

IN Brief

WINTER 2001

AN UPDATE: TELECOMMUNICATIONS TOWERS AND THE CONNECTICUT SITING COUNCIL

by Peter J. Tyrrell

Many of our clients have received requests from cellular and personal communication service ("PCS") carriers to build a tower on their premises. Both types of carriers offer mobile telephone services. Previously, PCS carriers had to seek local zoning permission to build a new telecommunications tower while the cellular carriers filed tower applications with the Connecticut Siting Council due to the definition of "cellular" contained in the statute. A recent court decision indicates the Siting Council has jurisdiction over the construction of new PCS and cellular towers.

In 1971 the Connecticut Legislature established the Connecticut Siting Council to balance the need for adequate and reliable electrical facilities and telecommunication towers at the lowest reasonable cost to consumers with the need: (a) to protect the environment and ecology of the state; and (b) to minimize damage to scenic, historic and recreational values. The Council regulates the location, construction and operation of facilities, including telecommunications towers owned or used by the State of Connecticut, public service companies such as SNET, intrastate communication carriers and cellular carriers. It takes into consideration local zoning and other land use provisions.

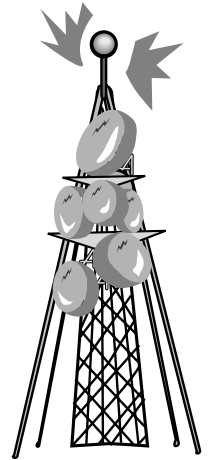
The Council has a well-established procedure to review any application to construct a new tower, holding a public hearing in the affected town in which members of the public and other interested parties may participate. The Council then bases its decision on whether to grant the applicant its requested Certificate of Environmental Compatibility and Public Need to build a tower on the basis of the evidence presented.

The siting of certain electrical facilities and telecommunications towers may be a complex matter in Connecticut. The applicant's rights and duties may depend upon nuanced factual settings and the nature of the technology employed by the operator.

On November 20, 2000, U.S. District Court in Connecticut had an opportunity to construe the Siting Council's jurisdiction. In the case of *Sprint Spectrum v. Connecticut Siting Council* (3-98-CV-33), Judge Covello held that communication carriers offering personal communication services are included within the term "cellular system" and thus fall within the Siting Council's jurisdiction (Connecticut General Statutes §16-50(i)(a)).

The cellular carriers that have been subject to the Siting Council's jurisdiction are SNET/Cingular and BellAtlantic/Verizon. PCS carriers that are subject to the Council's requirements by virtue of the court's decision include: Sprint PCS, AT&T Wireless Services, VoiceStream Wireless and Nextel Communications. Consequently, while the PCS carriers were previously subject to local zoning and other land use regulations, they now become subject to the Siting Council for new tower construction on raw land. All carriers remain regulated by local zoning when they seek to place antennas on existing buildings.

We recommend that if you are contacted by a telecommunications company that wishes to use your property or structure as a tower site, you call one of our experienced real estate attorneys to protect your interests before you sign any documents. **L&D**



...A RECENT COURT DECISION INDICATES THE SITING COUNCIL HAS JURISDICTION OVER BOTH PCS AND CELLULAR TOWERS...

For more information on this subject, please contact Peter J. Tyrrell at (860) 676-3069, or by email at ptyrrell@ldlaw.com, or read our previous article at www.ldlaw.com/fall_99.htm#art3.

TO SURVEY OR NOT TO SURVEY, THAT IS THE QUESTION

by Joel Mandell

ONLY A SURVEYOR CAN DETERMINE WHAT IS LOCATED ON THE PROPERTY AND WHERE, WHETHER THERE ARE ANY ENCROACHMENTS, ANY USES BY ABUTTING OWNERS, IF THE DRIVEWAY IS WHOLLY ON THE PARCEL, AND THE LOCATION OF ANY EASEMENTS. THESE QUESTIONS ARE NOT ANSWERED BY A TITLE EXAMINATION.

“Do I really need a survey?” During the 33 years I have been advising clients buying real property, this is one of the most frequently asked questions. It is usually followed with, “You and the title insurance company are examining title. Isn’t that enough?”

Even the most sophisticated real estate professionals seem surprised by the answers. You *do* need a survey. And no, a thorough title examination is *not* enough to fully protect you in the purchase of real property.

The owner of a particular parcel of real property is determined by an examination of the land records in the town in which the property is located. An abstract is produced by a title examiner and reviewed by a lawyer or a title insurance company underwriter, and a determination is then made as to title ownership of the property and any matters of title that may affect the property.

When my client asks about the building on the property, I explain that neither I nor the title insurance company can give any assurance on the location of any structure on the parcel without a current survey. Only a surveyor can determine what is located on the property and where, whether there are any encroachments, any uses by abutting owners, if the driveway is wholly on the parcel, and the location of any easements. These issues are not resolved by a title examination.

Lending institutions have created a market in which title insurance companies have agreed to give survey coverage without the benefit of a survey. Through coverage under its loan title insurance policy, the title company insures the lender against any loss or damage as a result of any state of facts an accurate survey may disclose. Thus, if a portion of the building is subsequently found to be located on an abutting parcel, resulting in a loss to the lender, the title insurer will be called upon to pay the loss under the policy, even though a survey was never prepared.

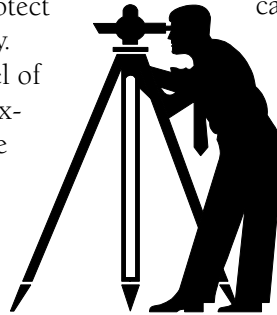
Is the owner similarly protected? The answer is an emphatic NO! Unless the buyer purchases an owner’s title policy and a current certified survey is used in underwriting the policy, survey coverage is not available to the owner, a fact far too often not fully explained to the buyer.

Once a prospective owner is convinced of the need to get a survey, the real estate lawyer can rely on two valuable tools to determine the type of survey required. The first, “Standards for Surveys and Maps in the State of Connecticut” prepared by The Connecticut Association of Land Surveyors, Inc., September 26, 1996, describes the types of surveys available and the wording for certifications. It is a helpful document that the real estate lawyer and professional land surveyor can use to determine the best survey to fit a given situation.

The ALTA/ACSM Land Title Survey is being requested on a more frequent basis by both State and National lenders in real estate transactions. The second tool, “Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys” adopted by the American Land Title Association, the National Society of Professional Surveyors and the American Congress on Surveying & Mapping in 1999, recognizes that local variations may be required to suit local needs and are used in conjunction with the Connecticut Regulations. Surveys prepared in accordance with these requirements generally contain more extensive information, such as a zoning data table, and incorporate additional technical procedures.

Both documents should be used by the lawyer, the title insurer and the surveyor as members of a coordinated team of real estate professionals working together in the best interests of their client. **L&D**

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HOUSING FOR OLDER PERSONS

by Herbert G. Isaacson

Within the next ten years, nearly 40 million Americans will be over 55, the minimum age established by the Federal Housing for Older Persons Act for senior citizen housing. To meet the needs of this growing segment of society, a wide spectrum of age-restricted housing has been developed, ranging from independent-living retirement communities for active older adults to skilled-nursing homes for seniors with special needs.

INDEPENDENT-LIVING RETIREMENT COMMUNITIES serve active older adults seeking a lifestyle free from the worries of home maintenance. They may include single-family, duplex, townhouse or apartment-style housing and may be organized as rental projects or owner-occupied condominiums or planned communities with homeowners associations. These communities frequently include clubhouse, recreational, and security facilities, and often distinguish between communities for younger and older senior citizens, with facilities for older seniors providing additional support services such as meals, health services and transportation. Age-restricted rental facilities are frequently designed to permit the exclusion of children under 18 to avoid the conflicts in lifestyle between young families and older persons seeking a quieter lifestyle.

ASSISTED-LIVING RESIDENCES provide apartment-style housing, group meals, personal care, support services and social activities in a residential setting. While assisted-living residents often maintain a high level of independence, driving their own cars and preparing one or more meals each day, they generally require assistance with one or more life skills on a regular basis. Assisted-living facilities provide nutritious meals, regular observation of physical conditions and an opportunity for residents to continue to interact with their peers.

ALZHEIMER'S DISEASE CARE FACILITIES are designed to meet the specialized needs of their residents and provide security, support and environmental benefits tailored to their cognitive levels.

CONTINUING-CARE FACILITIES, often called life-care facilities, offer seniors long-term contracts that guarantee lifelong shelter and access to specified health care services. A lump-sum entrance fee, non-refundable, partially refundable or fully refundable, depending on the contract, and regular monthly payments are often required. Generally, seniors move into continuing-care communities when they are still independent, can qualify for Long-Term Care Insurance and are able to take care of themselves. Should they become sick or frail, their needs will continue to be met, including entry into a skilled-nursing care facility.

SKILLED-NURSING HOMES provide seniors, or others who require daily nursing care and substantial assistance with multiple life-care skills, with comprehensive care services in a medically-oriented setting. While many see these facilities as a last resort, they may in fact be the proper setting for the frail elderly with multiple problems, or for disabled people seeking rehabilitation. Nursing homes are currently the most strictly regulated of the options discussed in this article, and the building of new nursing homes or the addition of nursing home beds is limited by Connecticut law and policy.

Attorneys at Levy & Droney have a long history of working with builders, developers and purchasers in every type of senior housing, representing both local and national developers of nursing homes, continuing-care facilities and assisted-living facilities and helping to create independent-living retirement communities. We have expertise in the preparation of condominium documentation and establishment of homeowner's associations, and the firm's land use planning attorneys have considerable experience in obtaining the necessary permits and approvals for these developments. Our estate planning lawyers can also advise individuals concerning the type of housing most appropriate for them. **L&D**

The following Levy & Droney, P.C. attorneys should be contacted in connection with Housing for Older Persons:

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FIRM HAPPENINGS

Levy & Droney is pleased to announce that **R. BARTLEY HALLORAN** has joined the firm as of counsel. Mr. Halloran is a graduate of Georgetown University, B.A. Economics, 1972, and the University of Connecticut Law School, J.D., 1975. He specializes in civil and criminal trial advocacy in the state and federal courts, specifically negligence, malpractice, products liability, automobile collision, industrial and construction accidents, securities law, and class actions.

A member of the Connecticut Trial Lawyers Association currently serving on the Board of Governors and Executive Committee, Mr. Halloran is also a member of the American Trial Lawyers Association, an associate of the American Board of Trial Advocates, a director of Connecticut Lawyers for Excellence in Government, and a member of the Connecticut and Hartford County Bar Associations and Connecticut Criminal Defense Lawyers Association.

A member of the Task Force on Access to the Courts and past Chair of the Judicial Review Commission, Mr. Halloran currently Chairs the Capitol City Economic Development Authority overseeing project plans and proposals for the revitalization of Downtown Hartford. Mr. Halloran's significant court cases include the Colonial Realty litigation, a \$17 million class action settlement regarding violation of wiretapping laws, a products liability claim involving tire explosion, and the \$45 million class action settlement regarding the L'Ambiance Plaza collapse.

Mr. Halloran can be reached at (860) 676-3222 or by email at rhalloran@ldlaw.com.

Levy & Droney, P.C. is pleased to announce that it has been retained to represent the **MARK TWAIN HOUSE** in the permitting and construction of its Education and Visitors Center to be designed by the renowned architect Robert A.M. Stern. The center will be located on the grounds of the Mark Twain House in Asylum Hill, Hartford.

Levy & Droney would also like to announce the formation of its **ASSET SUCCESSION AND PLANNING DEPARTMENT**. This department works closely with our clients on estate and business planning matters. We utilize an array of planning techniques ranging from simple wills to sophisticated Generation Skipping concepts, all of which serve to minimize income, estate, gift, succession and generation skipping taxes while maximizing family wealth preservation. The department has the expertise to handle all aspects of probate related matters including the settlement of decedent's estates, trust administration, conservatorships and guardianships. Our clients also benefit from the expertise available from all lawyers in our full-service law firm. Department members include:

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Levy & Droney Speaker's Bureau

If your organization would like an attorney to speak on a legal issue or topic, we would be pleased to offer the talents of an attorney of Levy & Droney. Topics are:

- Workplace Issues
- Family Issues
- Charitable Planning and Giving
- Estate Planning
- Automobile Liability
- Homeowner's Liability
- Condominium Issues
- First-Time Home Buyers

If interested, please contact Attorney Robert B. Levine at rlevine@ldlaw.com or (860) 676-3259.

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