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IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
No. 12-S-1678
Quiet Title Action

ROBERT K. STEELE, 48 South
Grantham Road, Dillsburg, PA 17019-
7983, Plaintiff
vs.

JOHN DOE, his successors and assigns,
LAWRENCE L. RICHARDS, CAROL
MARIE RICHARDS, and ELLEN M.
BURDETTE, Defendants

NOTICE – ACTION TO QUIET TITLE

NOTICE TO: The above-named Defendants, their heirs, assigns and all persons claiming any right, title, claim or interest to that property located in Carroll Valley Borough, Adams County, Pennsylvania, and further identified as 5 Hickory Trail, Carroll Valley, Pennsylvania 17320, as shown on a deed dated December 28, 1990 and recorded on January 23, 1991 in the Office of the Recorder of Deeds for Adams County, Pennsylvania in Deed Book 578 at Page 336, hereby referenced as Exhibit "C."

Take Notice that Robert K. Steele has filed an Action to Quiet Title in the aforesaid Court, averring that it has acquired title to the property by virtue of purchasing said property. Plaintiff has requested an order declaring Plaintiff to be the legal and equitable owner of the property and ordering the Recorder of Deeds to record an Order awarding fee simple title to the Plaintiff. You are hereby notified to file an Answer and any claims of ownership within twenty (20) days following the date of this publication. If you fail to do so, final judgment may be entered against you.

If you wish to defend, you must enter a written appearance personally or by an attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO
YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER OR CANNOT
AFFORD ONE, GO TO OR TELEPHONE
THE OFFICE SET FORTH BELOW TO
FIND OUT WHERE YOU CAN GET
LEGAL HELP.

Court Administrator
Adams County Courthouse
Gettysburg, Pennsylvania 17325
717-337-9846

Wendy Weikal-Beauchat, Esq.
Beauchat & Beauchat, LLC
63 West High Street
Gettysburg, PA 17325
717-334-4515
Attorney for Plaintiff

12/14

LEGAL NOTICE-ANNUAL MEETING

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the home office located at 101 South Queen Street in the Borough of Littlestown, Pennsylvania, between the hours of 1 and 2 p.m., on January 12, 2013 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt
President/Treasurer

12/7, 14, 21 & 28

REID VS. FRANKLIN TWP. ZHB ET AL

1. In zoning cases such as the instant matter where the trial court does not receive any additional evidence, the scope of review is limited to determining whether the Board committed an error of law or a manifest abuse of discretion.

2. A conclusion that the governing body abused its discretion may be reached only if its findings of fact are not supported by substantial evidence.

3. The Board's interpretation of the zoning ordinance it is charged with enforcing is generally entitled to a great degree of deference.

4. An "exception" in a zoning ordinance is one allowable where the facts and conditions detailed in the ordinance, as those upon which an exception may be permitted, are found to exist.

5. An applicant for a special exception bears the burden of proving that the proposed special exception satisfies the standards under the zoning ordinance.

6. Once the applicant has met its burden and shown a prima facie case, the burden shifts to any objectors to present evidence that the proposed use has a detrimental effect on the public health, safety, and welfare.

7. The authority of the Board to place a condition of approval on an application for a special exception use is well recognized and not at issue.

8. The Board cannot use a condition as a means by which it can authorize an application that is, on its face, noncompliant with the objective criteria required for approval by the controlling Ordinance.

9. The Pennsylvania Supreme Court stated that, in certain situations, it was acceptable for a Zoning Hearing Board to grant a special exception conditioned on the applicant's later compliance with the express requirements for the special exception.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 11-S-1314, DAVID AND KATHY REID, Appellants, VS. ZONING HEARING BOARD OF FRANKLIN TOWNSHIP, Appellee, AND NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC., Intervenor

John H. Mahoney, Esq., for Appellants

Clayton R. Wilcox, Esq., for Appellee

Michael S. Grab, Esq., for Intervenor

Kuhn, P.J., July 11, 2012

OPINION

Before this Court is a Land Use Appeal filed by Appellants, David and Kathy Reid (Appellants), on September 7, 2011. Appellants' appeal is from an August 22, 2011 written decision (Decision) issued by the Franklin Township Zoning Hearing Board (the Board) authorizing a special exception to Intervenor, Nextel Communications of the Mid-Atlantic (Nextel), for the construction of a wireless

communications tower facility (tower)¹ in an Agricultural Zoning District of Franklin Township. The appeal presents two questions for review to this Court: (1) whether Nextel's special exception application complied with all the applicable objective criteria contained within Franklin Township's Zoning Ordinance (Zoning Ordinance) and (2) the absence of any existing structures in the proposed service area that could be used to provide wireless communications and negate the need for the proposed tower. Resolution of the issues presented on appeal largely depends on Ordinance interpretation as the basic factual background is essentially not in dispute.

Appellants are the owners and residents of 2135 Buchanan Valley Road, Orrtanna, Franklin Township. Appellants were recognized as parties and participated through legal counsel in the proceedings related to this matter conducted by the Board. Appellants' property is located across the roadway from the subject property on which the proposed tower would be constructed. The subject property is a parcel of just over two acres of land located wholly within a 10.65-acre tract owned by Harry Irvin, with the subject property being leased to Nextel by Irvin pursuant to a lease agreement.² The tract, as a whole, is primarily used by Irvin as a fruit orchard and the use of the surrounding lands is primarily agricultural in nature.

On March 24, 2011, Nextel submitted an application to the Board requesting a special exception for the construction and use of the tower.³ Section 175-34 of the Zoning Ordinance provides the standards for filing a special exception application. FRANKLIN TOWNSHIP, ADAMS COUNTY, PA ZONING ORDINANCE § 175-34.⁴ The specific, objective criteria required for the authorization

¹ Nextel's proposed construction consists of a freestanding, 195-foot lattice tower and a 12-by-20-foot prefabricated equipment shelter all contained within a fenced and landscaped compound area.

² Unless otherwise noted, all facts are directly adopted from the Board's August 22, 2011 Decision.

³ The March 24, 2011 application is actually the second special exception application submitted by Nextel with regard to this proposed tower. In June of 2009, Nextel submitted its initial application for approval to construct the tower. This earlier application was denied by the Board in December of 2009. Nextel appealed the Board's decision in an appeal to this Court docketed at 10-S-99. This Court affirmed the Board's denial of the application but determined that Nextel had sufficiently provided evidence establishing financial assurances for the removal of the tower when its use concluded.

⁴ Hereinafter cited as "§ ____."

of a special exception for communication transmitting and receiving facilities are articulated in Section 175-44 of the Zoning Ordinance. § 175-44. Communication transmitting and receiving facilities are permitted by special exception as nonagricultural uses in Agricultural Zones under Section 175-9.C.2 of the Zoning Ordinance.

Hearings on Nextel's special exception application were held before the Board on May 26, July 11, and July 18, 2011. During those hearings, Nextel presented evidence and testimony from multiple expert and lay witnesses to demonstrate its compliance and fulfillment with the objective special exception criteria.

On August 22, 2011, the Board issued its Decision in which it found that Nextel had standing before the Board and had met its burden of proof for the requested special exception use. The Board also found that the plan submitted by Nextel did not include the notation of restrictions of land use and the location of the development area pursuant to the provisions of Section 175-9.D(2)(c)(2) of the Zoning Ordinance.⁵ The Board concluded that the omission of said notations did not necessitate the denial of the special exception application but must be included in the Final Land Development plan to be filed by Nextel. It is from this Decision that Appellants have filed the instant appeal presently before this Court.

In zoning cases such as the instant matter where the trial court does not receive any additional evidence, the scope of review is limited to determining whether the Board committed an error of law or a manifest abuse of discretion. *In re Petition of Dolington Land Group*, 839 A.2d 1021, 1026 (Pa. 2003). The Court does not substitute its own interpretation of the evidence for that of the Board. *Pietropaolo v. Zoning Hearing Bd. of Lower Merion Twp.*, 979 A.2d 969, 976 (Pa. Commw. Ct. 2009). "A conclusion that the governing body abused its discretion may be reached only if its findings of fact are not supported by substantial evidence." *Sutliff Enterprises, Inc. v. Silver Spring Twp. Zoning Hearing Bd.*, 933 A.2d 1079, 1081 n.1 (Pa. Commw. Ct. 2007). Evidence is substantial when a reasonable mind could accept it as adequate to support a conclusion. *Cardamone*

⁵ Specifically, the Board found that Nextel must include notations that make explicit reference to the location of the nonagricultural development, i.e. the tower and its surrounding facilities, and the 30 percent limitation established for nonagricultural use of the total parent tract, i.e. the complete Irwin tract.

v. *Whitpain Twp. Zoning Hearing Bd.*, 771 A.2d 103, 104 (Pa. Commw. Ct. 2001).

Moreover, the Board's interpretation of the zoning ordinance it is charged with enforcing is generally entitled to a great degree of deference. *Ruley v. W. Nantemean Twp. Zoning Hearing Bd.*, 948 A.2d 265, 268 (Pa. Commw. Ct. 2008). The basis for this deference is the specific knowledge and expertise the Board possesses to interpret said zoning ordinances. *Willits Woods Assoc. v. Zoning Bd. of Adjustment City of Philadelphia*, 587 A.2d 827, 829 (Pa. Commw. Ct. 1991).

In this case, the Board was charged with interpreting the provisions of the Zoning Ordinance that regulate applications for special exception uses in Franklin Township. "A special exception is a use that is expressly permitted provided [that] the applicant meet[s] certain enumerated standards." *Greth Dev. Group, Inc. v. Zoning Hearing Bd. of Lower Heidelberg Twp.*, 918 A.2d 181, 186 (Pa. Cmwlth. 2007) (citing *Southdown, Inc. v. Jackson Twp. Zoning Hearing Bd.*, 809 A.2d 1059, 1064 n.6 [Pa. Cmwlth. 2002]). "An 'exception' in a zoning ordinance is one allowable where facts and conditions detailed in the ordinance, as those upon which an exception may be permitted, are found to exist." *Kotzin v. Plymouth Twp. Zoning Bd. of Adjustment*, 149 A.2d 116, 117 (Pa. 1959) (quoting *Application of Devereau Foundation*, 41 A.2d 744, 746 [Pa. 1945]). "Thus, a special exception has its origin in the zoning ordinance itself[,] [and] [i]t relates only to such situations as are expressly provided for and enunciated by the terms of the ordinance." *Id.* Therefore, "the rules that determine the grant or refusal of the exception are enumerated in the ordinance itself." *Id.* In determining whether to grant the special exception, the function of the Board is "to determine that such specific facts, circumstances, and conditions exist which comply with the standards of the ordinance." *Id.*

An applicant for a special exception bears the burden of proving that the proposed special exception satisfies the standards under the zoning ordinance. *Greth Dev. Group*, 918 A.2d at 186 (citing *Shamah v. Hellam Twp. Zoning Hearing Bd.*, 648 A.2d 1299 [Pa. Cmwlth. 1994]). Once the applicant has met its burden and shown a prima facie case, "the burden shifts to any objectors to present evidence that the proposed use has a detrimental effect on the public health, safety,

and welfare.” *Id.* (citing *Broussard v. Zoning Bd. of Adjustment*, 831 A.2d 764, 772 [Pa. Cmwlth. 2003]).

As previously mentioned, Section 175-44 of the Zoning Ordinance permits special exceptions for communication transmitting and receiving facilities such as Nextel’s proposed tower. Specifically, Section 175-44 provides:

Communication transmitting and receiving facilities must meet *all* of the requirements in the district where such special exception use is permitted, except as modified hereinafter, and all additional requirements and standards stated hereinafter ... (emphasis added).

Therefore, under the plain language of the Zoning Ordinance and due to the proposed location of the tower in an Agricultural Zone, Nextel must demonstrate that its proposed tower fulfills the requirements under Section 175-44 of the Zoning Ordinance, in addition to the requirements of the Agricultural Zone under Section 175-9.

In Section 175-9, the Zoning Ordinance establishes the standards for the development of nonagricultural uses within an Agricultural Zone. Specifically, the development of communication transmitting and receiving facilities is permitted as a nonagricultural use by special exception pursuant to Section 175-9(C)(12). Additionally, under Section 175-9(D)(2) of the Zoning Ordinance, subdivision⁶ of the land is required for the development of all nonagricultural uses, including communication transmitting and receiving facilities, within the Agricultural Zone. Furthermore, “[t]he specified area for non-agriculture purposes shall be designated [as] the development area.” § 175-9(D)(2)(a).

Appellants’ first claim asserts that the Board committed an error of law or an abuse of discretion by not finding that Nextel failed to meet its burden of proof because the plan it submitted to the Board did not contain the requisite notations regarding the restriction of future non-agricultural use or development of the portion of the Irvin property

⁶ Under Franklin Township’s Subdivision and Land Development Ordinance, subdivision is defined as “[t]he division or re-division of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels, or other divisions of land, including changes in existing lot lines for the purpose, whether immediate or future, *of lease*, partitioned by the court for distribution to heirs and devisees, transfer of ownership, or building or lot development ...” § 146-7 (emphasis added).

outside of the development area. Appellants further contend that the condition of approval the Board placed upon Nextel's application to correct the omission of the notations was impermissible because it was designed to cure the alleged legal shortcomings in the application.

In its written Decision, the Board approved Nextel's application for a special exception to construct the tower subject to the condition of fulfilling Section 175-9.D(2)(c)(2) that requires explicit reference to the location of the nonagricultural development area and the 30 percent limitation established for nonagricultural use of the total parent tract be included in the submission of Nextel's land development plan. § 175-9.D(2)(c)(2).

The authority of the Board to place a condition of approval on an application for a special exception use is well recognized and not at issue. *E.g.*, *Blancett-Maddock v. City of Pittsburgh Zoning Bd. of Adjustment*, 6 A.3d 595, (Pa. Commw. Ct. 2010); *Elizabethtown/Mt. Joy Associates, L.P. v. Mt. Joy Twp. Zoning Hearing Bd.*, 934 A.2d (Pa. Commw. Ct. 2007); *Broussard v. City of Pittsburgh Zoning Bd. of Adjustment*, 907 A.2d 494 (2006). However, such a condition "is not to be used as a fudge factor by which to correct any legal shortcomings in an application for [a] special exception." *Blancett-Maddock*, 6 A.3d at 601. Effectively, the Board cannot use a condition as a means by which it can authorize an application that is, on its face, noncompliant with the objective criteria required for approval by the controlling Ordinance. See *Elizabethtown/Mt. Joy Associates, L.P. v. Mt. Joy Twp. Zoning Hearing Bd.*, 934 A.2d 759 (Pa. Commw. Ct. 2007).

Appellants contend that the Board's condition of approval serves to rehabilitate Nextel's defective application and is therefore impermissible. Specifically, Appellants assert that Nextel's failure to include the notations establishing a prohibition of nonagricultural uses of tract area located immediately outside of the development area and precluding subsequent subdivision of the remaining portion of Irwin's property as required by Section 175-9.D(2)(c)(2) of the Zoning Ordinance is a fatal defect in the application that requires its denial.

In support of their claims, Appellants rely upon the Commonwealth Court's decision and reasoning in *Blancett-Maddock v. City of Pittsburgh Zoning Bd. of Adjustment*, 6 A.3d 595, (Pa. Commw. Ct. 2010). In *Blancett-Maddock*, the Commonwealth Court was presented

with a situation where a Zoning Hearing Board also conditionally approved an application for a special exception to construct a cell phone tower filed by a telecommunications company. *Id.* Specifically, the telecommunications company was proposing to construct the tower on a lot located in the corner of a cemetery and bordered by residential and commercial districts. *Id.* The Zoning Hearing Board found that the size of the lot to be used for the tower that was proposed in the telecommunications company's plans did not fulfill the setback and access road requirements established in the zoning ordinance.⁷ *Id.* at 599. Even though the Zoning Hearing Board found that the proposed lot did not fulfill two of the specific objective requirements of the zoning ordinance, it determined that these "minor" deficiencies could be cured by the telecommunications company moving the proposed tower to another location in the cemetery and by widening the access road.

The Commonwealth Court disagreed with the Zoning Hearing Board's determination and reversed its decision. *Id.* at 602. The Commonwealth Court stated that the proposed cell phone tower was found by the Board to violate multiple provisions of the zoning ordinance. *Id.* The Court continued by stating that there was no evidence in the record that would suggest the telecommunications company would be able to cure those violations by simply revising the site plan or widening the access road. *Id.* Accordingly, the Court found that the Zoning Hearing Board had erred by using conditions to render an "unsatisfactory application satisfactory." *Id.*

Appellants make a similar argument in support of their claim that Nextel's failure to include the notations required by Section 175-9.D(2)(c)(2) on its special exception application must result in a denial of the application. Appellants assert here that, as in *Blancett-Maddock*, the Board found the special exception application to contain violations of the Zoning Ordinance and used conditions to impermissibly cure those violations.

⁷ Specifically, the Zoning Hearing Board found that the plans for the proposed special exception use reflected a failure to: 1) maintain a minimum of a 300 foot setback from adjacent residential properties and 2) possess an access road with a minimum width of 20 feet. The Zoning Hearing Board found the proposed tower to be less than 300 feet from residential lots that were adjacent to the cemetery and the access road to only be 12 feet wide. *Blancett-Maddock*, 6 A.3d at 599.

In its Decision, the Board stated that it considered the issue of the omitted notations when it made its decision. The omission notwithstanding, the Board concluded that Nextel had met its burden of proof with respect to the all the objective criteria of the Ordinance regarding the proposed special exception use. However, the Board did acknowledge that the omitted notations must be included by Nextel on the land development plan it will file.

It is worth noting that Appellants' claim is only that the plan Nextel presented to the Board did not include the notation of the zoning restrictions, not that Nextel's plan actually contained or represented any violation of the zoning restrictions that would necessitate additional lands being leased or construction beyond that which was proposed in the plans as submitted by Nextel. The absence of any claim of these types of violations of the zoning restrictions is of critical importance to the resolution of this issue. It is for this reason that this Court is able to distinguish the instant matter from the Commonwealth Court's decision in *Blancett-Maddock*.

This Court recognizes that the omission of the notations on the plan by Nextel represents a technical violation of the strict reading of the Ordinance, however, upon closer examination of the particular circumstances of this case, it is clear that Appellants' claim does not represent a fatal deficiency in Nextel's application. In actuality, the Zoning Ordinance is still the controlling authority over all the development in Franklin Township and the relevant zoning restrictions remain in effect against the proposed construction regardless of whether they are noted on the plan at this time or not. Similarly, it is important to note that all of the remaining land on Irvin's property is subject to those existing zoning restrictions irrespective of Irvin's acknowledgement or agreement to the same.

This Court's determination of this issue is guided by the Pennsylvania Supreme Court's decision and reasoning in *Broussard v. Zoning Board of Adjustment*, 907 A.2d 494 (Pa. 2006). In *Broussard*, a developer applied for a special exception to renovate a building into a conference facility. *Id.* The relevant zoning ordinance required the proposed conference facility to provide a specified amount of available parking and the developer sought to fulfill those requirements by having reserved spaces available in an off-site garage. *Id.* The developer's plan that was submitted to the Zoning

Hearing Board contained a letter of intent from the operator of the off-site garage, not an actual, recordable contract for the spaces as the provisions of the zoning ordinance required for off-site parking garages to be used to satisfy the parking requirements. *Id.* at 496-97. The Zoning Hearing Board acknowledged that the developer's application was technically deficient according to a strict interpretation of the zoning ordinance; however, it granted the special exception subject to the condition that an actual contract for the spaces be recorded prior to the issuance of the building permit. *Id.* at 497-98.

The Pennsylvania Supreme Court concluded that the Zoning Hearing Board had reasonably interpreted its own ordinance and was justified in approving the special exception subject to the fulfillment of a later condition. *Id.* The Court further stated that, in certain situations, it was acceptable for a Zoning Hearing Board to grant a special exception "conditioned on the applicant's later compliance with the express requirements for the special exception." *Id.* at 498. The Court continued to state that the resolution of these particular types of cases depended upon a two-part analysis: 1) whether the Zoning Hearing Board reasonably interpreted the controlling zoning ordinance to determine the ordinance's prerequisites for the special exception sought and 2) whether the applicant's submissions indicated an intent and ability by the applicant to fulfill those prerequisites and conditions associated with the special exception at issue. *Id.* at 500-502. If both of these inquiries are resolved favorably, then "a reviewing court should not reverse the grant of such an exception on the sole basis that some of the items described in the plan may be completed at a later date." *Id.* at 502.

After applying this analysis to the instant matter, this Court has concluded that the Board's interpretation of the Zoning Ordinance was reasonable and that Nextel submitted sufficient evidence by way of testimony to establish its intent, and ability, to fulfill the conditions of approval imposed by the Board.

Regarding the conditions imposed by the Board on its approval of the special exception application, this Court finds that the Board's conditions are within the same vein as the conditions present in *Broussard* and do not, by themselves, necessitate the denial of the application because they merely allow for the completion of a limited, procedural notation at a later date.

In its Decision, the Board stated that it found Nextel to have fulfilled its burden in meeting all of the specific objective criteria of the Zoning Ordinance applicable to all special exception applications. The Board concluded that the requirements of Section 175-9.D(2)(c) (2) would be fulfilled by Nextel's placement of those notations on its final land development plan submission and the omission of said notations in the special exception application was not fatal to the application. Additionally, the Board stated that it was satisfied by the testimony of two witnesses presented by Nextel who indicated that a final land development plan would be submitted and that the notations required by Section 175-9.D(2)(c)(2) would be included.

Thus, for the aforementioned reasons, this Court affirms approval of Nextel's application subject to the conditions of approval imposed by the Board.

Appellants second claim asserts that Nextel did not sustain its burden, under Section 175-44.D of the Zoning Ordinance, of producing evidence before the Board to demonstrate that no existing structures in the area to be served could be used to provide wireless communications and thereby establishing the necessity for the construction of the tower. § 175-44.D.

Appellants' contend that Nextel failed to fulfill the requirements of Section 175-44.D because it only provided evidence that there were no existing structures capable of providing wireless service within a particular "search ring" of the area and not the entire service area. Section 175-44.D states, in relevant part:

No new communication transmitting and/or receiving facility includes a tower, aerial, or antenna in excess of 35 feet shall be constructed unless the applicant proves to the satisfaction of the Zoning Hearing Board that good faith efforts have been pursued to locate such facilities on existing structures, towers, aerials, antennae, or other tall facilities located within the area where the applicant expects to service with the proposed facility, and the efforts were rejected for one or more of the following reasons:

(1) The proposed additional facilities would exceed the structural capacity of the existing facilities, and reinforcement of the existing facilities is not economically feasible.

(2) The proposed facility would cause frequency interference with existing equipment which cannot be prevented at an economically feasible cost.

(3) The existing facilities do not have sufficient height, location, space, or access to allow the proposed facility to substantially perform its intended function, or no such existing facilities exist in the proposed service area ...

§ 175-44.D(1)-(3).

This Court finds Appellants' claim to be unsupported by the record. During the hearings, Nextel presented testimony from multiple witnesses and introduced maps showing the deficiencies in coverage of the area that would be corrected via the proposed tower. Matthew Burtner, Nextel's site acquisition consultant, testified regarding the preference for using existing structures to provide service to the area, and then, if none are available, proceeding to secure undeveloped land sites on which a tower could be constructed to provide the necessary service. Transcript of July 11, 2011 Hearing before Franklin Township Zoning Hearing Board, p. 5.⁸ Burtner further testified that the use of existing structures is preferred because it is both a cheaper method than new construction and generally preferred by zoning ordinances. *Id.*

Burtner testified that Nextel initially supplied him with documents prepared by their engineers that detailed a specified "search ring" within the service area in which the engineers had determined the tower must be located in order to provide the improved service to the entire area due to the topography of the service area. *Id.* at 6 (emphasis added). After exploring the area within the "search ring," Burtner determined there were no suitable existing structures within the "search ring" that were capable of being utilized as a tower to provide service to the entire area. *Id.* at 10-11.

In addition to Burtner's testimony regarding the selection and acquisition of the site for the tower, Nextel produced the expert testimony of Michael Smith in the field of radio frequency coverage. N.T. at 28-62. During his testimony, Smith stated specifically that Nextel was proposing the construction of the new tower because "there's no structure capable of handling the antennas at the height required to supply service" within the area. *Id.* at 29.

⁸ Hereinafter referred to as "N.T. at ____"

The Board accepted Nextel's evidence as sufficient to meet its burden of demonstrating that there were no existing structures in the area to be served that could be used to provide wireless communications.

This Court is satisfied that the Board did not abuse its discretion or commit an error of law when it made this determination. Accordingly, this Court finds Appellants' claims to be without merit and they are hereby denied.

ORDER

AND NOW this 11th day of July 2012, upon consideration of the briefs, responses thereto, and other materials submitted to this Court by the parties in their respective capacities in this matter, it is HEREBY ORDERED that the Appeal by David and Kathy Reid presently before this Court is DENIED.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF PEARL M. DITCHBURN, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Attorney: Duane P. Stone, Esq., Stone, Duncan & Linsenbach, PC, P.O. Box 696, Dillsburg, PA 17019

ESTATE OF FREDERICK W. ECKER SR., DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Frederick W. Ecker Jr., 155 Gun Club Road, Orrtanna, PA 17353

Attorney: Larry W. Wolf, P.C., 215 Broadway, Hanover, PA 17331

ESTATE OF SYLVIA A. KATRINA, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Lisa Hill, 96 Country Drive, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF SHARON A. KERCHNER a/k/a SHARON ANN KERCHNER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: William Scott Kerchner, 284 Zimmer Road, Kirkwood, New York 13795; Loretta Ann Smith, 221 Center Street, McSherrystown, PA 17344

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF ELIZABETH K. MCCARTHY, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executrices: Kerri Lynne McCarthy, 27 Bragg Drive, East Berlin, PA 17316; Barbara Ann McCarthy, 166 Lake Meade Drive, East Berlin, PA 17316

ESTATE OF DONALD B. SMITH a/k/a DONALD B. SMITH SR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Alice C. Smith, c/o Joseph M. Sedlack, Esq., Reed Smith, LLP, 2500 One Liberty Place, 1650 Market Street, Philadelphia, PA 19103

Attorney: Joseph M. Sedlack, Esq., Reed Smith, LLP, 2500 One Liberty Place, 1650 Market Street, Philadelphia, PA 19103

SECOND PUBLICATION**ESTATE OF JOHN L. BAUGHER, DEC'D**

Late of Reading Township, Adams County, Pennsylvania

Executrix: Phyllis M. Baugher, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF SHIRLEY F. GREENHOLT, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executrices: Lori G. Lupolt and Wendy Ann Stauffer, c/o Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

ESTATE OF MARY E. HOOVER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Paul K. Hoover Sr., 1236 Russell Tavern Road, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROBERT W. KOONS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Stephen Herr Koons, P.O. Box 785, Carrboro, NC 27510; Philip Alan Koons, 1107 North Tioga Street, Ithaca, NY 14850

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF EARL W. McCLEAF, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Personal Representatives: Linda Moore n/k/a Linda Van Deuren, 13882 Harbaugh Church Road, Waynesboro, PA 17268; Earl W. McCleaf Jr., 123 Walnut Street, Mont Alto, PA 17237

Attorney: Clinton T. Barkdoll, Esq., Kulla, Barkdoll, Ullman & Painter, P.C., 9 East Main Street, Waynesboro, PA 17268

ESTATE OF GUY E. MCINTIRE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Michael McIntire and David McIntire, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF BRUNETTA L. SIBERT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Thomas E. Sibert, 1175 Brickcrafters Road, New Oxford, PA 17350

ESTATE OF GRACE C. STAUFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: David P. Stauffer, 23127 Robertson Road, Doylestown, PA 17219

ESTATE OF MARTHA B. THORNTON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Counsel Trust Company, c/o Alan M. Cashman, Esq., 141 Broadway, Suite 310, Hanover, PA 17331

Attorney: Alan M. Cashman, Esq., 141 Broadway, Suite 310, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF FRANK E. BASEHOAR SR.
a/k/a FRANK ELIAS BASEHOAR, DEC'D

Late of Oxford Township, Adams
County, Pennsylvania

Executor: Douglas A. Basehoar, 3473
Lyon Park Court, Woodbridge, VA
22192

Attorney: Elinor Albright Rebert, Esq.,
515 Carlisle Street, Hanover, PA
17331

ESTATE OF ADELINE S. FRANTZ, DEC'D

Late of Oxford Township, Adams
County, Pennsylvania

Executrix: Susan F. Clark, 240 Hyde
Park Road, Landenberg, PA 19350

ESTATE OF EVELYN T. GLEESON,
DEC'D

Late of Straban Township, Adams
County, Pennsylvania

Administrator C.T.A.: Thomas O. Oyler
III, c/o Edward J. O'Donnell IV, Esq.,
141 Broadway, Suite 310, Hanover,
PA 17331

Attorney: Edward J. O'Donnell IV,
Esq., 141 Broadway, Suite 310,
Hanover, PA 17331

ESTATE OF JAMES R. HARNER, DEC'D

Late of the Borough of Littlestown,
Adams County, Pennsylvania

Administratrix: Joan M. Helm, 523
Moul Avenue, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq.,
515 Carlisle Street, Hanover, PA
17331

ESTATE OF BAYWARD I. OSBORN,
DEC'D

Late of Franklin Township, Adams
County, Pennsylvania

Executrix: Carol L. Noyes, 1052
Coldspring Road, Fayetteville, PA
17222

Attorney: George E. Wenger Jr., Esq.,
Hoskinson & Wenger, 147 East
Washington Street, Chambersburg,
PA 17201

ESTATE OF FRANCIS C. PERRIN, DEC'D

Late of Conewago Township, Adams
County, Pennsylvania

Executrix: Julia A. Perrin, c/o Keith R.
Nonemaker, Esq., Guthrie,
Nonemaker, Yingst & Hart, LLP, 40
York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq.,
Guthrie, Nonemaker, Yingst & Hart,
LLP, 40 York Street, Hanover, PA
17331

ESTATE OF CHARLOTTE B. THOMAS,
DEC'D

Late of Menallen Township, Adams
County, Pennsylvania

Executrix: Barbara F. Fair, 501 Quincy
Street, Collegeville, PA 19426

Attorney: John A. Wolfe, Esq., Wolfe &
Rice, LLC, 47 West High Street,
Gettysburg, PA 17325