

# Environmentally Speaking

by STUART LIEBERMAN, ESQ.



Environmental Issues & Your Home

## U.S. community groups fight cell-tower placement

Cell phones. You can't live with them, and you can't live without them. But everybody wants to live without the cell towers that accompany cell phone systems.

Cell towers are an instrumental part of the mechanism that picks up messages from our phones and transmits messages to our phones. In order to have consistent, uniform coverage, cell phone providers need cell towers. And they need a lot of them. The more users, the more the need for cell phone towers.

But over the years, people have raised health concerns over cell towers. Some question whether these towers emit harmful energy, and whether they can make people sick. Notwithstanding the resolution to this issue, just about everybody in every community feels these towers are just plain ugly. Very few people, it would appear,

want to have cell towers in their community.

The federal government has already got into the act and has passed legislation which makes it easier for cell phone companies to place towers in communities that don't want them. Now when cell operators appear before planning boards and seek approval for a cell tower location, federal law more than evens the playing field in their favor.

Florida currently is considering its own law which will make it even easier for cell companies to erect these towers. If HB1495 becomes a law, local governments will be limited in their ability to prohibit the construction of cell towers. In addition, the law would require the Florida DEP to evaluate available sites on state-owned properties to house these antennas. The Florida law is predicated on the need

to have continuously good and uninterrupted service for public health and emergency purposes.

But many believe the true purpose behind HB1495 is to provide even further support for the powerful cell telephone industry. The more towers, the more customers, the more money these giants make.

Many municipalities are sensitive to the wishes of the citizens to limit residential sites in which these often ugly towers can be erected. And laws which allow towers in certain locations and don't allow them in other locations can withstand federal scrutiny as long as enough sites are left available in municipalities to ensure reliable, uninterrupted service.

But, it takes a brave municipality to fight the cell phone industry. For example Carlsbad, Calif., has agreed to pay a wireless provider \$250,000 to settle a lawsuit alleging

a tower owner was improperly denied a land use permit. In that case, many residents appeared before the planning commission and the governing body to oppose the proposed tower. As it turns out, there were already an ample number of these cell towers in the community and residents did not want even one more. But the cell provider sued and the municipality believed it had to settle.

Recently, residents of Bethel, Conn., expressed concerns over a proposal by a cell phone company to replace a 90-foot cell phone tower in a residential neighborhood with a 130-foot tower. And with the addition of "whip antennas," which would be placed atop the tower, the entire construction would reach 148 feet in the air, 58 feet higher than what currently exists.

☆ ☆ See TOWERS, page 13

☆ Sunday, October 10, 2004, The Daily Sentinel



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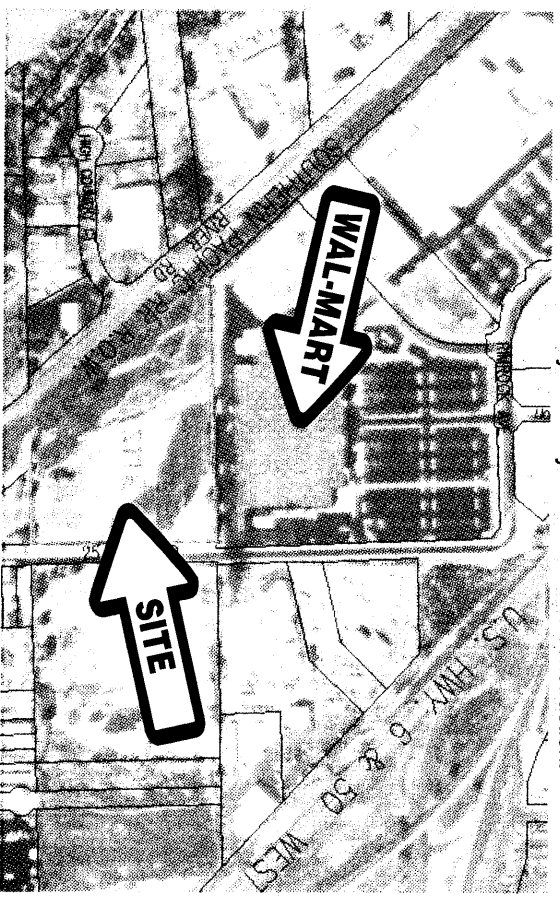
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The truth of the matter is that cell phones are a part of society and they are not going away. And cell towers need to be installed throughout the country in order for these devices to function reliably and without interruption.

But, money is always a factor. Cell towers represent money to the property owners who host the towers. They represent tax income to local governments that house these towers. They represent a lot of money to a lot of people.

Of course, this is a very strong industry with strong lobby support at both the federal level and the state levels. It is hard to fight a cell tower proposal. Hard, but certainly not impossible.

Residents should not be quiet when a plan for an inappropriate placement of one of these towers is being proposed by one of these companies. They need to organize, they need to speak out, and they need to seek competent legal representation.

It is hard to fight City Hall when there is so much money at stake. But, it is not impossible. Planning, coupled with adequate professional assistance, may yield a suitable outcome.

It is important for community groups to organize and to take action at the first moment they learn an inappropriate proposal is being made. The opposition often takes time to become organized and, therefore, it is important these efforts begin at the earliest opportunity possible.

Yes, you can and should fight City Hall if your community is being treated unfairly.

*Stuart Lieberman, Esq., is an environmental attorney with Lieberman and Blecher, an environmental law firm in Princeton, N.J. His syndicated column is purely commentary about the environment and how it affects reality and your home. It is NOT, in any way, to be considered legal advice. Lieberman served as a New Jersey Deputy Attorney General assigned to the State Department of Environmental Protection from 1986-1990.*

*We appreciate your comments regarding this column. Please address them to The Daily Sentinel, attn: Kay Stack, Special Sections Editor, P.O. Box 668, Grand Junction, CO, 81502; or e-mail at kstack@gjds.com. You can contact Mr. Lieberman directly at slieberman@liebermanblecher.com.*

Phil Jenkins, legal counsel for Chicago Title, said some of the problem is the complexity of the mortgage banking system and the home-loan process.

"The average person does not purchase or refinance a home very often," Jenkins said. "The mortgage lending process is not all that clear to average person. They are asked to sign a bunch of documents and they are not always sure of what they are signing."

According to Bickel, the usual result of a homeowner's attempt to eliminate their existing mortgage liens via mortgage elimination plan will be that the prior mortgage lender will commence foreclosure. A title search will reveal many unusual documents that are recorded as part of the mortgage elimination procedure, leading some insurers to reject title as unmarketable.

"Title insurance companies will also probably decline to insure a subsequent mortgage from

that borrower, due to the risks associated with the attempted mortgage elimination procedure," Bickel said. "In the end, some homeowners will lose the property at the mortgage foreclosure sale. Others will sell the home quickly to stop that foreclosure and extract any remaining equity after paying the prior mortgage lender significant extra fees and costs."

Don't be misled by fancy lan-

guage and complex documents. Don't fool yourself into thinking that you can walk away from your mortgage without paying the consequences. It's your debt, your loan and no magic wands can whisk it away.

*2004 Tom Kelly  
Tom Kelly, former real estate editor for The Seattle Times is a syndicated columnist and talk show host. His latest book, "How a Second Home Can Be Your Best Investment" (McGraw-Hill, \$16.95) was co-written with John Tuccillo, former chief economist for the National Association of Realtors and is now available in local bookstores. Tom can be reached at news@tomkelly.com.*

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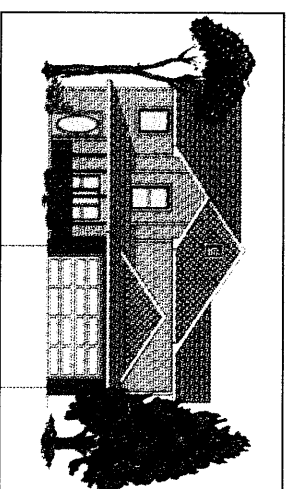
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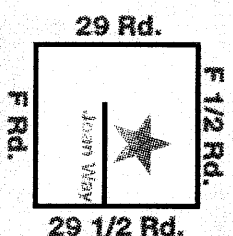
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