

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

TRIAL COURT
SUPERIOR COURT DEPT.
CIVIL ACTION NO. 2004-4904

_____)
CHRISTOPHER WHITLEY,)
))
Plaintiff.)
))
v.)
))
THE TOWN OF ACTON, JONATHAN)
WAGNER, KENNETH KOZIK, RICHARD)
FALLON, GARRY RHODES, and the)
ZONING BOARD OF APPEALS OF THE)
TOWN OF ACTON,)
))
Defendants.)
_____)

AFFIDAVIT OF ROLAND BARTL

I, Roland Bartl, on oath depose and say as follows:

1. I am the Town Planner for the Town of Acton, Massachusetts ("Town"). I am a member of the American Institute of Certified Planners ("AICP") and the American Planning Association (APA). As a practitioner in the planning field, my experience in city and town planning includes master planning, resource and build-out analyses, zoning, subdivision control, permit administration, and many related topics.

2. I have held the position of Town Planner in Acton since 1988. My responsibilities include advising the planning board, researching and drafting proposed zoning bylaws, performing or overseeing all executive functions of the Town's Planning Board. In that capacity, I have custody of the records of the Board relating to the adoption of proposed amendments of the zoning bylaw. I make this affidavit upon

personal knowledge and, where applicable, upon personal knowledge of the authenticity of records within my custody as Town Planner.

3. On information and belief, in late December 2004, the Town was served with a copy of the Complaint in the above-captioned matter. The Complaint challenges the validity of the Town's zoning bylaw and a certain decision of the Town's Board of Appeals relating to a proposed 62' amateur radio tower and antenna structure on residentially-zoned property.

4. After review of the Complaint by various Town officials, I was instructed by the Town Manager on behalf of the Board of Selectmen to conduct research with respect to the preparation and presentation at the April 2005 Annual Town Meeting of a revised zoning bylaw specifically applicable to amateur radio towers which (a) reasonably regulates the location and height of such antenna structures for the purposes of health, safety, or aesthetics, (b) reasonably allows for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and (c) represents the minimum practicable regulation necessary to accomplish the legitimate purposes of the town enacting such bylaw.

5. After reviewing many different bylaws and ordinances on the subject from Massachusetts and across the country, after receiving initial comments from a number of active amateur radio operators in Acton, and after receiving input from the Planning Board's Vice Chair who is himself a licensed amateur radio operator, the Planning Board arrived at an initial public hearing draft of a proposed zoning amendment for discussion before the public at the required Planning Board public hearing. A true copy of this initial draft is attached as Exhibit A. This initial draft proposed a height limit of 80 feet, a

limit of one tower per lot, and various other dimensional restrictions. At the recommendation of Town Counsel, a variant of this draft was prepared to allow further relaxation of the height and setback provisions by special permit. A true copy of this initial draft with the special permit provision is attached as Exhibit B.

6. Following the statutory requirements of G.L. c. 40A, § 5, the Planning Board issued a Notice of a public hearing to be held on February 22, 2005, with respect to the proposed zoning changes for amateur radio towers. A true copy of the Notice, published in the *Beacon* on February 3, 2005 and February 10, 2005 is attached as Exhibit C.¹

7. The Planning Board conducted its public hearing on February 22, 2005. Numerous members of the public – including the Plaintiff in this action – attended the public hearing and spoke on the proposed zoning amendments for amateur radio towers. A true copy of the sign-in sheet for the public hearing, showing the Plaintiff Christopher Whitley in attendance, is attached as Exhibit E.

8. After the close of the public hearing on February 22, the Planning Board voted to propose to Town Meeting a draft zoning amendment containing essentially no height restriction and very few other requirements or restrictions on amateur radio towers. In accordance with the Planning Board's instructions, I prepared a redrafted zoning article, a true copy of which is attached as Exhibit F. The revised article would establish an amateur radio installation as a stand-alone principal use; retain the prohibition from the front yard of buildings; and retain the minimum standard setback requirements for structures.

¹ The Notice contained a typographical error in the date of February 22, 2004 as opposed to 2005. A corrected Notice was published on February 17, 2005, a true copy of which is attached as Exhibit D.

9. After reviewing this draft and further meeting with representatives of the amateur radio community and the Board of Selectmen, the Planning Board made certain other minor adjustments to its proposed zoning article for amateur radio towers. The final version of the Planning Board's proposed amendment, which appears as Article 25A on the Warrant for the April 4, 2005 Annual Town Meeting, is attached as Exhibit G.

10. The Board of Selectmen retains the authority to determine what articles are placed on the Warrant for the Town Meeting and itself has the authority under M.G.L. c. 40A, § 5, to initiate zoning changes. Concerned about the absence of virtually any regulation whatsoever on the construction of amateur radio towers by the Planning Board's proposed article, the Board of Selectmen determined to also place on the Warrant an alternate article regarding amateur radio towers. The final version of the alternate article appears as Article 25B on the Warrant for the April 4, 2005 Annual Town Meeting and is attached as Exhibit H. This alternate article is based directly on the initial public hearing draft (Exhibit A), with the special permit provision (Exhibit B), but is relaxed in specific and material ways in response to comments by the amateur radio community at the Planning Board's public hearing and subsequent discussions. For instance, Article 25B increases the "by right" tower height from 80' to 100'; allows more than one tower on a lot by right in certain cases; allows additional deviations from the bylaw's requirements by special permit; and includes specific instructions to the Board of Appeals in acting on special permit applications to apply the bylaw in a manner that conforms to M.G.L. c. 40A, § 3.²

²

That Section provides in pertinent part:

No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by-laws may reasonably regulate

11. The Annual Town Meeting begins on April 4, 2005, and generally such meetings adjourn and conclude in a matter of two or three nights. This is the first opportunity that the Town will have had to amend its zoning bylaw since the filing of the Complaint in this matter.

12. The Town initiated these zoning changes voluntarily and has given the voters of the Town two choices by which to relax significantly the current provisions of the zoning bylaw applicable to amateur radio tower height.

13. General Laws chapter 40A, section 5, allows any "individual owning land to be affected by change or adoption" of a zoning bylaw to initiate a zoning change. Any such request to initiate a zoning change is filed with the Board of Selectmen and referred to the Planning Board for a public hearing. I have reviewed the records of the Planning Board and have found no request by the Plaintiff Christopher Whitley or his wife and counsel in this matter Karen Whitley for any zoning change pertinent to the Town of Acton's zoning bylaw applicable to amateur radio towers.

Signed under the penalties of perjury this 16th day of March, 2005.



Roland Bartl, AICP

the location and height of such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.

DRAFT ZONING ARTICLE ____
(Two-thirds vote)

AMATEUR RADIO TOWERS

To see if the Town will vote to amend the zoning bylaw as follows:

A. Insert under section 3.8.3 – Accessory Uses permitted in any Zoning District, a new sub-section 3.8.3.6 as follows:

3.8.3.6 Not more than one Amateur Radio Tower on a LOT, inclusive of all antennas, appurtenances, support STRUCTURES, anchors, and guys, subject to the following requirements:

- a) The Tower shall be owned and operated by an amateur radio operator who is licensed by the Federal Communications Commission (FCC).
- b) The operator of the Tower or the owner of the LOT shall dismantle and remove the Tower within 60 days after the cessation of the FCC-licensed operator's ownership or tenancy, or the expiration or rescission of the operator's FCC license.
- c) The Tower height shall not exceed 80 feet from ground level when fully extended, including all antennas and appurtenances.
- d) A Tower is prohibited in the front yard of the principal BUILDING or BUILDINGS on the LOT as defined in section 5.2.4.
- e) In Residential Districts, a Tower shall be set back at least 30 feet from all side and rear LOT lines regardless of the otherwise applicable yard requirements, except when:
 - i. The Tower, even when extended, does not exceed the maximum height limit for STRUCTURES; or
 - ii. The tower is directly attached to the side or rear of the principal BUILDING or BUILDINGS on the LOT and complies with the minimum side and rear yard requirements for STRUCTURES.

Anchors and guys must in all cases only comply with the minimum side and rear yard requirements that are otherwise applicable to STRUCTURES.

- f) The base of the Tower shall be surrounded by a fence with a locked gate or shall be equipped with an effective anti-climb device.
- g) No portion of the Tower shall be utilized as a sign or have signage attached to it.
- h) No portion of the Tower shall be illuminated or have lights attached to it.

B. Delete section 3.10.3 – Applicability of Special Requirements for Wireless Communication Facilities, and replace it with a new section 3.10.3 as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit a tower or antenna installed solely for use by a federally licensed amateur radio operator. For regulations on Amateur Radio Towers see section 3.8.3.6 of this Bylaw.

[Note: Section 3.10.3 currently states as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit an antenna installed solely for use by a federally licensed amateur radio operator, provided that the height of such antenna does not exceed applicable height limitations and, if freestanding, that it is set back from all LOT lines at least the distance equal to its height, but not less than the otherwise applicable minimum yard requirement.]

Or take any other action relative thereto.

SUMMARY

Amateur radio operators, or “hams”, communicate with other stations nearby and all over the world. Federal and State government recognize hams for providing vital communications in the event of emergency or disaster. The ability to communicate both over long and short distances increases with the height of an antenna above the ground. A low antenna height can be partially compensated for by boosting power. High power stations with low antenna heights have an increased likelihood to interfere with neighbors’ telephones, televisions, VCRs, and audio equipment. Generally, one or more antennas are mounted to a support tower to achieve the desired height.

This article establishes standards for amateur radio transmission towers. Amateur radio towers would be limited to 80 feet in height including any top-mounted antennas, and their location would be limited to side and rear yards. In residential districts, a special 30-foot side and rear yard setbacks would be required for freestanding towers that exceed the otherwise applicable height limit.

Federal Communications Commission (FCC) regulations state: “... local regulations which involve placement, screening or height of antennas and antenna structures based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practical regulation to accomplish the local authority’s legitimate purpose” (47 C.F.R. §97.15(e)); and “a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. State and local regulations of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the State or local authority’s legitimate purpose” (47 C.F.R. §97.15(b)). Massachusetts General Law provides in Ch. 40A, S. 3 the following: “No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.”

Presently, Acton allows amateur radio towers by right if their height does not exceed the standard limits for buildings and structures – 36 to 40 feet depending on zoning district. A recent Massachusetts Superior Court decision (*Chedester v. Town of Whately*, November 24, 2004) held that Whately’s 35-foot standard height limit is inconsistent with Federal Code and State Law,

DRAFT ZONING ARTICLE ___
 (Two-thirds vote)

AMATEUR RADIO TOWERS

To see if the Town will vote to amend the zoning bylaw as follows:

A. Insert under section 3.8.3 – Accessory Uses permitted in any Zoning District, a new sub-section 3.8.3.6 as follows:

3.8.3.6 Not more than one Amateur Radio Tower on a LOT, inclusive of all antennas, appurtenances, support STRUCTURES, anchors, and guys, subject to the following requirements:

- a) The Tower shall be owned and operated by an amateur radio operator who is licensed by the Federal Communications Commission (FCC).
- b) The operator of the Tower or the owner of the LOT shall dismantle and remove the Tower within 60 days after the cessation of the FCC-licensed operator's ownership or tenancy, or the expiration or rescission of the operator's FCC license.
- c) The Tower height shall not exceed 80 feet from ground level when fully extended, including all antennas and appurtenances.
- d) A Tower is prohibited in the front yard of the principal BUILDING or BUILDINGS on the LOT as defined in section 5.2.4.
- e) In Residential Districts, a Tower shall be set back at least 30 feet from all side and rear LOT lines regardless of the otherwise applicable yard requirements, except when:
 - i. The Tower, even when extended, does not exceed the maximum height limit for STRUCTURES; or
 - ii. The tower is directly attached to the side or rear of the principal BUILDING or BUILDINGS on the LOT and complies with the minimum side and rear yard requirements for STRUCTURES.

Anchors and guys must in all cases only comply with the minimum side and rear yard requirements that are otherwise applicable to STRUCTURES.

- f) The base of the Tower shall be surrounded by a fence with a locked gate or shall be equipped with an effective anti-climb device.
- g) No portion of the Tower shall be utilized as a sign or have signage attached to it.
- h) No portion of the Tower shall be illuminated or have lights attached to it.
- i) The Board of Appeals may, by special permit, on a case-by-case basis, allow more than one Amateur Radio Tower on a LOT (3.8.3.6.a), an Amateur Radio Tower height higher than 80' (3.8.3.6.c), and/or a set back of less than 30 feet from side and/or rear LOT lines (3.8.3.6.e) where such relief is demonstrated by the applicant to be necessary to reasonably and effectively accommodate amateur radio communications by the federally licensed amateur radio owner/operator of the Amateur Radio Tower, where such relief would not pose a substantial health, safety, or aesthetic problem to the neighborhood in the vicinity of the Amateur Radio Tower, and where denial of such special permit relief would otherwise result in a demonstrated violation of applicable Federal Communications Commission (FCC) regulations and/or Massachusetts General Law Ch. 40A, S. 3.

B. Delete section 3.10.3 – Applicability of Special Requirements for Wireless Communication Facilities, and replace it with a new section 3.10.3 as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit a tower or antenna installed solely for use by a federally licensed amateur radio operator. For regulations on Amateur Radio Towers see section 3.8.3.6 of this Bylaw.

[Note: Section 3.10.3 currently states as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit an antenna installed solely for use by a federally licensed amateur radio operator, provided that the height of such antenna does not exceed applicable height limitations and, if freestanding, that it is set back from all LOT lines at least the distance equal to its height, but not less than the otherwise applicable minimum yard requirement.]

Or take any other action relative thereto.

SUMMARY

Amateur radio operators, or “hams”, communicate with other stations nearby and all over the world. Federal and State government recognize hams for providing vital communications in the event of emergency or disaster. The ability to communicate both over long and short distances increases with the height of an antenna above the ground. A low antenna height can be partially compensated for by boosting power. High power stations with low antenna heights have an increased likelihood to interfere with neighbors’ telephones, televisions, VCRs, and audio equipment. Generally, one or more antennas are mounted to a support tower to achieve the desired height.

This article establishes standards for amateur radio transmission towers. Amateur radio towers would be limited to 80 feet in height including any top-mounted antennas, and their location would be limited to side and rear yards. In residential districts, a special 30-foot side and rear yard setbacks would be required for freestanding towers that exceed the otherwise applicable height limit.

Federal Communications Commission (FCC) regulations state: “... local regulations which involve placement, screening or height of antennas and antenna structures based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practical regulation to accomplish the local authority’s legitimate purpose” (47 C.F.R. §97.15(e)); and “a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. State and local regulations of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the State or local authority’s legitimate purpose” (47 C.F.R. §97.15(b)). Massachusetts General Law provides in Ch. 40A, S. 3 the following: “No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by-laws may reasonably regulate the location and height of

such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.”

Presently, Acton allows amateur radio towers by right if their height does not exceed the standard limits for buildings and structures – 36 to 40 feet depending on zoning district. A recent Massachusetts Superior Court decision (*Chedester v. Town of Whately*, November 24, 2004) held that Whately’s 35-foot standard height limit is inconsistent with Federal Code and State Law, overruled the Whately Board of Appeals, and ordered the Town of Whately to issue a building permit for a 140-foot high tower.

This article proposes an overall height limit of 80 feet. This accommodates most commercially available amateur radio towers, and is adequate for reasonably efficient amateur radio operations in Acton’s moderate topography.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636
Selectman assigned: – E-mail: bos@acton-ma.gov

Board of Selectmen:
Finance Committee:
Planning Board:



TOWN OF ACTON
 472 Main Street
 Acton, Massachusetts, 01720
 Telephone (978) 264-9636
 Fax (978) 264-9630

Planning Department

January 25, 2005

Notice of Public Hearing on Proposed Zoning Changes

Please publish the following as a LEGAL NOTICE on **February 3, 2005** and **February 10, 2005**.

Acton Planning Board public hearing - 2/22/04 - 8:30 PM - Acton Memorial Library. Subject - proposed zoning bylaw changes: (1) Regulations for amateur radio facilities. (2) Zoning Map housekeeping; changes scattered – (a) consolidate zoning on split-zoned parcels, (b) remove parcels from the affordable housing district that were developed with market rate housing. (3) Zoning Bylaw housekeeping – (a) zoning map reference, (b) local preference, (c) frontage exception and hammerhead lots, (d) East Acton Village pedestrian plazas, (e) parking lot design standards, (f) sections cross-references, (g) nonconforming structures. Agricultural operations will not be impacted. Amendments are available at the Planning Dept. and Town Clerk.

Distribution list (**do not include in advertisement**):

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Town of Boxborough Planning Board
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 Town of Maynard Planning Board
 Town of Stow Planning Board
 Town of Sudbury Planning Board
 Town of Westford Planning Board



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Planning Department

January 25, 2005

Notice of Public Hearing on Proposed Zoning Changes

Please publish the following as a LEGAL NOTICE on **February 17, 2005**.

Acton Planning Board public hearing - 2/22/05 - 8:30 PM - Acton Memorial Library. Subject - proposed zoning bylaw changes: (1) Regulations for amateur radio facilities. (2) Zoning Map housekeeping; changes scattered – (a) consolidate zoning on split-zoned parcels, (b) remove parcels from the affordable housing district that were developed with market rate housing. (3) Zoning Bylaw housekeeping – (a) zoning map reference, (b) local preference, (c) frontage exception and hammerhead lots, (d) East Acton Village pedestrian plazas, (e) parking lot design standards, (f) sections cross-references, (g) nonconforming structures. Agricultural operations will not be impacted. Amendments are available at the Planning Dept. and Town Clerk.

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Town of Littleton Planning Board
Town of Maynard Planning Board
Town of Stow Planning Board
Town of Sudbury Planning Board
Town of Westford Planning Board

PUBLIC HEARING ATTENDANCE RECORD

PROPOSED ZONING ARTICLES – 2005 ANNUAL TOWN MEETING

Amateur Radio Towers
Housekeeping Amendments – Zoning Bylaw
Housekeeping Amendments – Zoning Map

February 22, 2005
8:30 PM

	<u>Name</u>	<u>Address</u>	
1.	Chris Whitley	20 Silver Hill Rd	Resident / HAM
2.	Stacy Angle	111 Audubon Drive	
3.	THOMAS M. TALING	12 TUTTLE DR	
4.	Rebecca Harvey	7 Duston Lane	Resident / HAM
5.	Fred Bintliff	2 Powder House Ln	Resident / HAM
6.	PETER J WOSTKIEWICZ	11 LILLIAN RD	HAM
7.	ERIC HILFER	16 ORCHARD DR	Resident / HAM
8.	George Harlem	33 Old Village Rd	Resident / Ham.
9.	Tom Albertin	3 Broadview Road	Resident / HAM
10.	John McGovern	6 Winkle	Resident / HAM
11.			
12.			
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24.			
25.			

DRAFT ZONING ARTICLE __
(Two-thirds vote)

AMATEUR RADIO INSTALLATION

To see if the Town will vote to amend the zoning bylaw as follows:

A. Insert under section 3.2 – General Uses, a new use definition as sub-section 3.2.4 as follows:

3.2.4 Amateur Radio Installation – One or more antennas or antenna STRUCTURES for the exclusive use by an amateur radio operator with a valid and current amateur radio operator’s license issued by the Federal Communications Commission, provided that no antennas and antenna STRUCTURES shall be located in the front yard of a principal BUILDING as defined in Section 5.2.4.

B. Insert under section 3 – Table of Principal Uses, a new line 3.2.4 as follows:

		RESIDENTIAL DISTRICTS					VILLAGE DISTRICTS					OFFICE DISTRICTS	
PRINCIPAL USES		R-2	R-4	R-A	R-AA	VR	EAV	EAV-2	NAV	SAV	WAV	OP-1	OP-2
		R-8	R-8/4										
		R-10	R-10/8										
3.2 GENERAL USES													
3.2.4	Amateur Radio Installation	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

		BUSINESS DISTRICTS			INDUSTRIAL DISTRICTS					SP. DIST.	
PRINCIPAL USES		KC	LB	PM	GI	LI	LI-1	SM	TD	ARC	SITE PLAN
3.2 GENERAL USES											
3.2.4	Amateur Radio Installation	Y	Y	Y	Y	Y	Y	Y	Y	Y	NR

C. Delete section 3.10.3 – Applicability of Special Requirements for Wireless Communication Facilities, and replace it with a new section 3.10.3 as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit antennas or antenna STRUCTURES installed solely for use by a federally licensed amateur radio operator.

[Note: Section 3.10.3 currently states as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit an antenna installed solely for use by a federally licensed amateur radio operator, provided that the height of such antenna does not exceed applicable height limitations and, if freestanding,

that it is set back from all LOT lines at least the distance equal to its height, but not less than the otherwise applicable minimum yard requirement.]

- D. In section 4.3.6.3 – Treatment and Renovation of Runoff, add the following sentence at the end of the section:

“This section shall not apply to Amateur Radio Installations.”

[Note: Section 4.3.6.3 currently reads:

4.3.6.3 Treatment and Renovation of Runoff– All water runoff from IMPERVIOUS COVERS shall be funneled into gas trap catch basins. In addition, the first (1st) inch of every storm event shall be directed into a retention pond(s), where it shall be retained for an average of at least 3 days prior to recharge into the ground or discharge from the site. The retention pond(s) shall be exposed to sunlight, vegetated, and lined with soil featuring a permeability of 0.0001 cm/sec (0.1417 in/hr) or less. A DIVERSION BOX shall direct all water, which falls onto the site in excess of one (1) inch during a single storm event, toward additional storage, direct infiltration, or discharge from the site. Alternate methods of runoff treatment and renovation may be approved by the Special Permit Granting Authority if the Special Permit Granting Authority determines the intent of this Section is met.]

- E. Insert in section 8 – Nonconforming Lots, Uses, Structures, and Parking; Exemptions; a new sub-section 8.10 as follows:

8.10 Exemption for Amateur Radio Installations – The limitations of this Zoning Bylaw pertaining to the height of BUILDINGS and STRUCTURES and the requirements for a minimum number of parking spaces in Section 6.3 shall not apply to Amateur Radio Installations as defined in Section 3.2.4.

- F. Insert in section 9B.4 – Allowed Uses in a Senior Residence Development, a new subsection 9B.4.9 as follows:

9B.4.9 Amateur Radio Installations.

, or take any other action relative thereto.

SUMMARY

Amateur radio operators, or “hams”, communicate with other stations nearby and all over the world. The ability to communicate both over long and short distances increases with the height of an antenna above the ground. Federal and State governments recognize hams for providing vital communications in the event of emergency or disaster.

This article establishes “amateur radio installation” as a new principal use category allowed in every zoning district and provides certain exemptions for their antennas and antenna structures including an exemption from the otherwise applicable height limitations of the Acton Zoning Bylaw. The article would prohibit the placement of antennas and antenna structures in the front yards of buildings. Standard setback requirements from the lot lines would apply.

Federal Communications Commission (FCC) regulations state: “... local regulations which involve placement, screening or height of antennas and antenna structures based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practical regulation to accomplish the local authority’s legitimate purpose” (47 C.F.R. §97.15(e)); and “a station antenna structure may be erected at heights and

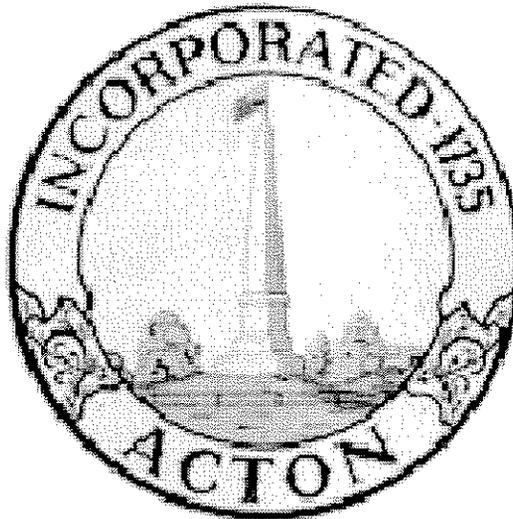
dimensions sufficient to accommodate amateur service communications. State and local regulations of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the State or local authority's legitimate purpose" (47 C.F.R. §97.15(b)). In further clarifications of its Rules, the FCC did not consider it a legitimate local government action to seek a balance between local interest and the needs of an amateur radio operation to achieve effective communications. Rather, the FCC has placed the interest of the amateur radio operator above that of the community and expects the least local regulation necessary for the welfare of the community to accommodate the needs of the amateur radio operators to engage in amateur radio communications. This article reflects the reality of FCC rules, which elevate effective amateur radio operations to a vital national interest and largely preempt local control.

Direct inquiries to: Roland Bartl, AICP, Town Planner
planning@acton-ma.gov / (978) 264-9636
Selectman assigned: -: bos@acton-ma.gov

Board of Selectmen:
Finance Committee:
Planning Board:

Town of Acton

Annual Town Meeting Warrant



Monday, April 4, 2005

**The Annual Town Meeting will convene at 7:00 P.M. in the
Acton-Boxborough Regional High School Auditorium
36 Charter Road**

ARTICLE 25A AMEND ZONING BYLAW – AMATEUR RADIO INSTALLATION

(Two-thirds vote)

[Notes in italic print are not part of the article but are intended for explanation only]

To see if the Town will vote to amend the zoning bylaw as follows:

A. Insert under section 3.2 – General Uses, a new use definition as sub-section 3.2.4 as follows:

3.2.4 Amateur Radio Installation – One or more antennas or antenna STRUCTURES owned and used exclusively by an amateur radio operator with a valid and current amateur radio operator’s license issued by the Federal Communications Commission (FCC), subject to the following restrictions and limitations:

3.2.4.1 No antennas and antenna STRUCTURES shall be located in the front yard of a principal BUILDING as defined in Section 5.2.4.

3.2.4.2 The operator of the Amateur Radio Installation, or the owner of the LOT, shall dismantle and remove the antennas or antenna STRUCTURES within one year after the cessation of a FCC-licensed operator’s ownership or tenancy, or the expiration or rescission of the operator’s FCC license.

3.2.4.3 The base of an antenna or antenna STRUCTURE shall be surrounded by a fence with a locked gate or shall be equipped with an effective anti-climb device.

B. Insert under section 3 – Table of Principal Uses, a new line 3.2.4 as follows:

		RESIDENTIAL DISTRICTS					VILLAGE DISTRICTS					OFFICE DISTRICTS	
PRINCIPAL USES		R-2	R-4	R-A	R-AA	VR	EA	EAV-2	NAV	SAV	WAV	OP-1	OP-2
		R-8	R-8/4				V						
		R-10	R-10/8										
3.2 GENERAL USES													
3.2.4	Amateur Radio Installation	Y		Y		Y	Y	Y	Y	Y	Y	Y	Y

		BUSINESS DISTRICTS			INDUSTRIAL DISTRICTS					SP. DIST.	
PRINCIPAL USES		KC	LB	PM	GI	LI	LI-I	SM	TD	ARC	SITE PLAN
3.2 GENERAL USES											
3.2.4	Amateur Radio Installation	Y	Y	Y	Y	Y	Y	Y	Y	Y	NR

C. Delete section 3.10.3 – Applicability of Special Requirements for Wireless Communication Facilities, and replace it with a new section 3.10.3 as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this section shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, or Amateur Radio Installations as defined in section 3.2.4.

[Note: Section 3.10.3 currently states as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to

regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit an antenna installed solely for use by a federally licensed amateur radio operator, provided that the height of such antenna does not exceed applicable height limitations and, if freestanding, that it is set back from all LOT lines at least the distance equal to its height, but not less than the otherwise applicable minimum yard requirement.]

- D. In section 4.3.6.3 – Treatment and Renovation of Runoff, add the following sentence at the end of the section:

“This section shall not apply to Amateur Radio Installations.”

[Note: Section 4.3.6.3 currently reads:

4.3.6.3 Treatment and Renovation of Runoff – All water runoff from IMPERVIOUS COVERS shall be funneled into gas trap catch basins. In addition, the first (1st) inch of every storm event shall be directed into a retention pond(s), where it shall be retained for an average of at least 3 days prior to recharge into the ground or discharge from the site. The retention pond(s) shall be exposed to sunlight, vegetated, and lined with soil featuring a permeability of 0.0001 cm/sec (0.1417 in/hr) or less. A DIVERSION BOX shall direct all water, which falls onto the site in excess of one (1) inch during a single storm event, toward additional storage, direct infiltration, or discharge from the site. Alternate methods of runoff treatment and renovation may be approved by the Special Permit Granting Authority if the Special Permit Granting Authority determines the intent of this Section is met.]

- E. Insert in section 8 – Nonconforming Lots, Uses, Structures, and Parking; Exemptions; a new subsection 8.10 as follows:

8.10 Exemption for Amateur Radio Installations – The limitations of this Zoning Bylaw pertaining to the height of BUILDINGS and STRUCTURES and the requirements for a minimum number of parking spaces in Section 6.3 shall not apply to Amateur Radio Installations as defined in Section 3.2.4.

- F. Insert in section 9B.4 – Allowed Uses in a Senior Residence Development, a new subsection 9B.4.9 as follows:

9B.4.9 Amateur Radio Installations.

, or take any other action relative thereto.

SUMMARY

[Written by Planning Board]

Amateur radio operators, or “hams”, communicate with other stations nearby and all over the world. The ability to communicate both over long and short distances increases with the height of an antenna above the ground. Federal and State governments recognize hams for providing vital communications in the event of emergency or disaster.

This article establishes “amateur radio installation” as a new principal use category allowed in every zoning district and provides certain exemptions for their antennas and antenna structures including an exemption from the otherwise applicable height limitations of the Acton Zoning Bylaw. Standard setback requirements from the lot lines would apply. The article would prohibit the placement of antennas and antenna structures in the front yards of buildings; require their removal within a year of cessation of the use; and mandate fencing or anti-climb devices.

Federal Communications Commission (FCC) regulations state: "... local regulations which involve placement, screening, or height of antennas and antenna structures based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practical regulation to accomplish the local authority's legitimate purpose" (47 C.F.R. §97.15(e)); and "a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. State and local regulations of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the State or local authority's legitimate purpose" (47 C.F.R. §97.15(b)). In further clarifications of its Rules, the FCC did not consider it a legitimate local government action to seek a balance between local interest and the needs of an amateur radio operation to achieve effective communications. Rather, the FCC has placed the interest of the amateur radio operator above that of the community and expects the least local regulation necessary for the welfare of the community to accommodate the needs of the amateur radio operators to engage in amateur radio communications. This article reflects the reality of FCC rules, which elevate effective amateur radio operations to a vital national interest and largely preempt local control.

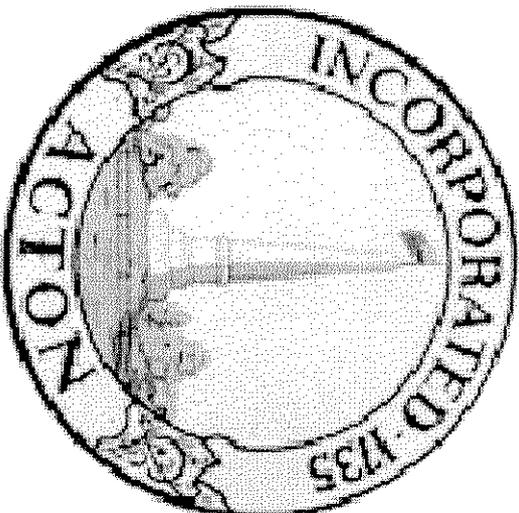
Direct inquiries to: Roland Bartl, AICP, Town Planner
planning@acton-ma.gov / (978) 264-9636

Selectman assigned: F. Doré Hunter: bos@acton-ma.gov

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>	<u>Planning Board</u>
	Not Recommended	Deferred	Recommended

Town of Acton

Annual Town Meeting Warrant



Monday, April 4, 2005

The Annual Town Meeting will convene at 7:00 P.M. in the
Acton-Boxborough Regional High School Auditorium
36 Charter Road

ARTICLE 25B AMEND ZONING BYLAW – AMATEUR RADIO INSTALLATION
(Two-thirds vote)

[Notes in italic print are not part of the article but are intended for explanation only]

To see if the Town will vote to amend the zoning bylaw as follows:

A. Insert under section 3.8.3 – Accessory Uses permitted in any Zoning District, a new sub-section 3.8.3.6 as follows:

3.8.3.6 Not more than one Amateur Radio Tower, or in the case of a licensed amateur radio operator utilizing a long wire horizontal antenna system not more than two Amateur Radio Towers, on a LOT, inclusive of all antennas, appurtenances, support STRUCTURES, anchors, and guys, subject to the following requirements:

- a) The Tower(s) shall be owned and operated by an amateur radio operator who is licensed by the Federal Communications Commission (FCC).
- b) The operator of the Tower(s) or the owner of the LOT shall dismantle and remove the Tower(s) within one year after the cessation of the FCC-licensed operator's ownership or tenancy, or the expiration or rescission of the operator's FCC license.
- c) Tower height shall not exceed 100 feet from ground level when fully extended, including all antennas and appurtenances.
- d) A Tower is prohibited in the front yard of the principal BUILDING or BUILDINGS on the LOT as defined in section 5.2.4.
- e) In Residential Districts, any Tower shall be set back at least 30 feet from all side and rear LOT lines regardless of the otherwise applicable yard requirements, except when:
 - i. The Tower, even when extended, does not exceed the maximum height limit for STRUCTURES; or
 - ii. The tower is directly attached to the side or rear of the principal BUILDING or BUILDINGS on the LOT and complies with the minimum side and rear yard requirements for STRUCTURES.

Anchors and guys must in all cases only comply with the minimum side and rear yard requirements that are otherwise applicable to STRUCTURES.

- f) The base of any Tower shall be surrounded by a fence with a locked gate or shall be equipped with an effective anti-climb device.
- g) No portion of any Tower shall be utilized as a sign or have signage attached to it.
- h) No portion of any Tower shall be illuminated or have lights attached to it unless required by the Federal Aviation Administration.
- i) The Board of Appeals may, by special permit, on a case-by-case basis, allow more than one Amateur Radio Tower or in the case of a long wire horizontal antenna system more than two Amateur Radio Towers on a LOT (3.8.3.6.a), an Amateur Radio Tower height higher than 100' (3.8.3.6.c), an Amateur Radio Tower or Towers in the front yard of the LOT provided that an alternate location on the LOT is not feasible (3.8.3.6.d), and/or a set back of less than 30 feet from side and/or rear LOT lines (3.8.3.6.e) where (1) such relief is demonstrated by the applicant to be necessary to reasonably and effectively accommodate amateur radio communications by the federally licensed amateur radio owner/operator of the Amateur Radio Tower(s) and such relief would not result in a substantial adverse health, safety, or aesthetic impact upon the neighborhood in the vicinity of the Amateur Radio Tower(s), or (2) denial of such relief would otherwise result in a demonstrated violation of applicable Federal Communications Commission (FCC) regulations and/or Massachusetts General Law Ch. 40A,

s. 3. In acting on petitions under this section, the Board of Appeals shall apply this bylaw in a manner that reasonably allows for sufficient height of an Amateur Radio Tower or Towers so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the bylaw for the protection of health, safety, and aesthetics.

B. Delete section 3.10.3 – Applicability of Special Requirements for Wireless Communication Facilities, and replace it with a new section 3.10.3 as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit a tower or antenna installed solely for use by a federally licensed amateur radio operator. For regulations on Amateur Radio Towers see section 3.8.3.6 of this Bylaw.

[Note: Section 3.10.3 currently states as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit an antenna installed solely for use by a federally licensed amateur radio operator, provided that the height of such antenna does not exceed applicable height limitations and, if freestanding, that it is set back from all LOT lines at least the distance equal to its height, but not less than the otherwise applicable minimum yard requirement.]

Or take any other action relative thereto.

SUMMARY

[Written by Board of Selectmen]

General Laws chapter 40A, section 3 provides that:

No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.

Articles 25A and 25B are alternative attempts to implement this requirement of state law, and analogous requirements of federal law.

The Board of Selectmen does not recommend the text of Article 25A, which was voted by the Planning Board, although it has obviously allowed that Article to be placed on this Warrant for Town Meeting consideration. The Selectmen feel that the Town should continue to benefit from such minimal control (originally drafted by the Town Planner to allow an 80 foot height by right, and amended by Town Counsel to allow that and other details to be waived by Special Permit) as the law allows in regard to potential erection of very tall amateur radio towers. Article 25A, as proposed by the Planning Board, effectively allows erection of a tower of any height anywhere by a licensed amateur radio operator.

Judging from comments made at the Planning Board's hearing and subsequent meeting on the same subject, there is some likelihood that new tall towers may be erected in residential neighborhoods.

The Board of Selectmen does agree that the existing zoning bylaw is deficient in how it addresses amateur radio antenna towers and requires revision. The Town Planner and Town Counsel were asked to make recommendations in that regard and did so. Very late in the Warrant assembly process the Selectmen were advised that, after the Planning Board public hearing on the original draft amendment, the Planning Board's proposed article would delete any reference to neighborhood or antenna height. Thereupon the Selectmen reviewed the text of the proposed amendment Town Counsel had recommended. It was concluded that Counsel's proposal, the predecessor to what is now this Warrant Article 25B, was more beneficial to the Town than what is now Article 25A. A Selectman attended a recent Planning Board meeting to further discuss the situation with the members of the Planning Board and the amateur radio operators who were notified and in attendance. The Planning Board did, following that further discussion, act to incorporate into their Article 25A two minor parts of the Town Counsel's recommended bylaw draft, relevant to safety and removal of an antenna no longer being used, but again chose not to insert any height criteria, either presumptive or by special permit.

In response to what seemed to be legitimate concerns of several of the amateur radio operators present at the recent Planning Board hearing and subsequent discussion, Town Counsel was requested by the Selectmen to further liberalize the original Warrant Article recommendation to increase the "by right" tower height to 100 feet and make allowance for a "long wire" type of antenna and in other respects.

The Board of Selectmen fully recognizes that the scope of the Town's regulatory powers in regard to amateur radio operators is quite limited, but at the same time the Board is of the opinion that retaining some hearing procedure which could stimulate a constructive exchange of concerns and discussion of potential mitigation between neighbors, before the construction of very high structures or towers in the neighborhoods, is in the best interest of all concerned and compatible with the traditions of the Town.

Direct inquiries to: F. Doré Hunter, Chairman, Board of Selectmen
bos@acton-ma.gov / (978) 264-9611

Selectman assigned: F. Doré Hunter: bos@acton-ma.gov

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>	<u>Planning Board</u>
	Recommended	Deferred	Deferred
