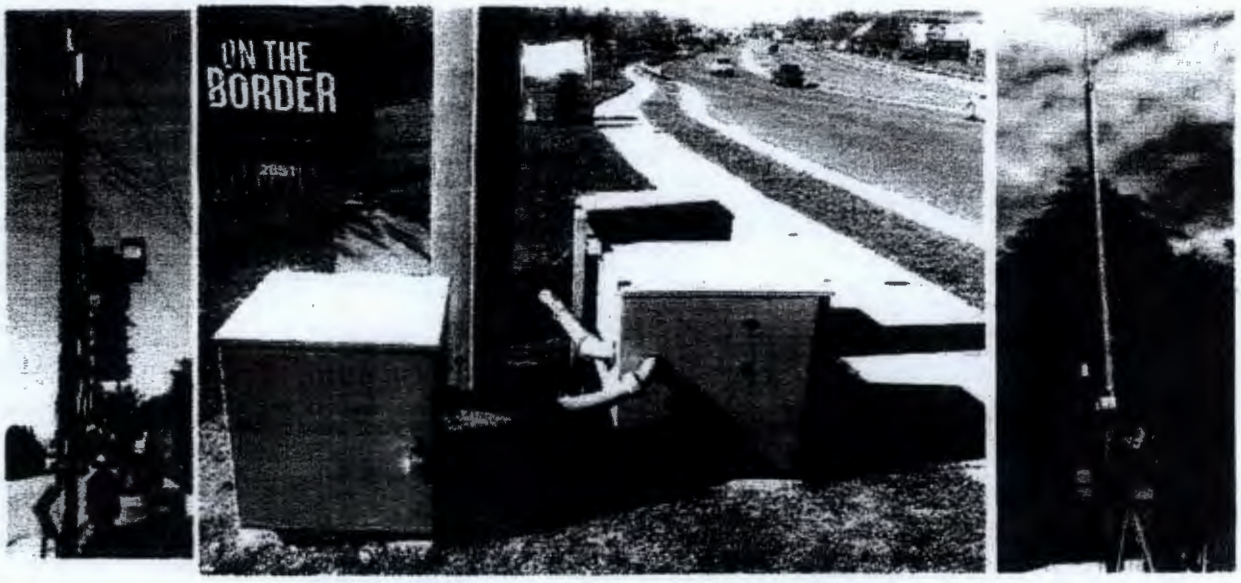
While it is certainly recognized that DAS systems and Cellular antennas are an important part of our nation's infrastructure, and that it is inevitable that new antennas will need to be installed as we move into the future, it is important for municipalities (and property owners, in the case of right-of-way easements) to retain some control over the size, location, scope, expansion, and characterization of the installations. This is because adverse impacts from negative externalities vary considerably with the size, location, scope, expansion, and characterization of the installations.

All things being otherwise equal…

- Larger facilities have a greater impact than smaller facilities.
- Facilities on the ground and located closer to common sight lines have a greater impact than those that are less visible.
- Underground facilities have a lesser impact than above-ground facilities in most instances (although there are cases where the structures required for vaulting may be as intrusive as the above-ground facilities).
- Streamlined and contained facilities have a lesser impact than unorganized conglomerations of diverse elements.
- Impact tends to lessen over time as a facility remains unchanged so that changes and expansions have an additional negative impact.
- Facilities that are designed to be in balance with existing utility structures have a lesser impact than less harmonious installations. For example, an above ground facility will have a greater impact in an area with existing underground utilities. And a new pole that is three times higher than existing poles will have a greater impact than a new pole that is the same height as existing poles. Please reference the proposed Tx 120 (120 foot) Mobilitie tower shown below (particularly as compared to the existing wood utility poles).

Likewise, please compare this set of examples of unorganized and uncontrolled conglomerations of diverse elements with more streamlined installations.

DET02:2350248.1



It is not an accident that the articles, cases, and publications of the wireless industry often address circumstances that involve *hiding* wireless facilities, or show pictures of physically small "small cells" neatly mounted. Hidden, smaller, and neatly mounted "small cells," will have an impact, but that impact will be lesser than other alternatives. Likewise, there needs to be control over future growth of installed facilities.

It is my opinion that the Federal Communications Commission should analyze the potential impact of small cell and DAS deployments in detail before considering additional rules. It is important for the Commission to have information as to which installations may have *De Minimis* impacts and which may have significant impacts before establishing national rules.

It is also my opinion that municipalities need to retain significant regulatory control over these installations in public rights-of-way in order to minimize impacts and protect the health, welfare, and safety of their residences in the same way that other regulations and the reasonable exercise of police powers have over the last hundred years.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 7, 2017.

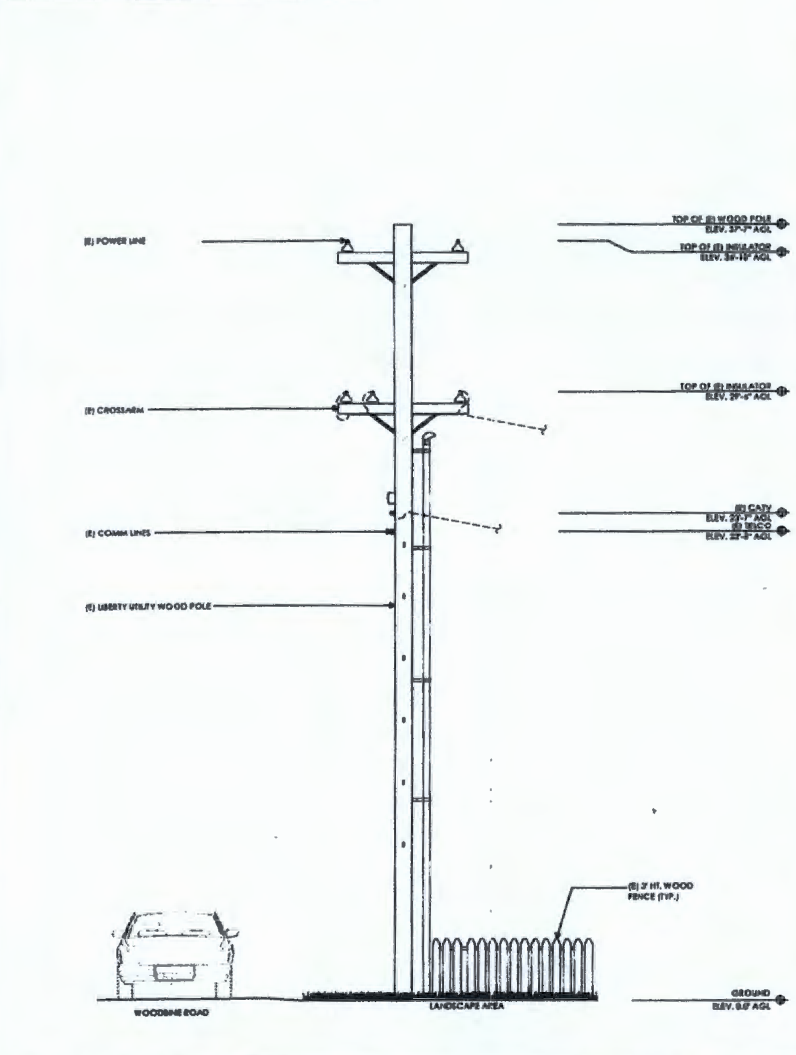
David E. Burgoyne, ASA, SR/WA
Certified General Real Estate Appraiser
(Indiana, Michigan, North and South Carolina)

DET02:2350248.1

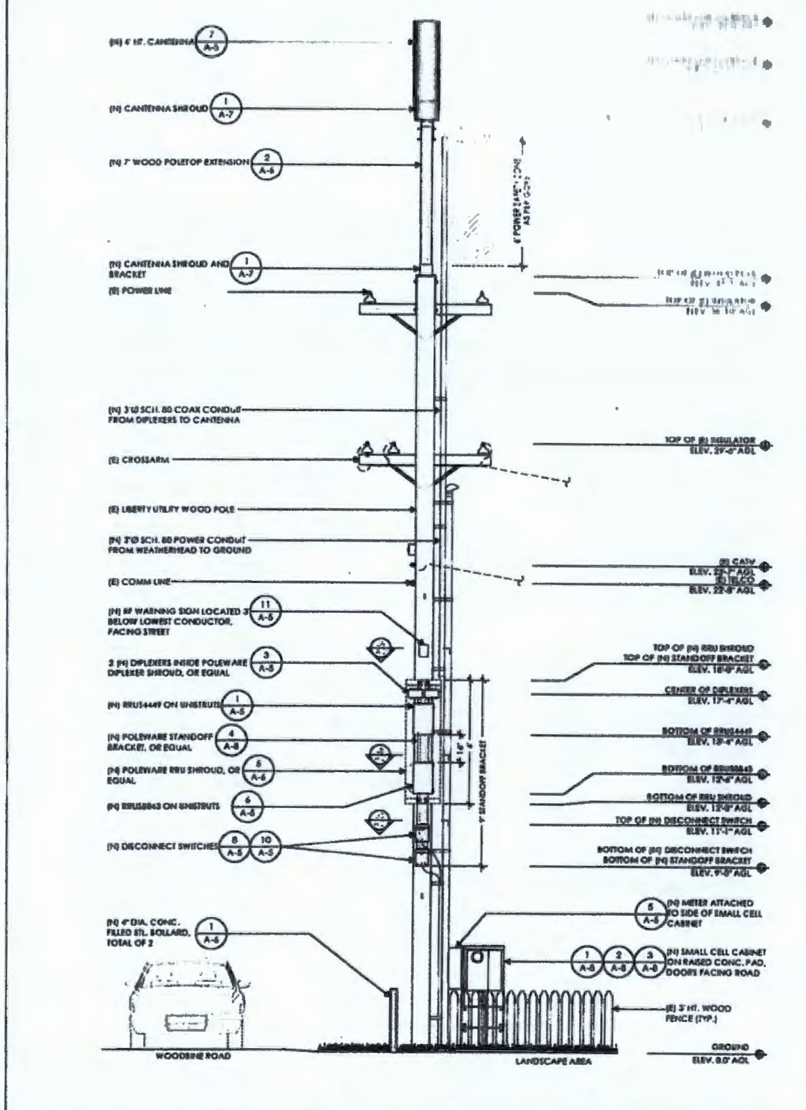
EXHIBIT 10

MAKE READY NOTES

1. ALL LIBERTY SITE SPECIFIC MAKE READY IMPROVEMENTS TO BE COMPLETED PRIOR TO VERIZON INSTALLATION.
2. ALL RISER LOCATIONS SHOWN ON PLANS TO BE VERIFIED BY LIBERTY PRIOR TO INSTALLATION.
3. ANY CONFLICTS WITH PROPER RISER INSTALLATION SHALL BE BROUGHT TO THE ATTENTION OF VZW PRIOR TO CONSTRUCTION.



WEST ELEVATION - EXISTING | SCALE 3/8" = 1'-0" | 1



WEST ELEVATION - PROPOSED | SCALE 3/8" = 1'-0" | 2

verizon

Verizon Wireless

MM

EPIC

100% Construction Drawing

SC SOUTH LAKE TAHOE 073
PROW WOODBINE ROAD
(NEAR) 3764 WOODBINE ROAD
SOUTH LAKE TAHOE, CA 96150
PSL #481974

Site Name:

Professional Seal:

It is a violation of law for any person, unless they are acting under the direction of a licensed Professional Architect/Engineer, to alter this document.

Rev.	Date	Description
01	03/30/18	Const. Dwgs 90%
02	04/05/18	Const. Dwgs 100%

Project No.:

Date: 04/05/18 Job No.:

Scale: AS SHOWN CAD File:

Designed By: JG Checked: RB

ELEVATIONS

Sheet Title:

A.3

Sheet No.:

EXHIBIT 11

24 JUL

Property values, desirability and cell towers.

EDITOR NEWS

CELL TOWERS, DESIRABILITY, ESTATE AGENTS, HOME BUYERS, HOME SELLERS, INVESTMENT, MOBILE TOWERS, PROPERTIES, PROPERTY MARKET

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ESTABLISHING A DIALOGUE
ON RISKS FROM
ELECTROMAGNETIC FIELDS

Property values, Desirability and Cell Phone Towers.

Usually a home is one, if not the biggest investment people will make in their lifetime. It is so important to protect this investment very carefully. Who would want to live right next to a cell phone tower or under one? And imagine what it's like for people who purchase or build their dream home, only to later have an unwanted cell tower installed in their neigbourhood? Or worse, next door?

Mike Abrahamse, from Rawson properties: "while it was hard to pinpoint the impact of cell towers had on property values, a buyer would rather buy a property where no such structure is visible, and while the jury might still be out on whether cell tower radiation was a health threat, the perception that it might be, was, in itself, enough to deter buyers."
https://www.tabletalk.co.za/news/cell-towers-planned-for-two-churches-11000194

The *general public*, now better educated and better informed on technology-related issues than ever before, may be the single

greatest determinant to the success or failure of a proposed technology project. This is especially true in democratic and highly industrialized societies. Public sentiment often makes itself heard through highly vocal *associations* or other special interest groups that usually have good access to the media.

› October 2016

› September 2016

A study on "The impact of cell phone towers on house prices: evidence from Brisbane, Australia"

Abstract

The growing public pressure against the spread of cell phone towers in urban areas has created a need to understand their impact on adjacent house prices. A few existing studies are, however, controversial in their methodology and inconclusive in their results. Therefore, our study on the effect of cell phone towers on house prices is designed to avoid these deficiencies. Property transaction data collected from two suburbs within the Brisbane City Council were analysed adopting the spatial hedonic property valuation model. The estimated models were statistically significant and were largely in line with theoretical expectations. The results revealed that proximity to cell phone towers negatively affects house values, decreasing as the distance from the

decreasing as the distance from the tower increases. A suitable compensation programme for nearby property owners is, therefore, suggested as being an appropriate policy response.https://link.springer.com/article/10.1007/s10018-017-0190-9

A survey conducted in June 2014 by the National Institute for Science, Law and Public Policy (NISLAPP) in Washington, D.C., *"Neighborhood Cell Towers & Antennas—Do They Impact a Property's Desirability?"*, shows home buyers and renters are less interested in properties located near cell towers and antennas, as well as in properties where a cell tower or group of antennas are placed on top of, or attached to a building.

Of the 1,000 survey respondents:

- 94% said a nearby cell tower or group of antennas would negatively impact interest in a property or the price they would be willing to pay for it.
- 94% said a cell tower or group of antennas on top of, or attached to, an apartment building would negatively impact interest in the apartment building or the price they would be willing to pay for it.
- 95% said they would opt to buy or rent a property that had zero

antennas on the building over a comparable property that had several antennas on the building.

- 79% said under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or antennas.
- 88% said that under no circumstances would they ever purchase or rent a property with a cell tower or group of antennas on top of, or attached to, the apartment building.
- 89% said they were generally concerned about the increasing number of cell towers and antennas in their residential neighborhood.

Concern was expressed in the comments section by respondents about potential property valuation declines near antennas and cell towers. While the NISLAPP survey did not evaluate property price declines, a study on this subject by Sandy Bond, PhD of the New Zealand Property Institute, and Past President of the Pacific Rim Real Estate Society (PRRES), *The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods*, was published in *The Appraisal Journal* of the Appraisal Institute in 2006. The Appraisal Institute is the largest global

professional organization for appraisers with 91 chapters. The study indicated that homebuyers would pay from 10%–19% less to over 20% less for a property if it were in close proximity to a cell phone base station. The 'opinion' survey results were then confirmed by a market sales analysis. The results of the sales analysis showed prices of properties were reduced by around 21% after a cell phone base station was built in the neighborhood.

The Appraisal Journal study added, "*Even buyers who believe that there are no adverse health effects from cell phone base stations, knowing that other potential buyers might think the reverse, will probably seek a price discount for a property located near a cell phone base station.*"

James S. Turner, Esq., Chairman of the National Institute for Science, Law & Public Policy and Partner, Swankin & Turner in Washington, D.C., says, "*The recent NISLAPP survey suggests there is now a high level of awareness about potential risks from cell towers and antennas. In addition, the survey indicates respondents believe they have personally experienced cognitive (57%) or physical (63%) effects from radiofrequency radiation from towers, antennas or other radiating devices, such as cell phones, routers, smart meters and*

other consumer electronics. Almost 90% are concerned about the increasing number of cell towers and antennas generally."

The Appraisal Institute,the largest global professional organization for appraisers says, '*A cell tower should, in fact, cause a decrease in home value.*'

The disclosure duties of an estate agent: "As a realtor, I must disclose to potential buyers where there are any cell towers nearby. I have found in my own experience that there is a very real stigma and cellular facilities near homes are perceived as undesirable." "The California Association of Realtors maintains that 'sellers and licensees must disclose material facts that affect the value or desirability of the property,' including 'known conditions outside of and surrounding' it. This includes 'nuisances' and zoning changes that allow for commercial uses."

https://sites.google.com/site/nocelltowerinourneighborhood/home/decreased-real-estate-value

Estate agents are regulated by a strict code of conduct. They have an equal duty to both buyer and seller of a property.

That duty includes informing a buyer of any negative aspects to the proposed sale including the proximity of radiation emitting structures and equipment such as high voltage powerlines, transformer stations, cell phone antennae and cell phone base stations .

PROPOSED GUIDELINES FOR ESTATE AGENTS AND PROPERTY OWNERS IN SOUTH AFRICA REGARDING CELLULAR ANTENNAE

Generally speaking the average high radiation area is within 300m radius of cell phone antennae.

Radiation Pattern of a Cell Tower Antenna

Propagation of "main beam" from antenna mounted on a tower or roof top

People living within 50 to 300 metre radius are in the high radiation zone (dark blue) and are more prone to all effects of electromagnetic radiation

Therefore it is reasonable to suggest that public perception dictates that values of properties of a similar size and type within 300m of a cell phone tower will be lower than those outside of that radius [this is confirmed in the above documents and references below from international sources in which it appears to be a graduated scale of devaluation determined mainly by distance]

The National Buildings Act gives the owner of a property the right to <u>not</u> have his/her property devalued by the acts or omissions of others. This is confirmed in a judgement by Judge Yekiso in 2006 in which he interprets the ACT as follows –

approval in respect thereof. However, if the building plans do comply with the requirements of the National Buildings Act and *any other applicable law*, that does not signify the end of the process. The local authority is still required to consider the contextual effect the erection of the proposed building will have on the adjoining or neighbouring properties when erected, and that is, whether the area in which such building is to be erected will probably or in fact be disfigured thereby; whether such building will probably or in fact be unsightly or objectionable or whether it will probably or in fact derogate from the value of adjoining or neighbouring properties. In the final analysis what I am, therefore, required to

Advanced Notice

Therefore if the City Manager [by way of the Community via the local Municipality] is informed in advance that the surrounding property owners would find a structure "Unsightly or objectionable or may derogate from the value of surrounding properties" then the decision is no longer his/hers to make. This especially if supported by professional valuation projections to which this part of the Act applies, the interpretation being supported by the Yekiso Judgement decision AND can be further verified by an assessment by an estate agent working in or familiar with the area concerned.

This brings us back to estate agents' responsibilities and property values. Internationally it has been determined that properties surrounding cell phone antennae are devalued by between 10-20%. It is therefore reasonable to suggest that in terms of the radiation pattern drawing above that the 10% devaluation should apply in the

region of 300m and the 20% to properties close to or within sight of the tower and these should be the guidelines used by property professionals based on known buyers perceptions / concerns.

Property valuation can only and must only be determined by independent local property professionals who have knowledge of the area concerned, not by government agencies and should be determined by the desirability of a property on a willing seller/willing buyer basis. It is the duty [at the very minimum in the moral sense] of the authorities to compensate any property owner who, based on the estate agents valuation, has been financially disadvantaged by a decision to approve a structure considered to be –

"Unsightly OR objectionable OR may derogate from the values of surrounding properties."

In recent years, legal claims over damage to property value because of EMF and RF emissions have met with some success. Plaintiffs in these lawsuits usually allege that the value of their property has been reduced because of its proximity to devices that emit RF or EMF. The theory behind this argument is that, since the general public believes that exposure to RF or EMF emissions is dangerous, the property is less valuable

the property is less valuable regardless of whether or not fears over the dangers are founded.

In 2003 seven householders in Swindon in the UK won sums of between £10,000 and £20,000 each from their local council after it mistakenly allowed a mast to be erected in the middle of their residential street, causing their properties to crash in value. https://www.theguardian.com/money/2003/may/25/houseprices.uknews

United States Court of Appeals for the 11th Circuit upheld a denial of a Cell Tower application based upon testimony of residents and a real estate broker, that the Tower would reduce the values of property which were in close proximity to the Tower. http://www.anticelltowerlawyers.com/anti_cell_lawyer_1_018.htm

Aesthetics:

The poor attempt by cell phone companies to disguise our mobile infrastructure as something natural is almost insulting. Photographer Dillon Marsh has documented some of the most egregious examples https://www.fastcompany.com/1681923/12-beautiful-photos-of-ridiculous-cell-phone-towers-disguised-as-trees

The funny thing about camouflage is that, if done poorly, it actually *draws attention* to what one is trying to hide.

References

25 Cell Phone Towers Disguised to Look Like Something Else

a. "The effect of distance to cell phone towers on house prices" by Sandy Bond, Appraisal Journal, Fall 2007, see attached. Source, Appraisal Journal http://www.prres.net/papers/Bond_Squires_Using_GIS_to_Measure.pdf

b. Sandy Bond, Ph.D., Ko-Kang Wang, "The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods," The Appraisal Journal, Summer 2005

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

Survey by the National Institute for Science, Law and Public Policy Indicates Cell Towers and Antennas Negatively Impact Interest in Real Estate Properties http://www.businesswire.com/news/home/20140703005726/en/Survey-National-Institute-Science-Law-Public-Policy

WHO handbook on *Establishing a Dialogue on Risks from Electromagnetic Fields* http://www.who.int/peh-emf/publications/risk_hand/en/

Decreased Real Estate Value https://sites.google.com/site/nocelltowerinourneighborhood/home/decreased-real-estate-value

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EXHIBIT 12

The Cost of Convenience: Estimating the Impact of Communication Antennas on Residential Property Values

Stephen L. Locke and Glenn C. Blomquist

ABSTRACT. *This paper applies hedonic and quasi-experimental methods to measure the disamenity value of communication antennas. We take advantage of a rich dataset of residential housing sales from central Kentucky that contains an extensive set of structural housing characteristics and precise location information. This allows us to overcome endogeneity issues caused by unobservable characteristics correlated with antenna location. The best estimate of the impact is that a property with a visible antenna located 1,000 feet away sells for 1.82% ($3,342) less than a similar property located 4,500 feet away. The aggregate impact is $10.0 million for properties located within 1,000 feet.* (JEL Q51, R21)

I. INTRODUCTION

Accompanying the desirable growth of cell phone and wireless Internet usage has been the not-so-desirable appearance of communication antennas. Cell phone usage worldwide, and especially in the United States, has grown fast. According to the Cellular Telephone Industries Association, in December of 1998 there were 69.2 million wireless subscribers. Fifteen years later, in December 2013, that number was 335.7 million.[1] To put this in perspective, the U.S. Census Bureau estimated the population to be 270.2 million in 1998 and 316.5 million in 2013. The United States has gone from 25.6% of the population having a wireless subscription in 1998 to more than one subscription per person in 2013. With the advances in mobile technology it is possible to do nearly every task that was once only possible on a desktop computer on a mobile device that fits in the palm of a hand. Like any other good or service, the added convenience of mobile technology has costs.

Economists have long been interested in estimating impacts of disamenities in urban areas. For examples see Mieszkowski and Saper (1978) on airport noise, Kohlhase (1991) on toxic waste sites, and Kiel and Williams (2007) on Superfund sites. An area that has received little attention is the disamenity associated with cell phone towers and communication antennas. As the demand for cell phones and mobile technology increases, it is followed by an increase in demand for reliable coverage, which in turn leads to an increase in the number of antennas. In the mid-1990s there was a sharp increase in the number of antenna structures to accompany the mobile phone technology that was becoming more prevalent. Choosing the location for an antenna involves conflicting incentives for residents. Land owners may want to have an antenna located on their property because it provides an additional source of income and better cell phone reception for residents in its vicinity.[2] However, these structures are visually unpleasant. Residents tend to object to having them located nearby because of the visual disamenity they create or because of adverse health effects they may associate with

[1] Visit http://www.ctia.org/ for more information about the growth of cellular subscriptions in the United States.

[2] Airwave Management, LLC, provides some insight into the amount of income these cell phone towers can generate for a land owner. According to their website, payments can reach as high as $60,000 per year (www.cell-tower-leases.com/Cell-Tower-Lease-Rates.html).

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the antennas.[3] Towers are often highly visible, and potential siting can induce objections from residents in the receiving neighborhood. Municipalities have used delays in the approval process in an attempt to appease protestors and possibly prevent siting.[4] Unlike some disamenities such as airport noise, information about the visual disamenity is available.[5]

Figure 1 illustrates when an externality is likely to exist, and the situation when a nearby antenna could provide a net benefit to nearby residents. In the upper photo, an antenna is located on a property adjacent to a residential subdivision. Regardless of any compensation, the antenna structure is likely to be considered a disamenity by nearby residents.[6] The lower photo shows an antenna that could provide a net benefit to nearby residents. The structure located at point A is hidden behind a thicket of trees and far enough away from the nearest neighbor (point C) so as not to impose any cost. If the owner of the property at point B owns the land where the antenna is located, the owner is receiving payments from the antenna's owner, while nearby residents receive the benefit of improved coverage. In this situation the potential disamenity is mitigated by trees. Having an antenna located nearby should not decrease property values; it probably increases property values where the antennas are located.

The purpose of this paper is to apply hedonic and quasi-experimental methods to measure any disamenity caused by communication antennas, controlling for endogenous antenna location and changes in unobserved housing and neighborhood characteristics. Spatial fixed effects are used to control for any time-invariant unobservables correlated with proximity to an antenna. The repeat sales method and quasi-experimental techniques are used to address time-invariant and time-varying unobserved characteristics that could affect the equilibrium hedonic price function. Quasi-experimental techniques are becoming increasingly common in the environmental economics literature and are used instead of instrumental variables when there is not random assignment into treatment and control groups (Greenstone and Gayer 2009).

II. RECENT WORK ON VALUING AMENITIES/DISAMENITIES

Omitted variables are a concern when estimating hedonic price functions. Following Rosen (1974), the hedonic price function of property i can be represented by $P_i = P(S_i,N_i,Q_i)$, where P_i is the price of property i. S_i, N_i, and Q_i are the structural, neighborhood, and environmental characteristics, respectively. Consumers have utility $U = U(X,S_i,N_i,Q_i)$, which is maximized subject to the budget constraint $P_i + X = M$, where X is a Hicksian composite commodity with price equal to \$1, and M is income. This gives the following first-order condition:

$$\left(\frac{\partial U}{\partial Q_i}\right) \Big/ \left(\frac{\partial U}{\partial X}\right) = \frac{\partial P_i}{\partial Q}. \qquad [1]$$

The marginal rate of substitution between the environmental characteristic and the composite good X is equal to the slope of the hedonic price function (market clearing locus) in the environmental characteristic Q_i. Once the hedonic price function P_i has been estimated,

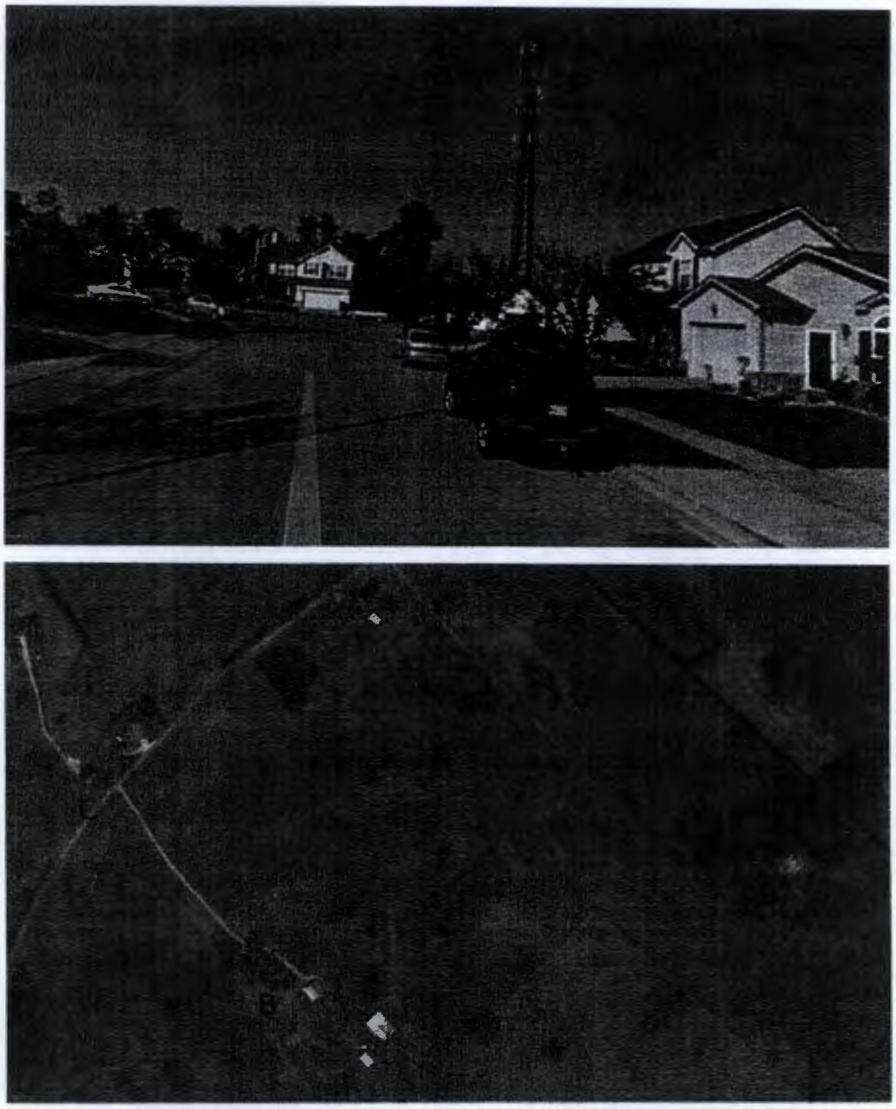
[3] Despite concerns about negative health effects from the radio waves emitted from mobile devices, a comprehensive study of the health effects related to cell phone and cell phone antennas by Röösli et al. (2010) finds that there is no conclusive evidence that using cell phones or living near cell phone towers harms human health. Nevertheless, the perception of such risks may be sufficient to alter behavior.

[4] See City of Arlington, Texas *v.* Federal Communications Commission, 133 S. Ct. 1863.

[5] A recent article by Alcantara (2012), with AOL Real Estate, highlights the concerns residents have about having a communication antenna located near their property. As reported, a group of residents in Mesa, Arizona, is protesting the siting of a cell phone tower in the group's neighborhood. One resident is quoted as saying, "Apart from the tower being so tall, we all feel that property values will go down if they build it so close. Most people I know wouldn't want to buy a house near a cell phone tower."

[6] If the structure was constructed *before* the residents moved in or built a house in this subdivision, no uncompensated externality exists. They have preferences such that the structure does not affect them, or they were compensated for the visual aspect of the structure though a lower purchase price. However, if the structure was constructed *after* the residents moved in or built in this subdivision, they are affected by the sight of the structure and a lower sales price if they do decide to sell the property. The land owner where the structure is located is receiving payments from the antenna's owner, while all affected nearby residents are not being compensated.

FIGURE 1
Houses Likely Affected *(upper photo)* and Houses Likely Not Affected *(lower photo)* by Nearby Antenna
Source: Google Earth 2014, 2015.



the partial derivative of P_i with respect to the environmental characteristic Q_i is equal to the implicit price of the environmental characteristic. However, when there are characteristics unavoidably omitted from P_i that are correlated with Q_i, the estimate of willingness to pay for Q_i will be biased. Endogeneity in the location of the antenna structures is the greatest concern in estimation. Holding all else constant, owners of the antenna structures are going to locate them in areas where it costs the least. If not taken into account, this incentive will lead to an overestimate of the negative impact these structures have on property values. Other issues that have to be addressed in estimation concern buyers' sorting (Cameron and McConnaha 2006; Bayer, Keohane, and Timmins 2009; Bieri, Kuminoff, and Pope 2012; Kuminoff, Smith, and Timmins 2013) and the stability of the hedonic price function (Kuminoff and Pope 2014; Haninger, Ma, and Timmins 2014). To address the sort-

ing concern, spatial fixed effects are included to control for unobservables that may influence both buyers' location choices and the location of communication antennas. The most recent panel data techniques that address both time-invariant and time-varying unobservables are used to account for the possibility of a changing hedonic price function after the construction of a nearby antenna.

While Rosen (1974) shows that the partial derivative of P_i with respect to Q_i provides an estimate of the willingness to pay for a small change in the environmental good Q_i, the appropriate functional form for the hedonic price function is uncertain. Cropper, Deck, and McConnell (1988) use simulations to determine how different functional forms perform when there are omitted variables in the hedonic price regression. They find that flexible functional forms perform well when all of the attributes are included, but recommend using a more parsimonious functional form when there are omitted variables. Since Cropper, Deck, and McConnell's (1988) work, sample sizes have increased dramatically, advances in geographical information systems allow researchers to control for previously unobserved spatial characteristics, unobserved structural housing characteristics are much less of a concern, and quasi-experimental techniques have become more prevalent. Kuminoff, Parmeter, and Pope (2010) find that Cropper, Deck, and McConnell's (1988) recommendations should be reconsidered. When using cross-section data, Kuminoff, Parmeter, and Pope (2010) find that the quadratic Box-Cox functional form with spatial fixed effects performs best. However, for practical purposes, including spatial fixed effects significantly reduces bias regardless of the functional form used.[7]

Kuminoff, Parmeter, and Pope (2010) also show that exploiting variation in an environmental amenity for properties that sell multiple times can reduce bias in willingness-to-pay estimates compared to pooled ordinary least squares with fixed effects. If the spatially correlated unobservables are time invariant, their effect will be purged from the model when first differences are taken. However, if the unobservables are not time invariant, the estimates from a repeat sales model will be biased. Repeat sales models have recently been used to estimate the impact of changing cancer risks (Gayer, Hamilton, and Viscusi 2002), the siting of wind farms (Heintzelman and Tuttle 2012), Superfund site remediation (Mastromonaco 2014), and reductions in three of the U.S. Environmental Protection Agency's criteria air pollutants (Bajari et al. 2012).

While there are advantages of using the repeat sales method and quasi-experimental techniques to eliminate the bias caused by time-invariant unobservables, these methods estimate a capitalization rate that is not necessarily equal to the marginal willingness to pay. It is possible that the presence of, or change in, an environmental (dis)amenity can cause the hedonic price function to change over time. Kuminoff and Pope (2014) and Haninger, Ma, and Timmins (2014) show that as long as the hedonic price function is constant over time, there should be no difference between the capitalization rate and the marginal willingness to pay. Given that the communication antennas are expected to have relatively small impacts on property values, it is unlikely that the construction of a new antenna structure will lead to a change in the hedonic price function. But, this issue will be addressed.

Kuminoff, Parmeter, and Pope (2010) find that a generalized difference-in-differences estimator with interactions between the time-dummy variables and housing characteristics to allow the shape of the price function to change over time performs best when panel data are available. Linden and Rockoff (2008) provide a technique for defining treatment and control groups so that difference-in-differences can be used to estimate the impact of environmental (dis)amenities when treatment and control groups are not clearly defined. Their technique has recently been used to estimate the impact of brownfield remediation (Haninger, Ma, and Timmins 2014) and shale gas developments (Muehlenbachs, Spiller,

[7] Since the quadratic Box-Cox is still computationally intensive and the coefficients are difficult to interpret, semilog and linear Box-Cox models are commonly used.

and Timmins 2014).[8] Parmeter and Pope (2013) provide a thorough overview of the difference-in-differences method and other quasi-experimental techniques. By differencing over time, the difference-in-differences method controls for time-invariant unobservables, just like the fixed effects and repeat sales methods, but also overcomes problems with time-varying unobservables with the "common trends" assumption.[9]

Mastromonaco (2014) and Bajari et al. (2012) both propose methods for reducing bias caused by time-varying spatially correlated unobservables. Mastromonaco (2014) includes census tract–year fixed effects that allow the effect of unobservables at the neighborhood level to vary over time in a repeat sales model. Bajari et al. (2012) also use a repeat sales model but exploit information contained in the residual from the first sale to learn about the characteristics of the house that the researcher cannot observe directly. In contrast, the data used in this study have house characteristics at the time of each sale and allow for control of time-varying housing characteristics that are typically unobservable. In this study the results below show that the unobservables at the neighborhood level that are correlated with proximity to a communication antenna are time invariant and are adequately controlled for using spatial fixed effects.

III. DATA ON HOUSING AND ANTENNAS

Housing data covering a period of 12 years from 2000 to 2011 were extracted from two multiple listing services that serve the Louisville and Elizabethtown areas in central Kentucky.[10] The housing data contain an extensive set of structural housing characteristics, closing date, and sales price for every property sold. All property addresses were geocoded, and a standardized address and latitude and longitude were assigned to each property.[11] This standardized address is used to identify houses that are sold multiple times.

These data are much richer than data extracted from a local property valuation administrator or data from DataQuick that are commonly used. While data from each of those sources identify properties that are sold more than once, the structural housing characteristics are recorded only for the most recent transaction. The data used here identify properties that are sold more than once during the sample period and record the structural housing characteristics each time the property is sold. This detail allows for a check of the assumption that structural housing characteristics are constant over time, an assumption that is often made when using the repeat sales method.

Data for the communication antennas come from the Federal Communication Commission's (FCC) Antenna Structure Registration database.[12] This database includes all communication antennas in the United States that are registered with the FCC. All antennas that may interfere with air traffic must be registered with the FCC to make sure the lighting and painting requirements are met. These data contain antenna characteristics such as dates of construction and demolition, latitude and longitude, antenna height, and antenna type. It is possible there are antennas located in the study area that are not registered, but this is

[8] Muehlenbachs, Spiller, and Timmins (2014) use a difference-in-difference-in-differences model. They use the Linden and Rockoff (2008) technique to find the distance at which shale gas developments do not impact property values, but also use the local public water service area to define a second treatment group. Similar to owners of land where shale gas wells are drilled, owners of land where communication antennas are located receive payments from the antenna's owner.

[9] In this study, a majority of communication antennas were built several years before the property was sold, making a visual check of the "common trends" assumption difficult.

[10] Please contact the author regarding any questions about the multiple listing service data.

[11] One issue with geocoding addresses is that the coordinates will correspond to the location on the street where the property is located and not the exact coordinates of the actual house; Filippova and Rehm (2011) were able to overcome this using the coordinates where the home was located within the plot. In the current study, properties that were not assigned a standardized address and a unique latitude and longitude were excluded from the final sample. Properties with less than 500 square feet or more than 10,000 square feet, or zero bedrooms or zero full baths were also dropped.

[12] Antenna Structure Registration database available at http://wireless.fcc.gov/antenna/index.htm?job = uls_transaction&page = weekly.

rare. Since the construction date of each antenna needs to be known to ensure the antennas located near houses were standing when the properties sold, antennas that did not include a construction date were dropped.[13] Google Earth[14] was used to verify whether not an antenna was standing when the property sold if there was a dismantled date recorded. Since the images include the date the image was captured, it was possible to identify whether the antenna was standing when the property sold.[15]

ArcGIS[16] was used to determine several location-specific characteristics. They include (1) the census tract in which each house is located, (2) the census block group in which each house is located, (3) distance to the nearest communication antenna, (4) distance to the nearest parkway/interstate, (5) distance to the nearest railroad, and (6) distance to the Fort Knox military base. Since the visual disamenity of communication antennas is the focus of this study, all proximity measures were calculated using straight-line distances. All antennas within a 10-mile radius of each property that were standing when the property was sold were identified. This information was used to determine the number of antennas located within specified distances from each property. In addition, using the Viewshed tool in ArcGIS, a variable was created that is distance to the nearest visible communication antenna for each house in the sample. This variable facilitates isolation of the impact of visual pollution (see Paterson and Boyle 2002; Jensen, Panduro, and Lundhede 2014). This variable is used along with (unconditional) distance for comparison.

Averages or shares for the housing characteristics are given in Table 1. The typical house sold for $183,609 (in 2011 dollars), has three bedrooms and two full bathrooms, is 1,655 square feet in size, has a lot size of about eight-tenths of an acre, and is 33 years old. Holding all else constant, the owner of a communication antenna will attempt to locate the antenna in an area that minimizes the antenna owner's cost. To check if antennas are located in areas where property values are low to begin with, Table 1 also shows averages for houses within and beyond 4,500 feet of an antenna.[17] Houses within 4,500 feet of an antenna sell for $32,991 (16%) less than houses more than 4,500 feet away, have slightly fewer bedrooms and bathrooms, are smaller, and are on smaller lots. The most notable difference is that houses within 4,500 feet of an antenna are about 18 years older on average than houses more than 4,500 feet away from an antenna. The differences in means between houses within and beyond 4,500 feet are statistically different from zero at usual levels for all characteristics except for Within 1 Mile Ft. Knox. It appears that communication antennas are in fact located in areas where properties are less valuable. While most of the difference in sales prices for houses within and beyond 4,500 feet of an antenna can be explained by differences in the types of houses, the primary focus of this study is controlling for differences that are unobservable. The precise location information for each house provided in the data is used to control for these unobservables.[18]

For the full sample of houses, the median distance to the nearest visible antenna when a house is sold is 4,459 feet, or approximately 0.84 miles. The mean distance is 5,959 feet (1.3 miles) with a standard deviation of 5,334

[13] Since the earliest construction year in the sample of antennas is 1927 and the latest 2011, it cannot be assumed that the absence of a construction date means the antennas with missing dates were built before the year 2000 and can be included in the final sample.

[14] See www.google.com/earth/ for access to images.

[15] This was a concern for only a handful of antennas. Multiple antennas were assigned the same coordinates, and it was determined that this corresponded to multiple antennas being mounted on the same structure. Some demolition dates indicated that an antenna was removed, and some demolition dates indicated that the actual structure was taken down. Being dismantled refers to the latter.

[16] See www.esri.com/software/arcgis.

[17] 4,500 feet is approximately the median value of distance to the nearest standing antenna in this sample. Distance in thousands of feet is used in the analysis that follows.

[18] A regression of the number of communication antennas in a census tract on the median sales price and census tract demographics suggests that the number of antennas in a census tract is negatively correlated with property values. However, even though the coefficient has the expected sign, the coefficient is not statistically different from zero at conventional levels, and the median sales price and demographics explain only 8% of the variation in the number of communication antennas in a census tract.

TABLE 1
Mean or Share for Structural Housing Characteristics

Variables	All	Less than 4,500 ft	Greater than 4,500 ft
Sales price (2011 dollars)	183,609	167,235	200,226
Bedrooms	3.241	3.161	3.323
Full bathrooms	1.811	1.687	1.937
Partial bathrooms	0.368	0.346	0.39
Square feet of living space	1,655	1,573	1,739
Lot size (acres)	0.82	0.383	1.263
Lot size missing	0.046	0.044	0.049
Has < in lot dimensions[a]	0.127	0.149	0.105
Has > in lot dimensions[a]	0.003	0.003	0.004
Age (years)	33.153	42.078	24.096
Age unknown	0.01	0.006	0.014
Fireplace	0.479	0.474	0.484
Basement	0.602	0.613	0.59
Finished basement	0.175	0.153	0.197
Central air	0.909	0.898	0.921
Brick exterior	0.346	0.322	0.37
Vinyl exterior	0.162	0.157	0.168
Metal roof	0.01	0.006	0.013
Composition roof	0.94	0.944	0.935
Ranch style	0.447	0.409	0.485
Modular style	0.014	0.004	0.024
Cape cod style	0.084	0.102	0.066
Carport	0.057	0.066	0.049
Garage	0.663	0.657	0.668
One-car garage	0.169	0.209	0.128
Multiple-car garage	0.563	0.494	0.632
Within 1 mile parkway/Interstate	0.485	0.629	0.338
Within 1 mile railroad	0.511	0.569	0.452
Within 1 mile Ft. Knox	0.014	0.014	0.014
Sample size	142,161	71,604	70,557

[a] The lot dimensions indicated the lot size was less (greater) than the listed size.

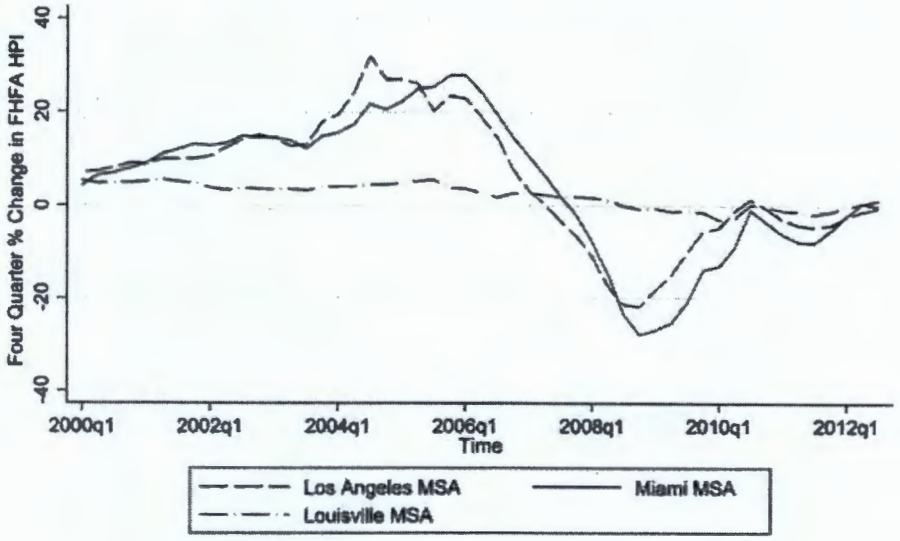
feet. Only 0.4% of houses are within 500 feet of the nearest visible antenna, while 9.5% of the houses in the sample have a visible antenna within 2,000 feet. Some houses are likely affected by the presence of multiple antennas. For example, there are 108 houses that have two visible antennas between 500 and 1,000 feet and 6 that have three antennas within that same radius. This variation in antenna density means that estimating the disamentity value caused by communication antennas using distance to the nearest antenna could be biased due to the presence of multiple antennas. Estimates would tend to be biased upward, because all the value of the disamenity would be attributed to the nearest antenna when it should be attributed to the combination of antennas.

Before moving to estimation of any disamenity value of antennas, it is worth addressing an overall concern about housing market analysis during the Great Recession. The concern is how an equilibrium framework such as that described by Rosen (1974) can produce misleading results during a period of disruption.[19] Without question, housing prices declined between 2006 and 2009, but as Carson and Dastrup (2013) report, there was considerable spatial variation. Across metropolitan areas, housing prices declined none at all to more than 60%. The four-quarter percentage change in the Federal Housing Finance Agency's housing price index[20] is shown in Figure 2 for the study area and the Los Angeles and Miami metropolitan statistical areas (MSAs). Even though the Louisville MSA was affected by the recent housing crisis,

[19] This issue is discussed in detail by Boyle et al. (2012).

[20] Federal Housing Finance Agency Housing Price Index data available at www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index.aspx.

FIGURE 2
Four Quarter Percent Change in the Federal Housing Finance Agency Housing Price Index in the Los Angeles, Louisville, and Miami Metropolitan Statistical Areas



house prices remained relatively stable compared to the larger MSAs that were affected the most. This stability alleviates concerns that the results presented below are being affected by a rapidly changing and unstable housing market.

Changes in census tract demographics[21] from 2000 and 2010 for the study area were also compared to changes for the entire United States. The only notable difference is that unemployment more than doubled nationally, while there was only a 62% increase in the study area. For the entire United States, the percentage change in the number of people who moved in from out of state fell by 71%, while it increased by 12% in the study area; since the study area contains the Fort Knox military base, the above average number of out-of-state movers is to be expected.[22]

Because there is a concern that antennas could be located in areas with not only lower property values but also disadvantaged populations, demographics for census block groups that contain antennas were compared to those within the same census tract that do not have any antenna structures, for the entire state of Kentucky in 2010. While small differences exist, none are significant at conventional levels. Table 1 shows that houses near these antennas sell for less than homes farther away; however, these differences do not appear to be driven by differences in demographic characteristics.[23]

IV. EMPIRICAL MODEL

To determine the impact proximity to an antenna structure has on property values, hedonic property value models and quasi-experimental methods are used. The first regressions rely on cross-sectional variation in distance to the nearest antenna and do not exploit the panel aspect of the data. The second

[21] Census data available at http://factfinder.census.gov.

[22] A regression of the change in the number of communication antennas in a census tract on the percentage changes in demographic characteristics in the same tract suggests that changes in demographics are not leading to significant changes in the number of communication antennas in an area. There were statistically significant coefficients for median income, unemployment, percentage of the population that owns their home, and the percentage of the population with a bachelor's degree or higher. However, the changes in these characteristics required to cause one additional antenna to be constructed or dismantled are extremely large. For example, it would take a 1,067% increase in unemployment to lead to the dismantling of one antenna.

[23] Note that this calculation is possible only for census tracts that have at least one block group without antennas.

set of regressions exploits the panel aspect of the data to reduce the potential bias caused by time-invariant unobservables. The data cover a period of 12 years, with communication antennas being built and dismantled throughout the period as well as in between sales of the same property. These changes allow for estimation of the traditional cross section specifications as well as the repeat sales and difference-in-differences specifications that are becoming more prevalent in the hedonic literature (Gayer, Hamilton, and Viscusi 2002; Linden and Rockoff 2008; Parmeter and Pope 2013; Haninger, Ma, and Timmins 2014; Muehlenbachs, Spiller, and Timmins 2014; Bajari et al. 2012).

Cross-Section Specification and Proximity Measures

Following Kuminoff, Parmeter, and Pope (2010) and Heintzelman and Tuttle (2012), a semilog specification with spatial fixed effects is used to address the potential bias caused by time-invariant, spatially correlated unobservables. The first specification is

$$\ln P_{ijt} = \mathbf{Z}_{ijt}\beta + \mathbf{X}_{ijt}\delta + \lambda_t + \gamma_j + \epsilon_{ijt}, \quad [2]$$

where $\ln P_{ijt}$ is the natural log of the price of house i at location j at time t, $\mathbf{Z}_{ijt}$ is the set of variables describing proximity to the nearest antenna structures, $\mathbf{X}_{ijt}$ includes an extensive set of structural housing characteristics, λ_t are year-month time dummy variables, γ_j are spatial fixed effects, and ϵ_{ijt} is the error term. To demonstrate the importance of including the spatial fixed effects, equation [2] is estimated without spatial fixed effects and again with census tract or census block group fixed effects. If there are unobserved spatial characteristics that are correlated with the proximity variables, β in equation [2] should be more precisely estimated when smaller geographic fixed effects are used.

Distance to communication antennas is measured using a continuous quadratic measure of distance to the nearest visible antenna that was standing when the property sold.[24] The spatial fixed effects ensure that this continuous measure of distance is measuring the impact of a nearby antenna and not proximity to an area that may be a magnet for communication antennas. As a robustness check, the inverse of distance to the nearest antenna that was standing when the property sold is also used.

As an additional robustness check, proximity is measured using 500-foot distance rings that include a dummy variable equal to 1 if a communication antenna is located within some specified distance. The dummy variable method is the primary specification used by Heintzelman and Tuttle (2012) and allows for a high degree of nonlinearity in the disamenity caused by these antennas. A shortcoming of this method is that the size of the distance rings and the distance used as the omitted category is somewhat arbitrary. If properties are affected by the presence of multiple antennas, the dummy variable approach will overestimate the disamenity caused by communication antennas. Since multiple properties in the sample have more than one antenna nearby, proximity is also measured using the number of antennas within each ring. This is the method used by Mastromonaco (2014) to estimate the impact of Superfund sites on property values in Los Angeles.

Panel Analysis

One strategy for removing time-invariant unobservables is to exploit the variation in distance to the nearest antenna for properties that sell multiple times. During the study period, new antennas were constructed and old antennas were dismantled. These changes create variation in distance to the nearest antenna over time for the same property. This approach eliminates any time-invariant unobservables that may be correlated with the proximity variables and is the primary method used by Gayer, Hamilton, and Viscusi (2002), Heintzelman and Tuttle (2012), Mastromonaco (2014), and Bajari et al. (2012). The following regression is estimated:

[24] Banfi, Filippini, and Horehájová (2008) and Bond (2007a, 2007b) estimate the impact of cell phone towers on property values, but their specifications do not fully account for endogeneity of tower location and correlated unobservables.

$$\ln P_{it} - \ln P_{it'} = (z_{it} - z_{it'})\beta + (\mathbf{X}_{it} - \mathbf{X}_{it'})\delta + \lambda_t + \epsilon_{it} - \epsilon_{it'}, \quad [3]$$

where $\ln P_{it}$ is the natural log of the price of house i at time t, z_{it} is the distance to the nearest standing antenna at time t, and $\mathbf{X}_{it}$ are structural housing characteristics that may vary over time. Following Gayer, Hamilton, and Viscusi (2002), λ_t is a set of year variables equal to –1 if the year indicates the first year the property sold, 1 if the year indicates the year of the last sale, and 0 for all other sales.[25] This allows for appreciation in housing values over time. ϵ_{it} is the error term. This specification is different from the repeat sales model that is typically estimated. In the typical repeat sales model, only the proximity variables that measure distance to the nearest antenna would be allowed to vary over time, while the structural housing characteristics are assumed to be constant. Several recent studies use data from sources that do not record the structural housing characteristics each time a house is sold and make the assumption of constant structural characteristics (Heintzelman and Tuttle 2012; Mastromonaco 2014; Bajari et al. 2012). Equation [3] will be estimated with and without the changing structural housing characteristics to control for changes and determine how sensitive the estimate of β is to the assumption of constant structural characteristics.

There are shortcomings when using the repeat sales approach. There is the possibility that the unobservables are not time invariant. Kuminoff, Parmeter, and Pope (2010) show that when the omitted spatial characteristics are time varying, the bias in the first-differenced estimates increases substantially. Since not all properties are sold multiple times, the repeat sales approach leads to much smaller sample sizes. In addition, properties that sell multiple times may be systematically different than properties that sell only once. Properties that turn over multiple times may be repeatedly priced below market value, or more importantly, the local disamenity has an above-average effect on those properties. With an extensive list of housing characteristics at the time of all sales, the number of time-varying unobservables is smaller than in studies that do not have house characteristics at the time of sale each time the property is sold.[26]

[25] Bailey, Muth, and Nourse (1963) introduce this method of estimating a price index using a repeat sales framework. The first period (year 2000) is the base year, and the remaining coefficients can be interpreted as the log price index.

V. RESULTS

Cross-Section Results

Results that use a continuous measure of distance to the nearest visible antenna are reported in Table 2, Panel A. In column (1), census tract fixed effects are included, and the results show that holding constant the characteristics of the house, the year, and month the property was sold, and the area in which the property is located, consumers are willing to pay a premium to be located farther away from a communication antenna. The estimates in column (1) show that the sales price of a house is increasing at a rate of approximately 0.74% at a distance of 1,000 feet and at a rate of about 0.68% at 2,500 feet. No effect is found beyond 21,093 feet (approximately 4.0 miles). Interestingly, specifications (not shown) that do not include any spatial fixed effects indicate that houses with communication antennas nearby sell for more, not less, than houses where the nearest antenna is farther away. Column (2) includes census block group fixed effects, which are more precise than the census tract fixed effects used in column (1). These estimates suggest that the sales price of a house increases at a rate of about 0.57% at a distance of 1,000 feet, and a rate of 0.53% at 2,500 feet. No effect is found beyond 21,583 feet (approximately 4.1 miles). Even though the effect of distance is identified by variation in distance within a smaller geographic area, the specification using census block group fixed effects provides

[26] A difference-in-differences specification was also used to mitigate the effects of time-invariant unobservables. This technique is discussed in detail by Parmeter and Pope (2013) and used by Linden and Rockoff (2008), Muehlenbachs, Spiller, and Timmins (2014), and Haninger, Ma, and Timmins (2012) in difference-in-differences. Treatment and control groups were identified using the method of Linden and Rockoff (2008).

TABLE 2
Cross-Section Results for Antenna Impact Using Continuous Measures of Distance

Variable[a]	(1) ln(Sales price)	(2) ln(Sales price)
Panel A		
Distance to nearest visible antenna	0.00772*** (0.00150)	0.00600*** (0.00132)
Distance^2 to nearest visible antenna	−0.000183*** (3.49e–05)	−0.000139*** (2.99e–05)
Constant	10.51*** (0.0309)	10.24*** (0.0195)
Observations	141,208	141,208
R-squared	0.853	0.862
Panel B		
Distance to nearest antenna	0.0104*** (0.00187)	0.00888*** (0.00173)
Distance^2 to nearest antenna	−0.000323*** (5.81e–05)	−0.000284*** (5.74e–05)
Constant	10.50*** (0.0307)	10.23*** (0.0199)
Observations	142,161	142,161
R-squared	0.853	0.862
Panel C		
Inverse distance to nearest visible antenna	−0.0359*** (0.00886)	−0.0285*** (0.00743)
Constant	10.56*** (0.0299)	10.28*** (0.0187)
Observations	141,208	141,208
R-squared	0.853	0.862
Year-month dummies	Yes	Yes
Tract fixed effects	Yes	No
Block group fixed effects	No	Yes

Note: Distances to antennas are measured in thousands of feet. Standard errors are clustered at the level of included fixed effect.
[a] Also included in each regression are bedrooms, full bathrooms, partial bathrooms, square feet, square feet^2, lot size, lot size missing, age, age^2, age unknown, fireplace, basement, finished basement, central air, exterior type, roof type, style of home, garage, carport, within 1 mile parkway/interstate, within 1 mile railroad, and within 1 mile Ft. Knox.
*** $p<0.01$.

estimates that are more precisely estimated than the census tract specification. This result provides further evidence that there are spatially correlated unobservables that are negatively correlated with distance to a communication antenna.[27]

Panel B uses the same quadratic distance specification but uses the more naive measure of distance to the nearest antenna that does not take into account whether the nearest antenna is visible from the house. While the effect is similar, it is estimated with less precision than the specification that accounts for visibility of the nearest antenna. For approximately 5% of the houses in the sample, the nearest antenna is not visible, and that fact produces measurement error in this specification.[28]

As a robustness check, the same specifications are estimated using the inverse of distance to the nearest visible antenna. These re-

[27] Regressions were estimated that included the percentage of rural residents in a census tract instead of census tract fixed effects. The results show that the sales price of a house is decreasing as the number of people living in rural areas increases, and that proximity to a communication antenna has a positive effect on the sales price of a house in highly urban areas, and a negative effect in more rural areas. This is consistent with the idea that antennas in more urban areas are more likely to be disguised than in rural areas, where the antennas structures tend to be much larger. Urban areas have multiple structures such as tall buildings, smoke stacks, clocks, and church steeples that antennas can be located on or around. The R^2 for the urban/rural specification was 0.72 compared to 0.85 in the census tract specification in Table 2.

[28] As an additional robustness check, a specification was estimated that uses distance to the nearest tower-type antenna. These structures are larger and are visible at greater distances than the smaller antenna structures and are expected to have a larger effect on property values and have an effect at greater distances if they are visible. If the estimated effect is larger than when all antennas are considered, this provided additional evidence that households are aware of this visual disamenity and respond rationally (Pope 2008; Currie et al. 2015). As expected, the results show that the tower-type antennas lead to a larger decrease in property values and have an effect farther away.

TABLE 3
Cross-Section Results of Antenna Impact Using 500-Foot Distance Rings: Any Antenna and Number of Antennas

Variable[a]	(1) ln(Sales Price) 1 if Within	(2) ln(Sales Price) Number Within
0 to 500	−0.0752*** (0.0232)	−0.0494** (0.0206)
500 to 1,000	−0.0613*** (0.0134)	−0.0390*** (0.0112)
1,000 to 1,500	−0.0630*** (0.0109)	−0.0417*** (0.00917)
1,500 to 2,000	−0.0620*** (0.00987)	−0.0417*** (0.00691)
2,000 to 2,500	−0.0512*** (0.00918)	−0.0289*** (0.00650)
2,500 to 3,000	−0.0450*** (0.00796)	−0.0286*** (0.00538)
3,000 to 3,500	−0.0428*** (0.00759)	−0.0288*** (0.00473)
3,500 to 4,000	−0.0343*** (0.00652)	−0.0248*** (0.00456)
4,000 to 4,500	−0.0128** (0.00593)	−0.0167*** (0.00425)
Constant	10.30*** (0.0194)	10.31*** (0.0208)
Observations	141,208	141,208
R-squared	0.862	0.863
Year-month dummies	Yes	Yes
Tract fixed effects	No	No
Block group fixed effects	Yes	Yes

Note: Standard errors are clustered at the census block group.

[a] Also included in each regression are bedrooms, full bathrooms, partial bathrooms, square feet, square feet^2, lot size, lot size missing, age, age^2, age unknown, fireplace, basement, finished basement, central air, exterior type, roof type, style of home, garage, carport, within 1 mile parkway/interstate, within 1 mile railroad, and within 1 mile Ft. Knox.

** $p<0.05$; *** $p<0.01$.

sults are shown in Table 2, Panel C. When census tract fixed effects are included, the estimates show that the sales price of a house is increasing at a rate of approximately 3.6% at a distance of 1,000 feet, and at a rate of about 0.57% at 2,500 feet. When census block group fixed effects are included, the estimates show that the sales price of a house is increasing at a rate of about 2.9% at a distance of 1,000 feet, and a rate of 0.46% at 2,500 feet. Again, the effect is estimated more precisely as more precise fixed effects are included. Overall, the results do not appear to be extremely sensitive to functional form when using a continuous measure of distance.

Results from an alternative specification that uses 500-foot distance rings are shown in Table 3. Column (1) indicates whether an antenna is located within a specified radius, and column (2) estimates the marginal effect of an additional antenna within the same radius by using the density of nearby antennas. The results suggest that houses located near an antenna sell for less than a comparable house farther away and that both distance to the nearest antenna and the density of nearby antennas have a significant effect on property values. In both specifications, the effect of communication antennas on property values diminishes almost monotonically with distance.[29]

[29] Bond and Wang (2005) and Bond (2007a) estimate the impact of cell phone towers on property values in New Zealand, but the studies have limitations. The first lacks precise location information for the houses and uses street name fixed effects as a proxy for distance to a tower. The second geocodes houses, but the model is misspecified. They use a continuous distance measure but set distance equal to zero if the house sold before the tower was constructed. Bond's (2007b) is the only study found that uses U.S. data. It is limited to sales from one area of Orange County, Florida, and includes the latitude and longitude of each property in each regression. Banfi, Filippini and Horehájová (2008) look at the impact of cell phone towers on rents in Zurich Switzerland and find a significant decrease in rents of about 1.5% on average. Filippova and Rehm's (2011) is the most recent study. They use data from the Auckland region of New Zealand and also use distance bands and a continuous distance measure. Their distance band specification yields insignificant results, and the coefficient of the continuous distance measure has a significant, but wrong-signed coefficient. They report a negative but insignificant impact on property values. The authors fail to consider the interaction terms between distance and their location variables. Given they use 50-meter increments for their distance bands, it is likely there is not enough variation within each band to identify any impact.

TABLE 4
Results Using Repeat Sales and a Continuous Measure of Distance: All Repeat Sales and Sold Only Twice

Variable	(1) Δ ln(Sold price)	(2) Δ ln(Sold price)
Panel A		
Δ Distance to nearest visible antenna[a]	0.00537*** (0.000924)	0.00200** (0.000941)
Constant	0.0543*** (0.00308)	0.152*** (0.00527)
Observations	29,759	20,871
R-squared	0.102	0.144
Panel B		
Δ Distance to nearest visible antenna[a]	0.00546*** (0.000869)	0.00254*** (0.000861)
Δ Bedrooms	0.0781*** (0.00562)	0.0613*** (0.00628)
Δ Full bathrooms	0.171*** (0.00802)	0.169*** (0.00912)
Δ Partial bathrooms	0.105*** (0.00959)	0.111*** (0.0114)
Δ Finished basement	0.0211*** (0.00385)	0.00992** (0.00458)
Δ Central air	0.255*** (0.00979)	0.243*** (0.0116)
Δ Carport	0.0585*** (0.0145)	0.0397*** (0.0151)
Δ Garage	0.0152* (0.00783)	0.0220** (0.00914)
Observations	29,759	20,871
R-squared	0.202	0.231
All repeats	Yes	No
Sold twice	No	Yes

[a] Distances to antennas are measured in thousands of feet. Standard errors are clustered at the property level.
* $p<0.1$; ** $p<0.05$; *** $p<0.01$.

The results that account for number of antennas (shown in Table 3, column (2)) are consistent with the argument made by Mastromonaco (2014) that considering only distance to the nearest site will lead to biased estimates if there are multiple sites that could adversely affect a property's sales price. As is expected, adding an additional antenna near a residential property has a smaller effect than an antenna being located near a property that did not previously have one nearby. Since the absolute value of the point estimate of almost every coefficient in column (2) of Table 3 is smaller than the corresponding coefficient in column (1), the estimates that measure proximity with distance to the nearest site are likely biased. To further explore this possible effect, a specification (not shown) was estimated that included both distance to the nearest visible antenna along with the density of nearby antennas, using .500-foot rings. Although the effect of density of nearby antennas remained significant, the effect of distance to the nearest antenna was not significant at conventional levels.

Panel Results

Results from the first repeat sales specification that assumes the structural housing characteristics are constant over time are shown in Table 4, Panel A. In this specification, the change in sales price is assumed to be a function of the change in distance to the nearest visible antenna and a set of year dummy variables that are equal to −1 if the year indicates the time of the first sale, 1 if the year indicates the year of the last sale, and 0 for all other sales. Comparing the change in sales price for houses that are sold more than once eliminates any bias that could be caused by time-invariant spatially correlated unobservables.

Comparing columns (1) and (2) for each cross-section specification in Table 2 shows that as more precise spatial fixed effects are used, the estimated effect of communication antennas on the sales price of a house is smaller and more precisely estimated. This indicates that the spatially correlated unobservables are negatively correlated with proximity

to an antenna. If this is true, and the unobservables are time invariant, the repeat sales estimates of the impact communication antennas have on property values should be similar to the estimates using the more precise census block group fixed effects.

The results in each column of Table 4 are consistent with this hypothesis. Column (1) includes all houses that sold more than once during the sample period. For every 1,000-foot change in distance to the nearest antenna, on average, the sales price of a house increases by 0.54%. Column (2) includes the set of houses that sold only twice during the 12 years the data cover. Since repeat sales are identified by the standardized address that was assigned to each property, limiting the sample to houses that sold only two times reduces the chance of including houses that are being considered repeat sales due to a coding error. Even though the sample size is reduced by 8,888 observations compared to the sample of all repeat sales, the R^2 increases by 0.042, and the effect of distance is still precisely estimated. In this specification, for every 1,000-foot change in distance to the nearest antenna, on average, the sales price of a house increases by 0.20%.

Of the 29,886 houses that sold more than once, a nontrivial number experienced a change in a major structural characteristic between sales. For example, 4,316 (17%) of houses had a change in the number of bedrooms between sales. The repeat sales results in Table 4, Panel B are based on relaxing the assumption that structural housing characteristics are constant over time. As is expected, including the changes in structural housing characteristics leads to a higher R^2, increases in each characteristic lead to a larger positive change in sales price, and the effect of distance is more precisely estimated. This result suggests that the change in distance to the nearest antenna between sales of the same property is not completely orthogonal to the change in housing characteristics, an assumption that must be made when detailed sales data are not used. When changing structural housing characteristics are accounted for, the estimated impact is slightly larger than the estimate in Panel A. While these estimates are not statistically different at conventional levels, a larger effect when the changing structural housing characteristics are included is consistent with the results from Bajari et al. (2012) that show ignoring time-varying correlated unobservables leads to underestimates of the benefits of pollution reduction.[30]

VI. DISCUSSION AND CONCLUSIONS

Overall, the results from the preferred specifications that include spatial fixed effects show that houses located near communication antennas sell for less on average than comparable houses located farther away from an antenna. There are a few important points to note about these results. First, regardless of the specification, time-invariant spatially correlated unobservables bias the cross-sectional estimates of the disamenity associated with nearby communication antennas when no controls for neighborhood characteristics are included. When spatial fixed effects are not included, the results suggest that houses near communication antennas sell for more, not less, than a similar house farther away from an antenna. When spatial fixed effects are included to capture the effect of time-invariant spatially correlated unobservables, each specification used indicates that houses near communication antennas sell for less than a similar house located farther away from an antenna. When the more precise census block group fixed effects are included, the estimated reduction in sales price caused by a communication antenna becomes smaller and is estimated more precisely in each of the cross-section specifications. This effect reinforces the importance of carefully controlling for

[30] Estimates from the difference-in-differences specification show that houses within 2,000 feet of an antenna at the time they were sold sell for about 3.3% less than a comparable house more than 2,000 feet away from an antenna at the time it was sold. When the equilibrium price function with respect to structural housing characteristics is allowed to change over time, an effect of about 2.2% is found but is not statistically significant at conventional levels. Since many houses in the sample are affected by the presence of multiple antennas, defining treatment and control groups using the method of Linden and Rockoff (2008) that uses distances to the nearest standing and not-standing antennas may not be appropriate.

spatially correlated unobservables that are correlated with proximity to a localized disamenity.

Consistent with the conjecture made by Mastromonaco (2014), estimating the effect of communication antennas on property values using distance to the nearest antenna is likely biased due to the presence of multiple nearby antennas. The results in column (2) of Table 3 indicate that a house located within 500 feet of an antenna sells for 7.5% less than a similar house more than 4,500 feet away from its nearest antenna. The results in column (2) of Table 3 show that adding an additional antenna within 500 feet of a house leads to a smaller reduction in sales price of 4.9%.

The results also suggest that the omitted spatial characteristics correlated with proximity to a communication antenna are time invariant and are being captured by the census block group fixed effects. First, the effect communication antennas have on nearby properties is smaller and is estimated more precisely when census block group fixed effects are used compared to the census tract estimates. This confirms that there are unobservables spatially correlated with distance to a communication antenna. Second, the repeat sales method eliminates any bias caused by time-invariant unobservables and provides results that are smaller than the cross-sectional estimates that include census block group fixed effects. Since the antennas are located in areas where property values are lower, the repeat sales specification that eliminates all time-invariant unobservables should yield results with the smallest amount of bias. Since the sample of houses that are sold multiple times may not be a random sample of all houses, some bias could still exist.

The best estimate of reduction in sales price caused by communication antennas shows that the sales price of a house is increasing at a rate of about 0.57% ($1,047) at a distance of 1,000 feet from the nearest antenna (Table 2, Panel A, column (2)). This suggests that a property located within 1,000 feet of the nearest antenna at the time of sale will sell for 1.82% ($3,342) less than a similar house that is 4,500 feet from the nearest antenna. In this specification, time-invariant spatially correlated unobservables are controlled for with census block group fixed effects. The repeat sales results in Table 4 provide additional evidence that the spatially correlated unobservables are being captured by the fixed effects. These estimates of the disamenity associated with communication antennas controls for time-invariant unobservables at the property level and suggests that a property located within 1,000 feet of an antenna will sell for 0.89% ($1,634) less than a similar house that is 4,500 feet from the nearest antenna (Panel B, column (2)). However, since the repeat sales are identified by matching a standardized address, these results could be sensitive to measurement error.

This effect is smaller than the estimated reduction caused by similar disamenities. Kroll and Priestley (1992) provide a review of the literature concerning overhead transmission lines and property values through the early 1990s. They find that in studies where a significant decrease was found, the decrease in property values typically fell in the range of 2% to 10%, and the effect diminished beyond a few hundred feet. Hamilton and Schwann (1995) estimate the impact of high voltage electric transmission lines have on property values, but primarily focus on the importance of using the correct functional form. They find that properties adjacent to a line lose about 6.3% of their value, but more distant properties are hardly affected. Using a repeat sales model, Heintzelman and Tuttle (2012) find that having a wind turbine located 0.5 miles away leads to a reduction in sales price from 8.8% to 15.81%.

The preferred specification for estimating the disamenity associated with communication antennas is the continuous measure of distance using census block group fixed effects (Table 2, Panel A, column (2)). These results imply that a property with an antenna located within 1,000 feet at the time of sale will sell for 1.82% ($3,342) less than a similar house that is 4,500 feet from the nearest antenna. In this sample, there are 3,031 houses within 1,000 feet of an antenna structure. Using the preferred repeat sales specification as a lower bound, if each antenna within 1,000

feet of a property were moved to a distance of 4,500 feet, there would be an aggregate increase in sales price of $4.95 million. The best estimate suggests the aggregate increase would be $10.13 million. These values should be compared to the cost of camouflaging or disguising communication antennas near residential properties to mitigate the effect they have on property values.

In areas where antennas are highly visible (Figure 1, upper photo), there is a potential externality caused by these antennas. If antennas are constructed near residential properties after the homeowner purchases the property, those houses suffer a small but nontrivial decrease in their property value and their owners are unlikely to be compensated by the land owner where the antenna is located or the owner of the antenna. Camouflaging is one solution to this problem that has been implemented in some areas. Camouflaged towers blend in with the landscape or are constructed in already standing structures such as church steeples and clock towers. Such developments will mitigate the disamenity associated with communication antennas and reduce the cost of convenience.

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References

Alcantara, Krisanne. 2012. *Cell Towers Near Homes? Battle in Mesa, Ariz., Typifies Fears Nationwide.* AOL Real Estate. Available at http://realestate.aol.com/blog/2012/11/16/cell-towers-near-homes-battle-in-mesa-ariz-highlights-fears/.

Bailey, Martin. J., Richard F. Muth, and Hugh O. Nourse. 1963. "A Regression Method for Real Estate Price Index Construction." *Journal of the American Statistical Association* 58 (304): 933–42.

Bajari, Patrick., Jane Cooley Fruehwirth, Kyoo Il Kim, and Christopher Timmins. 2012. "A Rational Expectations Approach to Hedonic Price Regressions with Time-Varying Unobserved Product Attributes: The Price of Pollution." *American Economic Review* 102 (5): 1898–1926.

Banfi, Silva, Massimo Filippini, and Andrea Horehájová. 2008. "Valuation of Environmental Goods in Profit and Non-profit Housing Sectors: Evidence from the Rental Market in the City of Zurich." *Swiss Journal of Economics and Statistics* 144 (4): 631–54.

Bayer, Patrick, Nathaniel Keohane, and Christopher Timmins. 2009. "Migration and Hedonic Valuation: The Case of Air Quality." *Journal of Environmental Economics and Management* 58 (1): 1–14.

Bieri, David S., Nicolai V. Kuminoff, and Jaren C. Pope. 2012. "The Role of Local Amenities in the National Economy." Presented in the University of Maryland Agricultural and Resource Economics Seminar Series. College Park, MD, October 24.

Bond, Sandy. 2007a. "Cell Phone Tower Proximity Impacts on House Prices: A New Zealand Case Study." *Pacific Rim Property Research Journal* 13 (1): 63–91.

———. 2007b. "The Effect of Distance to Cell Phone Towers on House Prices in Florida." *Appraisal Journal* 75 (4): 362–70.

Bond, Sandy, and Ko-Kang Wang. 2005. "The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods." *Appraisal Journal* 73 (3): 256–77.

Boyle, Kevin, Lynne Lewis, Jaren Pope, and Jeffrey Zabel. 2012. "Valuation in a Bubble: Hedonic Modeling Pre- and Post-Housing Market Collapse." *Association of Environmental and Resource Economists Fall News Letter* 32 (2): 24–31.

Cameron, Trudy Ann, and Ian T. McConnaha. 2006. "Evidence of Environmental Migration." *Land Economics* 82 (2): 273–90.

Carson, Richard T., and Samuel R. Dastrup. 2013. "After the Fall: An Ex-post Characterization of Housing Price Declines Across Metropolitan Areas." *Contemporary Economic Policy* 31 (1): 22–43.

Cropper, Maureen L., Leland B. Deck, and Kenneth E. McConnell. 1988. "On the Choice of Functional Form for Hedonic Price Functions." *Review of Economics and Statistics* 70 (4): 668–75.

Currie, Janet, Lucas Davis, Michael Greenstone, and Reed Walker. 2015. "Environmental Health Risks and Housing Values: Evidence from 1,600 Toxic Plant Openings and Closings." *American Economic Review* 105 (2): 678–709.

Filippova, Olga, and Michael Rehm. 2011. "The Impact of Proximity to Cell Phone Towers on Residential Property Values." *International Journal of Housing Markets and Analysis* 4 (3): 244–67.

Gayer, Ted, James T. Hamilton, and W. Kip Viscusi. 2002. "The Market Value of Reducing Cancer

Risk: Hedonic Housing Prices with Changing Information." *Southern Economic Journal* 69 (2): 266–89.

Greenstone, Michael, and Ted Gayer. 2009. "Quasi-Experimental and Experimental Approaches to Environmental Economics." *Journal of Environmental Economics and Management* 57 (1): 21–44.

Hamilton, Stanley W., and Gregory M. Schwann. 1995. "Do High Voltage Electric Transmission Lines Affect Property Value?" *Land Economics* 71 (4): 436–44.

Haninger, Kevin, Lala Ma, and Christopher Timmins. 2014. "The Value of Brownfield Remediation." Working Paper 20296. Cambridge, MA: National Bureau of Economic Research

Heintzelman, Martin D., and Carrie M. Tuttle. 2012. "Values in the Wind: A Hedonic Analysis of Wind Power Facilities." *Land Economics* 88 (3): 571–88.

Jensen, Catherine Ulla, Toke Emil Panduro, and Thomas Hedemark Lundhede. 2014. "The Vindication of Don Quixote: The Impact of Noise and Visual Pollution from Wind Turbines." *Land Economics* 90 (4): 668–82.

Kiel, Katherine A., and Michael Williams. 2007. "The Impact of Superfund Sites on Local Property Values: Are All Sites the Same?" *Journal of Urban Economics* 61 (1): 170–92.

Kohlhase, Janet E. 1991. "The Impact of Toxic Waste Sites on Housing Values." *Journal of Urban Economics* 30 (1): 1–26.

Kroll, Cynthia A., and Thomas Priestley. 1992. *The Effects of Overhead Transmission Lines on Property Values: A Review and Analysis of the Literature*. Washington, DC: Edison Electric Institute.

Kuminoff, Nicolai V., Christopher F. Parmeter, and Jaren C. Pope. 2010. "Which Hedonic Models Can We Trust to Recover the Marginal Willingness to Pay for Environmental Amenities?" *Journal of Environmental Economics and Management* 60 (3): 145–60.

Kuminoff, Nicolai V., and Jaren C. Pope. 2014. "Do 'Capitalization Effects' for Public Goods Reveal the Public Willingness to Pay?" *International Economic Review* 55 (4): 1227–50.

Kuminoff, Nicolai V., V. Kerry Smith, and Christopher Timmins. 2013. "The New Economics of Equilibrium Sorting and Its Transformational Role for Policy Evaluation." *Journal of Economic Literature* 51 (4): 1007–62.

Linden, Leigh, and Jonah E. Rockoff. 2008. "Estimates of the Impact of Crime Risk on Property Values from Megan's Laws." *American Economic Review* 98 (3): 1103–27.

Mastromonaco, Ralph A. 2014. "Hazardous Waste Hits Hollywood: Superfund and Housing Prices in Los Angeles." *Environmental and Resource Economics* 59 (2): 207–30.

Mieszkowski, Peter, and Arthur M. Saper. 1978. "An Estimate of the Effects of Airport Noise on Property Values" *Journal of Urban Economics* 5 (4): 425–40.

Muehlenbachs, Lucija, Elisheba Spiller, and Christopher Timmins. 2014. "The Housing Market Impacts of Shale Gas Development." Working Paper 19796. Cambridge, MA: National Bureau of Economic Research.

Parmeter, Christopher F., and Jaren C. Pope. 2013. "Quasi-Experiments and Hedonic Property Value Methods." In *Handbook on Experimental Economics and the Environment*, ed. John A. List and Michael K. Price, 3–66. Cheltenham, UK: Edward Elgar Publishing.

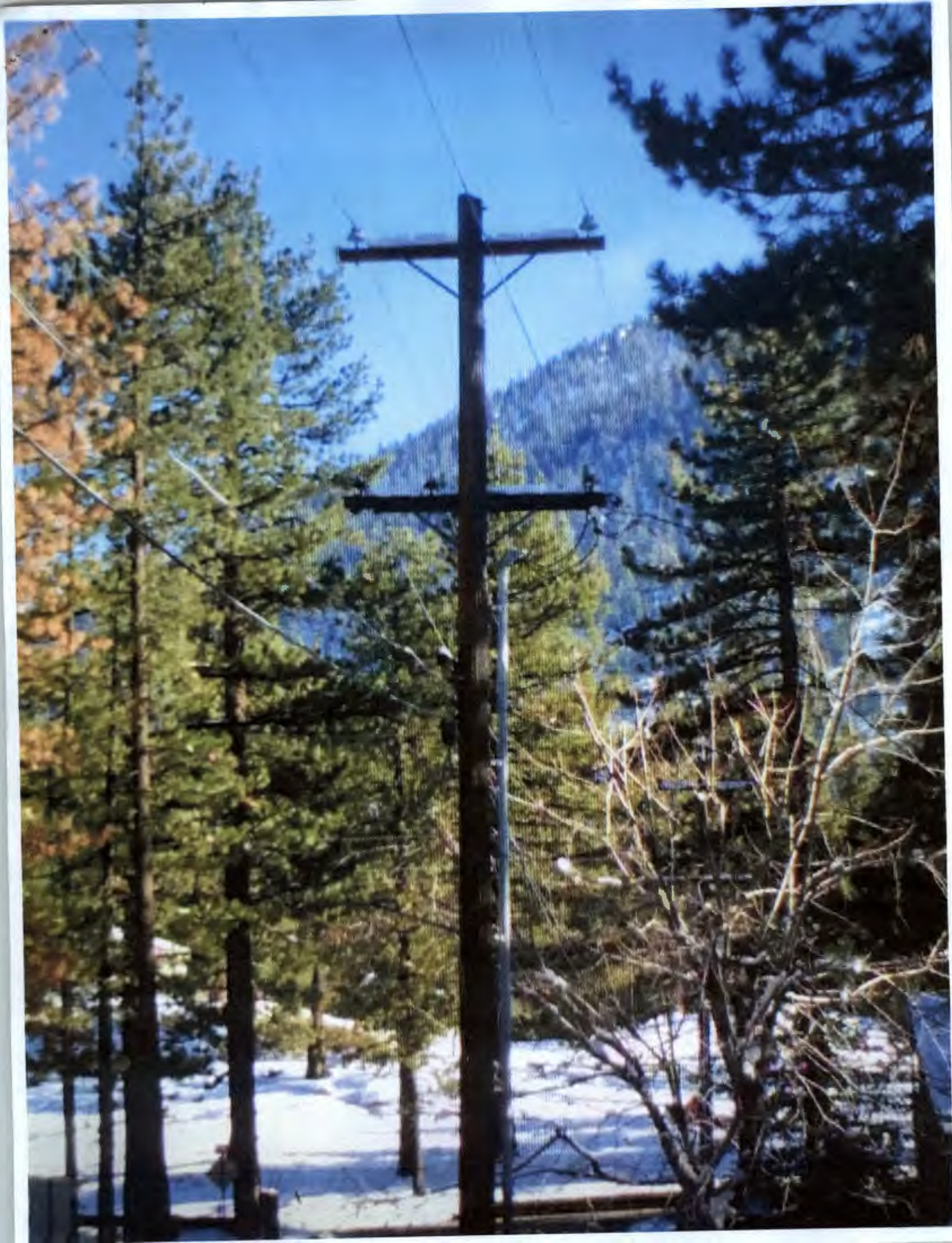
Paterson, Robert W., and Kevin J. Boyle. 2002. "Out of Sight, Out of Mind? Using GIS to Incorporate Visibility in Hedonic Property Models." *Land Economics* 78 (3): 417–25.

Pope, Jaren C. 2008. "Buyer Information and the Hedonic: The Impact of a Seller Disclosure on the Implicit Price for Airport Noise." *Journal of Urban Economics* 63 (2): 498–516.

Röösli, Martin, Patrizia Frei, Evelyn Mohler, and Kerstin Hug. 2010. "Systematic Review on the Health Effects of Exposure to Radio Frequency Electromagnetic Fields from Mobile Phone Base Stations." *Bulletin of the World Health Organization* 88 (12): 887–96.

Rosen, Sherwin. 1974. "Hedonic Prices and Implicit Markets: Product Differentiation in Pure Competition." *Journal of Political Economy* 82 (1): 34–55.

EXHIBIT 13



ROLLSTON, HENDERSON & JOHNSON, LTD
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LICENSED IN NEVADA AND CALIFORNIA

ROBERT M. HENDERSON
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Of Counsel
MICHAEL P. HAMBSCH
KENNETH C. ROLLSTON (1944-2017)

July 30, 2019

South Lake Tahoe City Council and Mayor
1901 Lisa Maloff Way
South Lake Tahoe, CA 96150

Re: Address: 1360 Ski Run Boulevard
File No.: 19-026
Special Use Permit for New 112' Verizon Wireless Tower and Associated Equipment
Hearing Date: Tuesday, August 6, 2019
Appellant: Monica Eisenstecken

Dear Mayor and City Council Members:

Please be advised the undersigned represents Monica Eisenstecken with regard to her appeal to the City Council of the Planning Commission's approval of the above-described project. Ms. Eisenstecken is a full-time resident (with her two young children) and owner of the adjacent property (3605 Needle Peak Road) which would be dramatically, if not catastrophically affected by this project. Please consider the following as reasons for denying the requested Special Use Permit.

1. Ms. Eichenstecken Was Unaware Of The Application Until after The Planning Commission Meeting Was Held.

Ms. Eisenstecken's property is adjacent to the property for which a permit is sought, and indeed well within a three hundred foot (300') radius of the location for the proposed equipment. In fact, the property where she and her elementary school age children live is approximately 130' feet from the base of the proposed tower.

Notwithstanding the fact she owns and lives in the neighboring property, she never received notice of Verizon's application and/or its placement on the Planning Commission's agenda until several days after the Planning Commission's June 13, 2019 meeting during which it approved the project[1]. I raise this issue not to claim that a notice of the hearing was not properly mailed to Ms.

[1] She only learned about the hearing because she received a letter from TRPA dated June 4, which told her to expect another letter with further details. When approximately 2 weeks passed without receiving further correspondence, she made inquiry of the city and learned the

Eisenstecken, although she did not receive it for whatever reason. Instead, and more substantively, I raise this issue to point out that the Planning Commission was not given the benefit of Ms. Eisenstecken's opposition, or any of the information set forth in this letter or which may be subsequently provided at public hearing on August 6, 2019. I further suspect that Ms. Eisenstecken is not alone in failing to receive actual notice of the Planning Commission hearing, notwithstanding a vehement opposition to the project, as will no doubt be evidenced at the August 6, 2019 hearing before you. Had the Planning Commission been aware of this information, I have every confidence it would have rejected the application, as I trust you will.

2. Verizon May Avail Itself Of Several Other Preferable Locations For This Tower Which Are Not Immediately Adjacent To Someone's House And/Or Are Not Within An Area Zoned For Residential Use And/Or Do Not Require Construction Of A New Tower But Instead Can Share An Existing One. – Therefore, It Is Not "Necessary And Desirable" On This Parcel.

In order to approve this permit, this City Council needs to find that the application meets each of the four (4) tests set forth in City Code 6.55.620. The first required finding is that the project requiring a Special Use Permit is "**necessary or desirable on a specific parcel**". In support of Verizon's contention that erecting a one hundred twelve foot (112') tower at 1360 Ski Run is necessary or desirable at this particular location, Verizon first claims:

> "*A number of nearby parcels to the subject parcel were considered for a wireless facility and ruled out for various reasons.*"[2]

Verizon fails to identify a single parcel they considered for this tower, let alone "[a] number of nearby parcels", nor does Verizon identify a single reason why such alternative sites were "ruled out" let alone its "various reasons".

Apparently Verizon expects these contentions to be accepted at face value without any specificity, rationale, or support whatsoever. This lack of detail alone necessarily constitutes a valid reason for concluding that finding number 1 cannot be satisfied.

While Verizon apparently could not be bothered to set forth the other parcels it considered and ruled out for this facility, Robert Perez, a cell tower leasing expert unafffiliated with the applicant has identified at least 14 other preferable parcels where this tower could be located. See correspondence from Mr. Perez, filed simultaneously herewith. Such establishes that it is not

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Planning Commission meeting had already occurred.

[2] See Attachment 3 to City of South Lake Tahoe Report to Planning Commission labeled as Item 1 on Page 9 of the report itself.

"necessary" to build the tower at this "specific parcel", 1360 Ski Run Boulevard, nor is it "desirable" to erect a tower in a residential neighborhood in close proximity to Ms. Eisenstecken and her other neighbors.

This City Council is required to make findings for a Special Use Permit for this tower in the same manner it might for a wide variety of projects. In other words, the City of South Lake Tahoe has not adopted specific ordinances pertaining exclusively to cell tower applications, nor should it necessarily do so. However, it is instructive and illustrative to look at a specific cell tower ordinance recently adopted by a nearby, similar municipality: the Town of Truckee. Truckee recognizes that equipment on existing structures (e.g., church steeple, communication towers, free-standing sign, water tank, etc.,) are preferable to a location where a new structure has to be specially built. See Truckee Municipal Code, §18.58(A) (3) (a) attached hereto as **Exhibit A**. In Truckee, applicants are "required to provide written documentation demonstrating a good faith effort in locating facilities per that site selection order of preference",[3] something that Verizon has altogether declined to do.

Again, Truckee's tower – specific code provision is instructive and helpful as a guide. Only where an existing structure is unavailable might an applicant turn to erecting a new structure, and even then priority is for locations where the greatest amount of screening exists, and never in a residential neighborhood.[4]

3. The Applicant Has Not Demonstrated That The One Hundred Twelve Foot (112') Tower Is "Not Injurious To The Neighborhood".

"**Not injurious to the neighborhood**" is another finding the City Council will be unable to make, for the following reasons:

A. Applicant Proposes This Tower In A Residential Neighborhood Next To A House, Which Is Necessarily Injurious.

The subject parcel is within Plan Area Statement 085, which is classified as residential. The Planning Statement says that "[t]his area should continue as residential area, maintaining the existing character of the neighborhood".

Verizon first contends that the tower will not be injurious to the neighborhood because:

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[3] The Ordinance itself appears to contain a minor error inasmuch as it references a non-existent section (2.a) of the obviously intended section which labeled "Site selection."

[4] Truckee Municipal Code: 18.58 (3) (b) (c); 18.58 (A)(4) "Co-Location." (i.e., two (2) or more users locate their equipment on the same tower) is encouraged. 18.58 (A)(5).

> *"[d]ue to the placement and stealth design of the tower within an existing group of trees, any visual blight to the neighborhood will be substantially reduced".*[5]

Verizon fails to explain how a tower which is one hundred twelve feet (112') tall can appear stealthy amongst adjacent trees which top out at no more than seventy feet (70'). The only tree depicted on Verizon's site survey[6] is 64.3', which it admits is of "typ[ical]" height. This stands in contrast to Verizon's "PHOTOSIMULATIONS" Attachment 7, (pages 42-44) which fail to realistically depict a tower which towers more than 40' over surrounding trees.

In evaluating cellular facilities, the local entity may consider "other valid public goals such as safety and aesthetics". *T-Mobile USA, Inc. v City of Anacortes*, 573 F.3d 7 (9th Cir. 2009); *Cellular Telco v Town of Oyster Bay*, 166 F.3d 490, 494 (2nd Cir. 1989) (Esthetic concerns can be a valid basis for zoning decisions).

Again, the Town of Truckee necessarily determined that cell towers are injurious to residential neighborhoods and outlawed them accordingly in such locations. South Lake Tahoe can and should consider the same logic.

Applicant further provides that *"the neighborhood will also benefit from... improved access to emergency services, who for the most part use Verizon to track and dispatch their assets".*[7] Even if this statement were true, and access to emergency services increased, this says nothing about how the tower is "not injurious to the neighborhood". In any event, this contention is believed to be factually inaccurate, as the undersigned is unaware of any agency providing emergency service using Verizon "for the most part" to "track and dispatch their assets".

TRPA code requires additional findings for any structure (excluding buildings) having a maximum height greater than twenty-six feet (26')[8]. Specifically, additional two findings are that 1) the function of the structure requires a greater maximum height than otherwise provided for and 2) the additional building height is the minimum necessary to feasibly implement the project and

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[5] See Attachment 3 to City of South Lake Tahoe Report to Planning Commission labeled as Item 2 on Page 9 of the report itself.

[6] See Attachment 4 to City of South Lake Tahoe Report to Planning Commission labeled as page 28 to the report itself.

[7] Attachment C; page 9 of Report to Planning Commission, Item 2.

[8] TRPA Code 37.6.1.

there are no feasible alternatives requiring less additional height.[9]

B. Nobody Can Guarantee The Emissions From The Proposed Tower Will Not Cause Health Problems.

Applicant proposes to radiate a 5G signal from this tower 24 hours a day for an indefinite period, presumably for decades. Nobody can know the health consequences of this for neighbors, although there is undeniably cause for concern. .

We understand in considering radio frequency emissions, the City is limited to insuring that a proposed installation complies with FCC emission standards. This does not mean, however, that the City is precluded from considering the fact that it might be preferable for such potentially carcinogenic emissions to be emanating from a tower located a considerable distance from people's homes, rather than adjacent to them. Similarly, although local municipalities may not prohibit wireless service altogether "**Congress also made it clear that it was preserving the authority of local governments over zoning decisions regarding the placement and construction of the wireless service facilities**, subject to certain limitations, such as regulations that 'shall not prohibit or have the effect of prohibiting the provision of personal wireless services.'" 47 USC §332(c)(7)(B)(i)(II). 1 California Land Use Practice, October 2018 Update (Adam U. Lindgren,, Steven T. Mattas CEB) §12.68, pp 12-62, 12-63, emphasis added.

C. Cell Tower Will Reduce Its Neighbors' Property Values.

If this tower is constructed, Ms. Eisenstecken will likely feel compelled to sell this property where she has lived for 15 years, and hope that a prospective buyer is less concerned about the cell tower than her because, for example, they may only use the house infrequently as a second home, and therefore be less concerned about the pervasive effect of a tower next to one's primary residence. Nevertheless, when Ms. Eisenstecken attempts to sell her property, she will have insult added to her injury, as she will likely find the value of her property to have been greatly reduced. In fact, the existence of a nearby cell phone tower is important enough that Ms. Eisenstecken will be legally required to disclose the existence of the cell tower, as such is specifically called for by the disclosure form (SELLER PROPERTY QUESTIONNAIRE (C.A.R. Form SPQ, Revised 12/16)) used in almost every residential real property sale in California. See **Exhibit B**. See page 4 of 4, line 5.

4. Verizon's Application Is Objectively Deficient.

Aside from failing to provide the "various reasons" why they ruled out "a number of nearby

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[9] TRPA Code 37.7.4; 37.7.7.

parcels" as a suitable site, Verizon's application contains several inadequacies.

Verizon's application included the following claims:

" ● [Is the project located] within five hundred feet (500') of a stream environment zone or riparian habitat? ____ YES ___✔_ NO[10]"

My understanding is that this is not correct and that the distance from the proposed tower to the stream environment zone ("SEZ") is only 120' (approximately).

"● Does the project involve [a] change in building/structure height? ____ YES ___✔_ NO[11]"

This is inexcusably inaccurate, as project, if it were allowed, would cause a one hundred twelve foot (112') tower to be erected, which is obviously a change in height over the existing structures on the property of normal height.

"● [Does the project involve] new sources of . . . emissions? ____ YES ___✔_ NO[12]"

While this may not cause particulate emissions, there will nevertheless be a high level of radiation emissions emanating from the equipment

"● Applicant contends "nearest house is ~250' away".[13]

In fact, the nearest house is actually 89 feet away, the nearest apartment is 99 feet away.

Inaccuracies are specifically a basis for the City to *"rescind any approval or take other*

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[10] See ENVIRONMENTAL INFORMATION FORM, page 2 of 5: page 18 of Report To Planning Commission.

[11] See ENVIRONMENTAL INFORMATION FORM, page 3 of 5: page 19 of Report To Planning Commission.

[12] See ENVIRONMENTAL INFORMATION FORM, page 3 of 5; page 19 of Report To Planning Commission.

[13] See ENVIRONMENTAL INFORMATION FORM, page 4 of 5: page 20 of Report To Planning Commission.

appropriate action".[14] Furthermore, Verizon's failure to supply information upon which the City Council can make meaningful findings that the project is "necessary or desirable [at 1360 Ski Run]" and "is not injurious to the neighborhood[15]" necessitates the application be denied. What is the most important component of considering injury to the neighborhood if not consideration for the neighbors who reside in it?

5. Ms. Eisenstecken Respectfully Disagrees That This Project Is Categorically Exempt Form CEQA.

Verizon relies upon two (2) claimed categorical exemptions in support of its contention that it is not subject to review under the California Environmental Quality Act (CEQA). Even assuming, *arguendo*, that statement might normally be accurate, such exemptions are "inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant". 14 Cal. Code of Regs. §15300.2(b). Our understanding is that the instant application is just part of Verizon's master plan, including approval of twenty-four (24) small sites for wireless equipment. Therefore, the cumulative impact of such multiple projects should not escape review just because they are proposed as a series of multiple applications, rather than one comprehensive application.

The first exemption Verizon relies upon is 5303/Class No. 3 which applies to small structures. First, a one hundred twelve feet (112') tower is not a "small structure" under any reasonable definition. Further, when considered within the context of Verizon's comprehensive web of antennas around town, it is part of a larger project which should not escape CEQA review merely because it is done one piece at a time.

Applicant also attempts to rely upon §15332/Class No. 32 which pertains to "infill development projects". Among other requirements, this exemption requires that the project be consistent with "all applicable general plan policies as well as with applicable zoning designation and regulations". 14 Cal. Code of Regs §1332(a). As set forth above, the zoning for this area is designated residential. Discussion under that code section states it "is intended to promote infill development within urbanized areas. The class consists of environmentally benign infill projects". Ms. Eisenstecken does not consider the radio frequency which will be broadcast in her direction from a near point blank range to be benign, but rather malignant.

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[14] General Planning Application, page 4 of 6; page 14 City of South Lake Tahoe Report To Planning Commission.

[15] The uncontested and indisputable information is that this tower would be injurious to the neighbors in the neighborhood including Ms. Eisenstecken, her family, and other nearby residents.

Conclusion

We trust the City Council will agree with us that it is legally unable and in good conscience to make at least two (2) of the findings required for it to approve this application. Such a decision is not anti-technology, but rather judicious land planning, which will allow technological advancement to flourish when done correctly and with respect for the citizens who live here. The Washoe County Board of Adjustment recently (this year) denied a very similar application to construct a very similar tower in Incline Village, and no different result is warranted here.

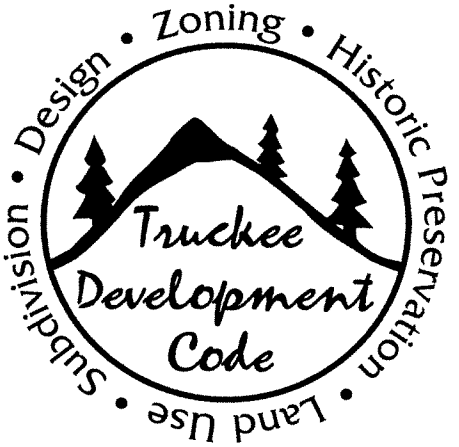
Of course, you and staff are free to contact me with any questions or concerns.

Sincerely,

Michael K. Johnson
Rollston, Henderson & Johnson, Ltd.

EXHIBIT A

Town of Truckee



DEVELOPMENT CODE

Truckee Municipal Code, Title 18

Amended:

January 11, 2019

This Section establishes standards for the development and operation of telecommunications facilities including cellular wireless communications and data network facilities (Subsection A), satellite antennas (Subsection B), single pole/tower amateur radio antennas (Subsection C), and television and radio broadcasting towers (Subsection D).

A. Cellular wireless communications and data network facilities (Large and Small). Cellular wireless telephone and data network antennas, including supporting towers and related ground-mounted structures and equipment, shall comply with the following requirements.

1. Permit requirements. The land use permit requirement for cellular wireless communications and data network facilities shall be as determined by Article II (Zoning Districts and Allowable Land Uses). Large cellular wireless communications and data network facilities shall require approval of a Use Permit; small cellular wireless communications facilities shall require approval of a Minor Use Permit. Plans for the cellular wireless communications and data network facility shall be submitted with the land use permit application in compliance with Chapter 18.70 (Applications, Processing and Fees).

2. Height. Cellular wireless communications and data network facilities up to a maximum of 10 feet high shall fall under the definition of a small cellular wireless and data network facility.

3. Site selection. Sites for cellular wireless communications and data network facilities shall be selected according to the following order of preference:

a. On existing structures (e.g., a church steeple, communication towers, freestanding sign, water tank, etc.);

b. In locations where the existing topography, vegetation or other structures provide the greatest amount of screening; or

c. On vacant land without significant visual mitigation, only in commercial and manufacturing zoning districts.

As part of the application process, applicants for cellular wireless communication and data network facilities shall be required to provide written documentation demonstrating a good faith effort in locating facilities in compliance with Subsection 2.a (Site selection order of preference), above.

4. Prohibited areas. Cellular wireless communications and data network facilities shall not be established within the RS, RM, DRS, DRM and DRH zoning districts.

5. Co-location. The Town shall encourage and allow "co-location" of cellular wireless communications and data network equipment on appropriate existing Town structures and towers subject to reasonable engineering requirements. The Town shall encourage utility providers, special districts and other public agencies to allow "co-location" of cellular wireless communications and data network equipment on appropriate existing structures and towers subject to reasonable engineering requirements.

TABLE 2-1
ZONING DISTRICTS

Zoning Map Symbol	Zoning District Name	General Plan or Downtown Specific Plan (DSP) Land Use Classification Implemented by Zoning District
Residential Zoning Districts		
RR	Rural Residential	Residential Residential Cluster - 5 acres and 10 acres Open Space Recreation DSP - Single Family Residential
RS	Single-Family Residential	Residential Residential Cluster - 5 acres and 10 acres Open Space Recreation Tahoe Donner PC Public (Hospital/Office)
RM	Multi-Family Residential	Residential High Density Residential Tahoe Donner PC
DRS	Downtown Single-Family Residential	DSP – Single-Family Residential
DRM	Downtown Medium Density Residential	DSP – Single-Family Residential
DRH	Downtown High Density Residential	DSP – Multi-Family Residential
Commercial and Manufacturing Zoning Districts		
CN	Neighborhood Commercial	Residential Residential High Density Commercial Tahoe Donner PC Public (Hospital/Office)
CG	General Commercial	Commercial Industrial Public (Hospital/Office) DSP - Commercial
CH	Highway Commercial	Commercial
CS	Service Commercial	Industrial Commercial
M	Manufacturing/Industrial	Industrial
DMU	Downtown Mixed Use	DSP - Mixed Use
DC	Downtown Commercial	DSP - Commercial
DVL	Downtown Visitor Lodging	DSP - Visitor Lodging
DM	Downtown Manufacturing/Industrial	DSP - Industrial

EXHIBIT B

CALIFORNIA ASSOCIATION OF REALTORS®

SELLER PROPERTY QUESTIONNAIRE

(C.A.R. Form SPQ, Revised 12/16)

This form is not a substitute for the Real Estate Transfer Disclosure Statement (TDS). It is used by the Seller to provide additional information when a TDS is completed. If Seller is exempt from completing a TDS, Seller should complete an Exempt Seller Disclosure (C.A.R. Form ESD) or may use this form instead.

I. Seller makes the following disclosures with regard to the real property or manufactured home described as *Mar Vista Neighborhood*, Assessor's Parcel No. _____, situated in _____, County of _____ California ("Property").

II. **The following are representations made by the Seller and are not the representations of the Agent(s), if any. This disclosure statement is not a warranty of any kind by the Seller or any agents(s) and is not a substitute for any inspections or warranties the principal(s) may wish to obtain. This disclosure is not intended to be part of the contract between Buyer and Seller. Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker has not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desires legal advice, they should consult an attorney.**

III. **Note to Seller:** PURPOSE: To tell the Buyer about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.
- Answer based on actual knowledge and recollection at this time.
- Something that you do not consider material or significant may be perceived differently by a Buyer.
- Think about what you would want to know if you were buying the Property today.
- Read the questions carefully and take your time.
- If you do not understand how to answer a question, or what to disclose or how to make a disclosure in response to a question, whether on this form or a TDS, you should consult a real estate attorney in California of your choosing. A broker cannot answer the questions for you or advise you on the legal sufficiency of any answers or disclosures you provide.

IV. **Note to Buyer:** PURPOSE: To give you more information about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.
- Something that may be material or significant to you may not be perceived the same way by the Seller.
- If something is important to you, be sure to put your concerns and questions in writing (C.A.R. form BMI).
- Sellers can only disclose what they actually know. Seller may not know about all material or significant items.
- Seller's disclosures are not a substitute for your own investigations, personal judgments or common sense.

V. **SELLER AWARENESS: For each statement below, answer the question "Are you (Seller) aware of..." by checking either "Yes" or "No." Explain any "Yes" answers in the space provided or attach additional comments and check section VI.**

A. STATUTORILY OR CONTRACTUALLY REQUIRED OR RELATED: **ARE YOU (SELLER) AWARE OF...**

1. Within the last 3 years, the death of an occupant of the Property upon the Property . . . . . [ ] Yes [ ] No
2. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.) . . . . . [ ] Yes [ ] No
3. The release of an illegal controlled substance on or beneath the Property . . . . . [ ] Yes [ ] No
4. Whether the Property is located in or adjacent to an "industrial use" zone . . . . . [ ] Yes [ ] No (In general, a zone or district allowing manufacturing, commercial or airport uses.)
5. Whether the Property is affected by a nuisance created by an "industrial use" zone. . . . . [ ] Yes [ ] No
6. Whether the Property is located within 1 mile of a former federal or state ordnance location. . . . . [ ] Yes [ ] No (In general, an area once used for military training purposes that may contain potentially explosive munitions.)
7. Whether the Property is a condominium or located in a planned unit development or other common interest subdivision. . . . . [ ] Yes [ ] No
8. Insurance claims affecting the Property within the past 5 years . . . . . [ ] Yes [ ] No
9. Matters affecting title of the Property . . . . . [ ] Yes [ ] No
10. Material facts or defects affecting the Property not otherwise disclosed to Buyer . . . . . [ ] Yes [ ] No
11. Plumbing fixtures on the Property that are non-compliant plumbing fixtures as defined by Civil Code Section 1101.3 . . . . . [ ] Yes [ ] No

Explanation, or [ ] (if checked) see attached; _____

Buyer's Initials (_____) (_____) Seller's Initials (_____) (_____)

Monte Vista

Property Address: *Mar Vista Neighborhood, ,* Date: _____

B. REPAIRS AND ALTERATIONS: **ARE YOU (SELLER) AWARE OF...**

1. Any alterations, modifications, replacements, improvements, remodeling or material repairs on the Property (including those resulting from Home Warranty claims) . . . . . [ ] Yes [ ] No
2. Any alterations, modifications, replacements, improvements, remodeling, or material repairs to the Property done for the purpose of energy or water efficiency improvement or renewable energy? . . . . . [ ] Yes [ ] No
3. Ongoing or recurring maintenance on the Property (for example, drain or sewer clean-out, tree or pest control service) . . . . . [ ] Yes [ ] No
4. Any part of the Property being painted within the past 12 months. . . . . [ ] Yes [ ] No
5. If this is a pre-1978 Property, were any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces completed in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule. . . . . [ ] Yes [ ] No

Explanation: _____

C. STRUCTURAL, SYSTEMS AND APPLIANCES: **ARE YOU (SELLER) AWARE OF...**

1. Defects in any of the following, (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace, foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors or appliances . . . . . [ ] Yes [ ] No
2. The leasing of any of the following on or serving the Property: solar system, water softener system, water purifier system, alarm system, or propane tank (s) . . . . . [ ] Yes [ ] No
3. An alternative septic system on or serving the Property. . . . . [ ] Yes [ ] No

Explanation: _____

D. DISASTER RELIEF, INSURANCE OR CIVIL SETTLEMENT: **ARE YOU (SELLER) AWARE OF...**

1. Financial relief or assistance, insurance or settlement, sought or received, from any federal, state, local or private agency, insurer or private party, by past or present owners of the Property, due to any actual or alleged damage to the Property arising from a flood, earthquake, fire, other disaster, or occurrence or defect, whether or not any money received was actually used to make repairs . . . . . [ ] Yes [ ] No

Explanation: _____

E. WATER-RELATED AND MOLD ISSUES: **ARE YOU (SELLER) AWARE OF...**

1. Water intrusion into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property . . . . . [ ] Yes [ ] No
2. Any problem with or infestation of mold, mildew, fungus or spores, past or present, on or affecting the Property . . . . . [ ] Yes [ ] No
3. Rivers, streams, flood channels, underground springs, high water table, floods, or tides, on or affecting the Property or neighborhood . . . . . [ ] Yes [ ] No

Explanation: _____

F. PETS, ANIMALS AND PESTS: **ARE YOU (SELLER) AWARE OF...**

1. Pets on or in the Property . . . . . [ ] Yes [ ] No
2. Problems with livestock, wildlife, insects or pests on or in the Property . . . . . [ ] Yes [ ] No
3. Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above . . . . . [ ] Yes [ ] No
4. Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above. . . . . [ ] Yes [ ] No
   If so, when and by whom _____

Explanation: _____

Property Address: *Mar Vista Neighborhood, ,* Date: _____

G. BOUNDARIES, ACCESS AND PROPERTY USE BY OTHERS: **ARE YOU (SELLER) AWARE OF...**

1. Surveys, easements, encroachments or boundary disputes . . . . . [ ] Yes [ ] No
2. Use or access to the Property, or any part of it, by anyone other than you, with or without permission, for any purpose, including but not limited to, using or maintaining roads, driveways or other forms of ingress or egress or other travel or drainage . . . . . [ ] Yes [ ] No
3. Use of any neighboring property by you . . . . . [ ] Yes [ ] No

Explanation: _____

H. LANDSCAPING, POOL AND SPA: **ARE YOU (SELLER) AWARE OF...**

1. Diseases or infestations affecting trees, plants or vegetation on or near the Property . . . . . [ ] Yes [ ] No
2. Operational sprinklers on the Property . . . . . [ ] Yes [ ] No
   (a) If yes, are they [ ] automatic or [ ] manually operated.
   (b) If yes, are there any areas with trees, plants or vegetation not covered by the sprinkler system . . . . [ ] Yes [ ] No
3. A pool heater on the Property . . . . . [ ] Yes [ ] No
   If yes, is it operational? . . . . . [ ] Yes [ ] No
4. A spa heater on the Property . . . . . [ ] Yes [ ] No
   If yes, is it operational? . . . . . [ ] Yes [ ] No
5. Past or present defects, leaks, cracks, repairs or other problems with the sprinklers, pool, spa, waterfall, pond, stream, drainage or other water-related decor including any ancillary equipment, including pumps, filters, heaters and cleaning systems, even if repaired . . . . . [ ] Yes [ ] No

Explanation: _____

I. CONDOMINIUMS, COMMON INTEREST DEVELOPMENTS AND OTHER SUBDIVISIONS:
ARE YOU (SELLER) AWARE OF...

1. Any pending or proposed dues increases, special assessments, rules changes, insurance availability issues, or litigation by or against or fines or violations issued by a Homeowner Association or Architectural Committee affecting the Property. . . . . [ ] Yes [ ] No
2. Any declaration of restrictions or Architectural Committee that has authority over improvements made on or to the Property . . . . . [ ] Yes [ ] No
3. Any improvements made on or to the Property without the required approval of an Architectural Committee or inconsistent with any declaration of restrictions or Architectural Commitee requirement. . . . . [ ] Yes [ ] No

Explanation: _____

J. TITLE, OWNERSHIP LIENS, AND LEGAL CLAIMS: **ARE YOU (SELLER) AWARE OF...**

1. Any other person or entity on title other than Seller(s) signing this form . . . . . [ ] Yes [ ] No
2. Leases, options or claims affecting or relating to title or use of the Property . . . . . [ ] Yes [ ] No
3. Past, present, pending or threatened lawsuits, settlements, mediations, arbitrations, tax liens, mechanics' liens, notice of default, bankruptcy or other court filings, or government hearings affecting or relating to the Property, Homeowner Association or neighborhood . . . . . [ ] Yes [ ] No
4. Any private transfer fees, triggered by a sale of the Property, in favor of private parties, charitable organizations, interest based groups or any other person or entity . . . . . [ ] Yes [ ] No
5. Any PACE lien (such as HERO or SCEIP) or other lien on your Property securing a loan to pay for an alteration, modification, replacement, improvement, remodel or material repair of the Property? . . [ ] Yes [ ] No
6. The cost of any alteration, modification, replacement, improvement, remodel or material repair of the Property being paid by an assessment on the Property tax bill? . . . . . [ ] Yes [ ] No

Explanation: _____

K. NEIGHBORHOOD: **ARE YOU (SELLER) AWARE OF...**

1. Neighborhood noise, nuisance or other problems from sources such as, but not limited to, the following: neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks,

freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife . . . . . [ ] Yes [ ] No

Explanation: _____

L. GOVERNMENTAL: **ARE YOU (SELLER) AWARE OF...**

1. Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that applies to or could affect the Property . . . . . [ ] Yes [ ] No
2. Existence or pendency of any rent control, occupancy restrictions, improvement restrictions or retrofit requirements that apply to or could affect the Property. . . . . [ ] Yes [ ] No
3. Existing or contemplated building or use moratoria that apply to or could affect the Property . . . . . [ ] Yes [ ] No
4. Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property . . . . . [ ] Yes [ ] No
5. Proposed construction, reconfiguration, or closure of nearby Government facilities or amenities such as schools, parks, roadways and traffic signals . . . . . [ ] Yes [ ] No
6. Existing or proposed Government requirements affecting the Property (i) that tall grass, brush or other vegetation be cleared; (ii) that restrict tree (or other landscaping) planting, removal or cutting or (iii) that flammable materials be removed . . . . . [ ] Yes [ ] No
7. Any protected habitat for plants, trees, animals or insects that apply to or could affect the Property . . . . . [ ] Yes [ ] No
8. Whether the Property is historically designated or falls within an existing or proposed Historic District . . . . . [ ] Yes [ ] No
9. Any water surcharges or penalties being imposed by a public or private water supplier, agency or utility; or restrictions or prohibitions on wells or other ground water supplies . . . . . [ ] Yes [ ] No

Explanation: _____

M. OTHER: **ARE YOU (SELLER) AWARE OF...**

1. Reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys or other documents, pertaining to (i) the condition or repair of the Property or any improvement on this Property in the past, now or proposed; or (ii) easements, encroachments or boundary disputes affecting the Property whether oral or in writing and whether or not provided to the Seller. . . . . [ ] Yes [ ] No
   (If yes, provide any such documents in your possession to Buyer.)
2. Any occupant of the Property smoking on or in the Property. . . . . [ ] Yes [ ] No
3. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer . . . . . [ ] Yes [ ] No

Explanation: _____

VI. [ ] **(IF CHECKED) ADDITIONAL COMMENTS:** The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation.

Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from his/her own duty of disclosure.

Seller _____ Date _____

Seller _____ Date _____

By signing below, Buyer acknowledges that Buyer has read, understands and has received a copy of this Seller Property Questionnaire form.

Buyer _____ Date _____

Buyer _____ Date _____

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Reviewed by _____ Date _____