

DESCHENES & FARRELL, P.C.

Attorneys at Law
The Fiske House at Central Square
One Billerica Road
Chelmsford, MA 01824-3010
Telephone: (978) 250-8877
Facsimile: (978) 250-0057

*Douglas C. Deschenes
Kathryn Lorah Farrell*

*Anthony J. Natola
Julie A. McNeill
Melissa E. Robbins
Kevin S. Eriksen*

June 1, 2010



Acton Planning Board
Ryan Bettez, Chairman
Acton Town Hall
472 Main Street
Acton, MA 01720

RE: Acton Water District
Lawsbrook Road

Dear Members of the Board,

On May 24, 2010, the Planning Department forwarded the Applicant an email from Jim and Kathy Quinn, residents of 299 School Street. The email was largely surrounding the potential of locating a tower on the Acton Water District property behind School Street and located off of Lawsbrook Road. Specifically, the Quinns suggested that the tower could be located "behind and to the right of the soccer fields...along the ridge of trees." As previously stated by the Applicant, and as detailed in a written statement from SBA Towers submitted at the last hearing, this site is not a viable alternative for contamination reasons. Nonetheless, per the request of the Planning Department, site acquisition did follow-up further with Mr. Chris Allen, water district manager, regarding this email. Based on this follow-up, the Applicant's concerns and position relative to the feasibility of the Acton Water District property remain the same.

Prior to the hearing on May 4, 2010, the Applicant began an investigation into the feasibility of this property. At that time, it became apparent that there was a contamination plume affecting a very large portion of the property. Based on a review of the EPA generated community update dated July 2009, the contamination plume contains elevated concentrations of VDC, aka Vinylidene Chloride aka Dichloroethene. It is unclear to the Applicant whether there are additional chemicals of concern within the plume. Furthermore, the Acton Water District Annual Report for the year ending December 31, 2009 states in its Environmental Manager's Report that cleanup efforts of the groundwater contamination plumes remain ongoing. Conversations

between site acquisition and the Acton Water District confirmed that there are environmental concerns on the site. On April 26, 2010, site acquisition attended a meeting of the Acton Water District. At this meeting, the possibility of locating a tower on the Lawsbrook property was discussed. It is the Applicants understanding that the environmental concerns were also discussed and acknowledged by the Acton Water District at this time. While the Quinns state in their email that Matt Mostoller was present at this meeting, and that the "Acton Water District was amiable to the location of a cell tower on their land", it is the Applicant's understanding that no alternative locations on the Lawsbrook site or plans for a future RFP were raised by any representative of the Acton Water District at that time. Furthermore, while the location referenced by the Quinns in their email may or may not be physically located over the contamination plume, the property as a whole is impacted by the contamination. Therefore, the site would still create an unacceptable risk to the Applicant from a liability standpoint. The site's contaminated status also raises concerns pertaining to the certainty of continuous operations on site. Finally, as previously stated, towers located on land containing known contamination are extremely difficult to market to carriers and the ability to lease such a tower would be a major concern.

It is also worth noting that, even assuming that there were no environmental concerns on site, the area suggested by the abutter appears to be in close proximity to the stream running through the property. As the Board is no doubt aware, these wetland areas are subject to strict state and local buffer zone requirements and it may not be legally possible to permit a tower in a great many locations on this site because of localized wetlands. Furthermore, this site would require the issuance of an RFP. To date, an RFP has not been issued on this property.

Since the precise location suggested by the abutter cannot be ascertained by the Applicant, it is not possible for the Applicant to concede that locating a tower on this property would "lower the visual impact of the tower." Nonetheless, even assuming that this site would make the tower less visible from the residents on School Street, that fact in and of itself does not make this a more suitable alternative. The letter submitted at the last hearing from SBA clarifies the Applicants position and concerns relative to the contamination plume on site. In addition, the Lawsbrook road area is heavily residential and it is possible that this site would cause an even greater aesthetic impact to residential abutters than the one currently proposed on Craig Road.

Finally, the Quinns also stated in their letter that they had a conversation with Bill Klauer from the Historical Commission. They state in the email that there are no comments on record from the Historical Commission on this site. The Applicant is in receipt of an Acton Planning Department Inter-departmental Memo dated February 8, 2010 from the Historical Commission on this application. This letter is on file with the Planning Department. The letter suggests utilizing stealth technology on site to minimize the visual impact. The Applicant fully understands and respects the concerns of the Historical Commission and the abutters in this regard. As a result, the Applicant has offered a number of alternative stealth designs including a flush mount, a monopine and most recently, a CAM design.

Thank you in advance for your time and consideration. We hope this letter has clarified the Applicants position regarding the Acton Water District property.

Sincerely
DESCHENES & FARRELL, P.C.

A handwritten signature in black ink, appearing to read 'K. S. Eriksen', written in a cursive style.

Kevin S. Eriksen