

5/10/07
#1

cc: BOS
TOM SCHNORR
ROLAND BARTL

✓ 5/8 DJ
✓ 5/8 DJ

ATTORNEY THOMAS SCHNORR

IN TALKING ABOUT ATT'Y THOMAS SCHNORR WE DO NOT QUESTION HIS INTEGRITY, HIS CREDENTIALS, OR HIS COMPETENCE. RATHER WE DO QUESTION THE PROCESS BY WHICH HE WAS APPOINTED. WE DO QUESTION THE PERSPECTIVE HE BRINGS TO CELL TOWER MATTERS BASED ON THE EXTENSIVE RELATIONSHIP HE AND HIS FIRM HAVE HAD WITH CELL TOWER COMPANIES. AND WE DO QUESTION HIS PERFORMANCE ON ARTICLE #39 AT HEARINGS AND AT THE RECENT TOWN MEETING.

HE WAS RECOMMENDED BY ATT'Y STEVE ANDERSON¹ AFTER ATT'Y ANDERSON HAD TO REMOVE HIMSELF FROM BEING TOWN COUNSEL BECAUSE OF HIS VERY PROMINENT POSITION IN WORKING FOR CELL TOWER COMPANIES. DO YOU THINK IF ATT'Y GENERAL ALBERTO GONZALES STEPS ASIDE HE WILL RECOMMEND HIS OWN SUCCESSOR? DO YOU THINK ACTON SHOULD HAVE AS TOWN COUNSEL RE CELL TOWERS ANOTHER PEA FROM THE SAME POD?

THE WEB SITE FOR ATT'Y SCHNORR'S FIRM, PALMER&DODGE,² SPEAKS LOUDLY ABOUT THEIR WORK FOR TELECOMMUNICATIONS COMPANIES. IT SPEAKS OF BEING OF COUNSEL TO AMERICAN TOWER IN THE RAISING OF BILLIONS OF DOLLARS IN DEBT AND EQUITY FINANCING. ONE IS NOT OF COUNSEL IN WORK OF THIS SCOPE WITHOUT HAVING SOME DEEP AND LASTING TIES.

1 SEE ATTACHMENT 1
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ATT'Y SCHNORR'S BIO SPEAKS OF 200 AT&T CELL TOWER SITINGS AND OF HIS WORK IN DEALING WITH "HOSTILE ZONING BOARDS". WE DO NOT LIKE THE RING OF THIS.

ATT'Y SCHNORR'S FIRST ACTION THAT WE KNOW OF WAS TO COMMENT ON WARRANT ARTICLES. HE DID SO FOLLOWING RECEIPT OF A MEMO FROM THE TOWN PLANNER SAYING ARTICLE #38 WAS PREPARED BY THE PLANNING BOARD AND THAT HE DIDN'T LIKE THE CITIZEN'S ARTICLE #39. ATT'Y SCHNORR SHOULD HAVE KNOWN THAT SUCH A LEAD IN TO HIS FIRST OPINION WAS INAPPROPRIATE .

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IN OFFERING HIS OPINION ON ARTICLE #39 ATT'Y SCHNORR QUICKLY DID WHAT THE TOWN PLANNER ASKED. HE FIRST SAID ARTICLE #39 WAS ALL ABOUT HEALTH. HE OFFERED NO FACTS TO BACK UP HIS STATEMENT. THERE WAS NO MENTION OF HEALTH IN OUR ARTICLE. THERE WAS NO STRESSING OF HEALTH IN OUR MANY APPEARANCES BEFORE BOARDS OF THE TOWN. AND PARAGRAPH #4

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OF OUR INITIAL PETITION STATES "THERE IS MUCH DEBATE ON THE HEALTH ISSUES RELATED TO CELL TOWERS (AND OUR UNDERSTANDING IS THAT THE TELECOMMUNICATIONS PROVIDERS THEMSELVES PREFER NOT TO BUILD WITHIN 1000 FEET OF SCHOOLS). WE ALSO UNDERSTAND THAT, DUE TO FEDERAL LAW REGARDING UTILITIES, THE UNKNOWN HEALTH ISSUES MAY NOT BE USED AS A REASON TO BLOCK A CELL TOWER. OTHER FACTORS SUCH AS VISUAL IMPACT, AESTHETICS, NOISE, SAFETY, NUISANCE VALUE, AND CHANGES IN THE CHARACTER OF A NEIGHBORHOOD ALSO NEGATIVELY IMPACT PROPERTY

1,3,4,5 SEE ATTACHMENTS SO NUMBERED

VALUES.” DOES THIS SOUND LIKE THE USE OF HEALTH TO STOP A CELL TOWER? WHY WOULD WE RAISE THE ISSUE OF HEALTH WHEN WE KNEW AS STATED THAT IT COULD NOT BE USED TO BLOCK CELL TOWERS? ADDITIONALLY CASE LAW RE THE TCA OF 1996 HAS ESTABLISHED THAT WHILE THE USE OF HEALTH FROM RF RADIATION TO BLOCK CELL TOWERS IS NOT LEGAL ITS USE DOES NOT INVALIDATE OTHER ARGUMENTS.

FURTHER A 9TH CIRCUIT DECISION IN METRO PAIR VS. THE CITY OF SAN FRANCISCO IN 2002 SAYS THAT SPEAKING OF “ PUBLIC HEALTH, SAFETY, AND WELFARE IS NOT REMOTELY EQUIVALENT TO BASING A ZONING DECISION ON A FEAR OF RF RADIATION.” IT FURTHER SAYS “THAT AN OPPONENT’S STATEMENT THAT HIS OPPOSITION WAS NOT BASED ON ENVIRONMENTAL (HEALTH) EFFECTS SHOULD BE RESPECTED.” THIS SAME RESPECT SHOULD BE ACCORDED US BY THE TOWN COUNSEL AND BY THE TOWN.

THUS ATT’Y SCHNORR IS LEFT ONLY WITH MIND READING FOR HIS CLAIM THAT ARTICLE #39 IS ALL ABOUT HEALTH. WE REFER TO UNITED STATES VS. FIGUEROA-ENCARNACION, 343 F.3d 23 (1ST CIRCUIT 2003) WHICH SAYS “JUDGES ARE NOT EXPECTED TO BE MIND READERS.” MAY WE ADD “NEITHER ARE TOWN COUNSELS.”

DID ATT’Y SCHNORR EVER RESEARCH ANY OF OUR WORK? DID HE EVER CALL TO TALK TO US? APPARENTLY NOT. RATHER HE SIMPLY COMPLIED WITH THE REQUEST OF THE TOWN PLANNER AND FOUND UNSUBSTANTIATED WAYS TO

DAMN ARTICLE #39. THIS IS HARDLY THE SIGN OF A STRONG INDEPENDENT TOWN COUNSEL THAT THE TOWN OF ACTON NEEDS AT THIS TIME ON CELL TOWER MATTERS.

HE ALSO SAID THAT OUR ARTICLE #39 TO PROTECT HOMES AND SCHOOLS WOULD LEAD TO LAWSUITS. HE DID SO EVEN THOUGH ALL TEN SURROUNDING TOWNS HAVE HAD COMPARABLE LANGUAGE WITHOUT RELATED LAWSUITS. HE DID SO EVEN THOUGH ARTICLE #39 LEFT ABOUT 15% OF ACTON AVAILABLE FOR CELL TOWERS COMPARED TO AS LOW AS 2% IN SURROUNDING TOWNS. HE DID SO WITHOUT CHALLENGING THE TOWN PLANNER'S ASSERTIONS TO HIM ABOUT SCENIC AREAS, WHICH ARE NOT PROTECTED BY BYLAW.

INCIDENTLY, THE TOWN PLANNER NEVER RAISED AN ISSUE ABOUT BOTH NEWTOWN RD. AND ARLINGTON ST BEING SCENIC ROUTES AT THE INTERSECTION OF THOSE STREETS WHEN A CELL TOWER WAS PROPOSED THERE SUDDENLY THE TOWN PLANNER FOUND AN INTEREST IN SCENIC AREAS IN ORDER TO NARROW THE LAND AVAILABLE FOR CELL TOWERS, AND ATT'Y SCHNORR ACCEPTS THE ASSERTION WITHOUT RESEARCH. NOT ONLY DOES IT APPEAR ATT'Y SCHNORR DID NOT CHECK THE TOWN PLANNER'S FACTS, HE APPARENTLY DIDN'T CHECK OTHER FACTS IN MAKING HIS UNSUBSTANTIATED CLAIM THAT ARTICLE #39 WOULD LEAD TO LAWSUITS. HE DID SO IN A MANNER THAT NOW LEAVES ACTON OPEN TO APPLICATIONS THAT WOULD FOREVER

DENY ACTON THE ABILITY TO PROTECT RESIDENTIAL AND SCHOOL LAND. HE DID SO WITHOUT ADVISING ANYONE OF THIS RISK AND AGAIN HE DID SO WITHOUT TALKING TO US.

HE ALSO CLAIMED THAT THE PROPOSED 1000 FT. SETBACK FROM SCHOOLS "WOULD HAVE THE EFFECT OF IMPOSING AN ABSOLUTE BAN ON WIRELESS COMMUNICATION FACILITIES" THEREIN, BY KEEPING ACTON'S ZBA FROM GRANTING A VARIANCE. THIS IS WRONG. THE ZBA CAN GRANT VARIANCES WITH REGARD TO SETBACKS. ADDITIONALLY HE FAILED TO INFORM THE TOWN OF A 3RD CIRCUIT DECISION OF JUNE 4, 2003 IN OMNIPOINT VS. EAST TOWN THAT UPHELD THE LOCAL ZBA AND THE DISTRICT COURT DECISION NOT TO GRANT OMNIPOINT A VARIANCE TO SITE IN RESIDENTIAL AREAS IN ORDER TO FILL A GAP.

HE ALSO FAILED TO INFORM THE TOWN OF AN APPELLATE COURT DECISION OF DECEMBER 2, 2005 IN OMNIPOINT VS. WHITE PLAINS WHICH STATED "CONGRESS HAS DEFINITELY PROVIDED TOWNS THE ULTIMATE VOICE IN THE ZONING DECISION MAKING PROCESS. TO THWART THIS AND THE VOICE OF CITIZENS IS TO THWART DEMOCRACY."

AND HE FAILED TO INFORM THE TOWN OF AN 11TH CIRCUIT DECISION ON MAY 6, 2005 IN MICHAEL LINET INC. VS. THE VILLAGE OF WELLINGTON, FLORIDA. THIS DECISION SAID SAFETY CONCERNS BECAUSE OF THE PROXIMITY TO

6 SEE ATTACHMENT 6

SCHOOLS IS A VALID REASON FOR DENIAL OF A REQUEST TO BUILD A CELL TOWER. THIS 11TH CIRCUIT DECISION ALSO AFFIRMED THE DISTRICT COURT'S UPHOLDING OF THE VILLAGE'S DENIAL TO CONSTRUCT A CELL TOWER BASED ON AESTHETICS AND PROPERTY VALUES.

NOR DID HE POINT OUT TO THE TOWN THAT IN A METRO PAIR VS. CITY OF SAN FRANCISCO 9TH CIRCUIT DECISION IN 2002 THE COURT STATED "INDIVIDUAL ZONING DECISIONS OR PERSISTENT COVERAGE GAPS CAN NEVER CONSTITUTE A PROHIBITION UNDER THE STATUTE." THIS DEFERENCE TO A TOWN'S LEGAL RIGHT TO PROTECT IT'S RESIDENTIAL AREAS GOES BACK AT LEAST TO A NOVEMBER 19, 1999 DECISION BY THE 3RD CIRCUIT COURT IN CELLULAR TELEPHONE COMPANY VS. ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF HO-HO-KUS NO.98-6484 WHICH OVERTURNED A U.S. DISTRICT COURT DECISION AND SAID THAT A ZBA DECISION NOT TO ALLOW A CELL TOWER IN A RESIDENTIAL AREA DIDN'T VIOLATE THE TCA OF 1996.

LET'S LOOK FURTHER AT ATT'Y SCHNORR'S WRITTEN COMMENTS ON ARTICLE #39. IN THE LAST PARAGRAPH OF PAGE 3 HE SAYS ARTICLE #39 IS "IN ESSENCE A THINLY DISGUISED ATTEMPT BY THE CITIZENS TO REGULATE THE LOCATION OF WIRELESS FACILITIES BASED UPON THE CITIZEN'S BELIEF THAT WIRELESS EMISSIONS ARE DANGEROUS AND UNHEALTHY." WE TAKE STRONG EXCEPTION TO THE "THINLY DISGUISED ATTEMPT" PHRASE WHICH SHOWS AN UTTER LACK OF KNOWLEDGE OF HOW OPEN WE HAVE BEEN IN THIS PROCESS AND AN UTTER

5,6,7 SEE ATTACHMENTS SO NUMBERED

DISRESPECT FOR US AS CITIZENS. AS ARGUED EARLIER ARTICLE #39 IS NOT ABOUT HEALTH AS CLAIMED BY MR. SCHNORR.

ON PAGE 3 THE 3RD FULL PARAGRAPH HE SAYS “ FROM A LAND USE PLANNING PERSPECTIVE IT SEEMS TO ME TO DISTINGUISH BETWEEN PUBLIC AND PRIVATE SCHOOLS MAKES NO SENSE.” DOESN’T ATT’Y SCHNORR RECOGNIZE THAT THE LANDOWNER AT A PRIVATE SCHOOL CAN SAY “NO” ALL BY HIMSELF? DOESN’T HE KNOW THAT IN CONCORD THE LANDOWNER OF THE MIDDLESEX SCHOOL SAID “YES” OVER THE TOWN’S OBJECTION TO A CELL TOWER IN AN OLD SMOKESTACK AND THAT CONCORD’S PUBLIC SCHOOLS REMAIN WELL PROTECTED FROM CELL TOWERS?

IN SOME COMMUNITIES THE VIEWS OF TOWN COUNSEL ARE THOUGHT TO BE THE FINAL SAY ON MATTERS. THUS WHEN ATT’Y SCHNORR’S VIEWS REACHED THE BOARD OF SELECTMEN THEIR STATED INCLINATION TO SUPPORT ARTICLE #39 BY A 3 TO 2 VOTE WAS SLOWED AND EVENTUALLY DERAILED. THIS DERAILING OF ARTICLE #39 RESULTED FROM MANY ADOPTING THE TOWN COUNSEL’S UNSUBSTANTIATED VIEWS. WHAT WAS WRONG WITH THIS IS QUITE SIMPLE. HE WAS WRONG ABOUT HEALTH. HE WAS WRONG ABOUT THE SCARE TACTIC OF SAYING LAWSUITS WOULD RESULT. FURTHER HE WAS WRONG IN THAT HIS OPINIONS COULD ONLY HELP TELECOMMUNICATION COMPANIES AND NOT ACTON. HE WAS WRONG IN NOT SAYING THAT IF ARTICLE #39 WAS TOO

RESTRICTIVE, THEN THE ATT'Y GENERAL WOULD SO RULE LONG BEFORE THERE WOULD BE AN OPPORTUNITY FOR LAWSUITS.

NEXT CAME ATT'Y SCHNORR'S PERFORMANCE AT TOWN MEETING. WE'VE BEEN TOLD BY SOME INCLUDING OUR TOWN MANAGER THAT A CITIZEN'S PETITION CAN ONLY BE AMENDED FROM THE FLOOR OF TOWN MEETING. NOW WHAT DID ATT'Y SCHNORR DO AT TOWN MEETING? HE SPLIT ARTICLE #39 IN TWO THUS WEAKENING OUR ABILITY TO GET IT PASSED. HE DID SO ON HIS OWN. HE DID SO WITHOUT EVEN A COURTESY CALL TO US. THE TOWN MODERATOR WAS SURPRISED, NOTICED THIS CHANGE, AND TRIED TO REACH US. ON REACHING ATT'Y SCHNORR THE TOWN MODERATOR DIRECTED HIM TO CONTACT US AND TELL US WE HAD "THE RIGHT TO BE WRONG" AND COULD LEAVE THE MOTION FOR ARTICLE #39 EXACTLY AS WRITTEN IN THE WARRANT. WHEN ATT'Y SCHNORR CONTACTED ATT'Y SIDNEY JOHNSTON HE NEVER PRESENTED THE MATTER AS DIRECTED BY THE TOWN MODERATOR. RATHER HE SAID OUR ARTICLE HAD BEEN SPLIT IN TWO AND HERE'S THREE VERSIONS OF HOW THE SECOND PART CAN READ; PICK ONE. NONE OF THESE THREE WERE AS WE WROTE IT. SO ATT'Y SCHNORR CHANGED THE LANGUAGE OF ARTICLE #39 WITHOUT A VOTE FROM THE FLOOR. HE THUS PREVAILED ON WHAT HE APPARENTLY WANTED TO DO WHICH WAS TO DEFEAT ARTICLE #39' PROTECTION OF HOMES AND SCHOOLS WHILE PRESERVING THE RIGHT FOR THE BOARD OF SELECTMEN TO FORM A COMMITTEE WITH OR WITHOUT A TOWN MEETING

VOTE.

HE WAS WRONG IN RULING THAT ARTICLE #39 HAD TO BE SPLIT. HE WAS WRONG IN GIVING A MOTION FOR A SPLIT ARTICLE TO THE TOWN MODERATOR, THUS SURPRISING HIM. HE WAS WRONG IN SPLITTING ARTICLE #39 WITHOUT CONTACTING US. HE WAS WRONG IN SPLITTING ARTICLE #39 WITHOUT AN AMENDMENT FROM THE FLOOR. HE WAS WRONG IN NOT FOLLOWING THE TOWN MODERATOR'S DIRECTIVE TO ADVISE US WE COULD HAVE ARTICLE #39 MOVED AS WRITTEN. HE WAS WRONG IN TRYING NOT TO HAVE THE LAST PART OF ARTICLE #39 VOTED ON. HE WAS WRONG IN CHANGING THE LANGUAGE OF THE LAST PART OF ARTICLE #39. HE WAS WRONG IN NOT REQUIRING A VOTE FROM THE FLOOR TO AMEND ARTICLE #39.

AND HE WAS WRONG, AS HE WAS IN HIS EARLIER OPINION ON ARTICLE #39, NOT TO CALL US. HE USURPED OUR ARTICLE #39 WITHOUT EVEN TALKING TO US. THIS LACK OF APPROPRIATE PROCESS IN HANDLING ARTICLE #39 WAS JUST PLAIN WRONG. THIS TOTAL LACK OF RESPECT FOR APPROPRIATE PROCESS IS NOT ONLY WRONG, IT IS ALSO A TERRIBLE PRECEDENT FOR ACTON IF IT STANDS WITHOUT REBUKE.

ADDITIONALLY AT TOWN MEETING WE WANTED TO PROPOSE AN AMENDMENT TO ARTICLE #38 TO ELIMINATE THE LAST CLAUSE OF 3.10.6.4 THUS MAKING SETBACKS FROM THE APPLICANT'S HOME THE SAME AS FROM NEIGHBORING

HOMES. THIS WOULD HAVE BEEN CONSISTENT WITH HOW ARTICLE #38 WAS PRESENTED AT HEARINGS. ATT'Y SCHNORR SAID THIS AMENDMENT ONLY AFFECTED THE APPLICANT AND NOT THE NEIGHBORHOOD AND THAT HE WOULD THUS RULE IT ILLEGAL IF WE PROPOSED IT. HIS POSITION WAS ABSURD. A CELL TOWER OR A PIG STY NEAR AN APPLICANT'S HOME AFFECTS THE ENTIRE NEIGHBORHOOD. HE THUS PROTECTED THE INTERESTS OF CELL TOWER BUILDERS AND NOT THE INTERESTS OF ACTON. AGAIN--- HE WAS WRONG.

FURTHER TO SHOW ATT'Y SCHNORR'S INDUSTRY ORIENTATION LET'S LOOK AT HIS WORK ON WRITING THE CURRENT MORATORIUM WARRANT ARTICLE. IN THE FIRST WHEREAS PARAGRAPH HE SAYS THE TCA OF 1996 AIMS "TO PROMOTE THE DEVELOPMENT OF NATIONWIDE WIRELESS COMMUNICATIONS NETWORKS." NOWHERE DOES HE SAY THAT THE TCA OF 1996 IN SECTION (7) SPEAKS OF THE "PRESERVATION OF LOCAL ZONING AUTHORITY" WITH A FEW BUT QUITE SIGNIFICANT PROCEDURAL LIMITATIONS. NOWHERE DOES HE MENTION PROTECTION OF RESIDENCES AND SCHOOLS WHICH WAS THE CENTRAL PURPOSE OF THE MORATORIUM AS DISCUSSED AT TOWN MEETING.

IN SECTION 3.11.5 EXEMPTIONS IN THE CURRENT MORATORIUM WARRANT ARTICLE HE SHOWS THAT HE HAS READ SECTION 3.10.5 CATEGORICAL EXEMPTIONS IN ACTON'S CURRENT BYLAW. THIS SECTION SAYS THAT CELL TOWERS MAY BE BUILT IN OFFICE DISTRICTS, IN INDUSTRIAL DISTRICTS, IN THE LIMITED BUSINESS DISTRICT "AND NO SPECIAL PERMIT SHALL BE REQUIRED."

8 SEE ATTACHMENT 8

THIS IS ONE OF THE MAJOR LOOPHOLES WE EXPECTED TO CLOSE VIA THE WIRELESS STUDY COMMITTEE. WHAT DOES ATT'Y SCHNORR SAY? HE SAYS THE CATEGORICAL EXEMPTIONS OF 3.10.5. CONTINUE TO STAND AS IS AND ARE EXEMPT FROM PROVISIONS OF THIS TEMPORARY MORATORIUM. DOES THIS IN ANY WAY HELP ACTON OR DOES IT HELP THE CELL TOWER INDUSTRY?

LASTLY AND PERHAPS MOST IMPORTANTLY THE MORATORIUM WARRANT ARTICLE HAS NO PROVISION TO HAVE A MORATORIUM ON APPLICATIONS AND RELATED HEARINGS. IT ONLY LIMITS DECISIONS AND CONSTRUCTION. IT MEANS THAT HEARINGS WOULD BE HELD WITH THE EXISTING BYLAW AS NO ONE KNOWS HOW THE REVISED BYLAW WILL READ. ISN'T THIS ALSO NO HELP TO ACTON BUT OF POSSIBLE VERY SIGNIFICANT HELP TO THE CELL TOWER INDUSTRY? THIS TOGETHER WITH OTHER POINTS WE HAVE MADE SUGGESTS TO US THAT ATT'Y SCHNORR IS INDUSTRY ORIENTED AND NOT UNBIASED.

NOW THE WIRELESS STUDY COMMITTEE WILL REQUIRE SOME LEGAL OPINIONS. WE HAVE NO CONFIDENCE THAT ATT'Y SCHNORR CAN OFFER EVEN HANDED OPINIONS REASONABLY ACCEPTABLE TO ALL. WE RECOMMEND THAT A NEW ATTORNEY FOR THIS PURPOSE BE ENGAGED. WE BELIEVE THE TOWN CAN FIND FIRMS KNOWLEDGEABLE IN THE FIELD BUT NOT ONES WHOSE PERSPECTIVE HAS BEEN SHAPED BY EXTENSIVE WORK FOR CELL TOWER COMPANIES.

THANK YOU FOR YOUR TIME