

the MANAGER



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School Violence (part 1 of a 2-part series)

Were Columbine Boys Harris & Klebold Anomalies?



They were troubled students, but they did not appear to be much more so than dozens of other students at Columbine High School. Eric Harris and Dylan Klebold often dressed in black and frequently wore trench coats to school. They associated with a fringe group and occasionally exhibited some anti-social behaviors. However, no one foresaw – in the many clues they had left in the previous two years – the crimes they were about to commit at the Littleton, Colorado, school.

The bizarre story of Harris and Klebold, relatively bright students, began in 1997 when, as part of a school project involving creativity,

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Managing Cellular Tower Litigation

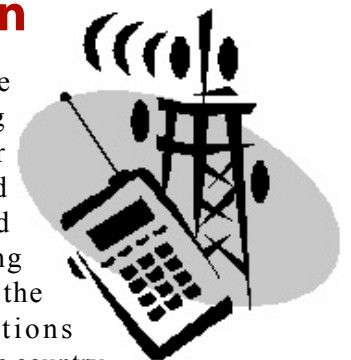
Introduction

Cell phones, to be functional, must be within a few miles of a cellular antenna. In areas away from cities, these are usually mounted on tall towers. In every community, however, there is some opposition to siting cellular equipment, especially near residential, historic, conservation, or school areas. The primary concerns are cancers, unknown health effects, property values, visual impairment, and environmental damage. There are tens of thousands of antenna locations currently in the U.S. and tens of thousands more are expected to be installed in the next few years.

Congress, concerned that many

communities were denying siting permits for cellular towers and antennas and thereby creating gaping holes in the telecommunications networks across the country, passed the Telecommunications Act of 1996. One of the key features of this Act prohibits municipalities from denying siting permits because of concerns of possible adverse health effects.

Municipalities have been denying permits to telecommunications carriers for a variety of reasons. Most of these denials have become



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Metrogard Welcomes **37** New Members!

Metrogard is pleased to announce 37 new members as of July 1, 2003 to our public entity insurance program. With many municipal and public school budgets under pressure today, we are pleased to be able to service the needs of our customers with a cost effective insurance program. Welcome all new members!!

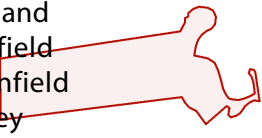
Maine

Bath
 Danforth
 Harpswell
 Livermore Falls
 Livermore Water District
 Maine Central Institute
 Millinocket
 MSAD 11
 MSAD 19
 MSAD 37
 MSAD 52
 MSAD 53
 Northern Oxford Sanitary District
 Rumford
 Rumford Water District
 Scarborough School District
 School Union 13
 School Union 76
 Windham



Massachusetts

Boston Housing Authority
 Brookfield
 Buckland
 Deerfield
 Greenfield
 Hadley
 Lunenburg
 Lunenburg Water District
 North Central Charter School
 Rockland
 SABIS Charter School
 Salisbury
 Saugus
 Swansea Water District



Vermont

Lamoille SU
 Orange-Windsor SU



Connecticut

Wilton



Rhode Island

Motoring Technical Institute



*visit us at
upcoming*



Trade Shows

- ☛ Vermont League of Cities & Towns (VLCT)
Town Fair Day
October 2, 2003
Barre Municipal Civic Center
Barre, VT
- ☛ Connecticut Conference of Municipalities (CCM)
Annual Convention and Exposition
October 9, 2003
Radisson Hotel and Conference Center
Cromwell, CT

Cell Tower Litigation, cont'd

litigation issues, and in many cases, insurance claims as well.

Lawsuits typically are filed in federal court although the plaintiff has the option to file in the state courts. Either way, according to Peter Roxo, senior litigation specialist, Massamont Insurance Agency, “a lawsuit is a contentious process that often is resolved only after considerable time and cost. In most of the cases the municipalities have been required by the courts, or have consented through settlements, to grant the telecommunications company a siting permit, though the municipality may succeed in attaining some of the town’s objectives.”

Siting Exposures

At the local level, various state authorities and local planning and zoning boards have siting jurisdiction. Other local authorities may include conservation commissions, historic district commissions, boards of health, and boards of selectmen. A typical wireless communications zoning regulation is created to protect the public (to the extent not prohibited by federal law); minimize visual impacts; protect the scenic, historic, natural and human-made resources of the town; and protect property values. Zoning violations are a common reason for denying a permit.

Section 704 of the Telecommunications Act (47 U.S.C. 332(c)) establishes the fundamental rules of siting. This section aims to eliminate market entry barriers and to ensure a consistent national standard for regulating radio frequency emissions. The Act requires action by the municipal authorities on applications for permits within a reasonable period of time. Although Section 704 preserves local zoning authority in the placement, construction, and modification of cellular towers, it imposes two key restrictions on local planning and zoning authorities. First, they may not reject an application

based on perceived environmental risks as long as the company adheres to FCC regulations. Second, local authorities may not discriminate between different providers of functionally equivalent services, nor may they prohibit – or have the effect of prohibiting – personal wireless services.

The denial of a permit may result in a lawsuit against the municipality. There are three classes of permit denial that are usually dispositive in court in favor of the telecommunication carrier, according to Kay Doyle of Kopleman and Paige, P.C:

- Disparate treatment, i.e., unreasonable discrimination among service providers;
- Human health exposures; and
- Denials, the real purpose of which is to prohibit the tower or antenna;

all of which are violations of the Act. Ms. Doyle also cautions municipalities that procedural errors can result in a court ruling against the municipality, the most important being the failure of the denying board to produce an official written record of the decision, including the rationale for the decision. If the denial is based on a proposed design that does not meet the esthetic standards of the permitting authority, the record should clearly state why the application is different from other applications that have been granted, e.g., the proposed tower blocks the view within an historical district or a conservation area.

Of particular interest is the application of civil rights law to the siting of cellular towers. Several attorneys for telecommunications carriers have argued, sometimes successfully, that U.S. law (42 U.S.C. 1883 and 1888) grants redress to anyone, including telecommunications carriers, whose civil rights have been abridged. Those deprived of their rights may sue in equity or seek other proceedings for redress (Section 1883) and may recover reasonable attorney’s fees (Section 1888).



Cell Tower Litigation, cont'd

The courts are split on the applicability of these civil rights provisions to the siting of cellular towers, Ms. Doyle relates. The Telecommunications Act itself makes no provision for monetary damages. By incorporating civil rights in the complaint, the plaintiff may seek monetary damages. Two cases have gone to the federal courts of appeal on this issue. The 3rd Circuit Court has ruled that the civil rights provisions are not appropriate for relief and damages under the Telecommunications Act; the 11th Circuit Court ruled otherwise, but that decision has since become moot for unrelated reasons.

Unless there is a claim for monetary damages, a municipal liability insurance policy would not respond to a telecommunications lawsuit, and the insurer would not be obliged to defend the municipality. The plaintiffs typically do not want an insurer to be involved; they would rather hold a financial hammer over the municipality with the implied threat of asking for damages at a later time if they cannot get a satisfactory settlement with the defendant. To keep this threat alive, they may assert a claim under the 42 U.S.C. 1883 & 1888 without initially asking for damages. If the plaintiff does make a claim under the civil rights provisions and prevails, he may be entitled to attorney fees as well as monetary damages.

In some cases the Telecommunications Act may preempt local regulations or bylaws. For example, zoning regulations and municipal bylaws that require minimum separation distances between towers to limit siting have proven futile.

Most litigation cases involving siting have been settled outside the courthouse, almost always with the plaintiff getting the requested permit. Legal costs and expenses can be very significant for municipalities, reaching tens or hundreds of

thousands of dollars. “Town counsel fees may or may not be reimbursable by the town’s insurance policy,” notes Dave Dawson, claims manager, Massamont Insurance Agency.

Mr. Roxo recommends that, before granting a permit, the municipality negotiate a release from liability with the telecommunications carrier. If a permit is initially denied and a claim is filed, he suggests that, as part of any settlement, the municipality seek a release from the plaintiff freeing the municipality from having to reimburse the carrier for its legal fees and expenses. Many municipalities require that telecommunications companies post a surety bond to cover the costs of dismantling towers should there be a constructive abandonment.

Solutions, Not Litigation

In the matter of permitting, early intervention by town counsel is a virtue. When any board, commission, or office of the municipality receives a request for a telecommunications permit, the town’s counsel should be notified as soon as possible. All subsequent actions, including hearings, should be coordinated with town counsel or the designated law firm.

It is important that all involved boards, commissions, and committees within the municipality be educated on the controlling nature of the Telecommunications Act and the implications of moratoriums, excessive restrictions, and permit denials. Although some boards and commissions may have charters that some members may perceive as being in conflict with the interests of the telecommunications carriers, these competing interests must be set aside and amicable solutions found in the ultimate interest of all parties and the taxpayers.

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School Violence, cont'd

they produced videotape that featured the massacre of school athletes. A year later, they were arrested for breaking into a van and for theft. Those arrests left both boys severely embittered. Each boy spent nearly a year in a state-mandated juvenile anger management program. Records from those programs mentioned signs of pending violence, but provided no specifics. That information was not passed on to anyone who might have been able to stop the carnage they committed at Columbine High School.

Harris and Klebold's pent up emotions and anger, perhaps stemming from being outsiders, gradually took hold of each of them. Harris reportedly was taking prescription drugs for depression and obsessive-compulsive disorder. The anger management programs had no effect on either youth. Violence increasingly became an obsession for them, evidenced by their fascination with violent video games, and Harris's statements on his Web site and in his journal. By mid-1998 they were well along in their plans to act out their violent fantasies.

What happened at Columbine was not an anomaly because violent deaths occur more than a dozen times each year around the country....

On April 20, 1999, Harris and Klebold brought four guns and 80 bombs into Columbine H.S. with the intent to kill as many people as possible, including first responders. By noon fifteen people were dead, including both teenagers who committed suicide. Only their lack of adeptness at handling electronic systems and explosives prevented 700 more deaths.

Looking Internally

Can similar cases occur elsewhere? Can they be prevented? Experts are in general agreement that events like Columbine could erupt at anytime, anywhere. Most specialists, including those involved in the Columbine case, believe many school-related killings can be prevented. For some it is a matter of denying kids access to weapons. Others believe in tightened school security. Many persons familiar with school violence believe training administrators and educators in recognizing and dealing with emotional and developmental problems is crucial to prevention and intervention. Other officials and police specialists see a need for a cultural change in our schools and society at large.

In the Columbine case there were clues before there was a massacre, but no one person saw them all or persuasively. The boys displayed a predilection for violence to their court-mandated anger managers, yet those managers did not follow up with school or local law enforcement officials. They played violent video games, but so do millions of non-violent kids. Friends knew for a long time of their anger, yet not one of them did anything about it. Klebold's girlfriend acted as a go-between to buy two shotguns and a carbine for them. There were contradictions. Harris, a senior, played soccer during his freshman and sophomore years, yet he targeted jocks for killing. The boys belonged to Columbine's Trench Coat Mafia, yet they were loners.

We know that what happened at Columbine was not an anomaly because violent deaths occur more than a dozen times each year around the country, though seldom with such violence and loss. The National School Safety Center on its Web site reports that 60 school-related violent deaths, exclusive of suicides, have occurred between

School Violence, cont'd

January 1999 and March 2002, three of them in Massachusetts. Three persons were killed in October 2002 at the University of Arizona's school of nursing. In November, a potentially violent attack in Bow, NH was averted when police arrested two teenagers before they could commit armed robbery at the high school.

Beyond Academics

Our schools, though designed as academic institutions, are more than that. They are social institutions that formally and informally mold the minds and behaviors of our young. They are settings for developing or crushing egos and self-esteem. Schools are a place for marketing drugs, promoting alcohol and vetting ideologies. Importantly, schools are the place where young minds perceive social acceptance, recognition, or rejection.

Teachers will tell you that troubled students are disruptive, uncooperative, tardy, truant, noisy, or unusually reticent; don't follow peer dress codes; have broken homes; get arrested. Parents say, "Give them time and they will grow up just fine." Victims and prison wardens are not so sure.

Few administrators and even fewer teachers and

parents are trained to deal with troubled children. Gone are the days of strict discipline in most of the nation's schools. As student and parental rights expanded, primarily in the last thirty years,



discipline in the classroom diminished and violence increased. Teachers and administrators, in many cases following the lead of school boards, have become fearful of being perceived as being too strict. Such perceptions can lead to calls for suspensions, resignations, or terminations among faculty, and lawsuits against the schools. In some districts teachers and administrators fear for their lives as they go about their daily duties at their schools.

The obvious answer to school violence is to change the culture in which the children are raised and to bring back strict discipline—at home and in the schools. Such a simple solution is not likely to happen, given today's environment and civil rights.

Nonetheless, there are steps that school administrations can take to significantly reduce the potential for school violence without the fear of lawsuits and admonishments, orders, and penalties from the courts.

In the next issue of the MANAGER we will discuss prevention and intervention measures.

With nearly 3 million crimes each year in or near our schools, there is never a time to be complacent. To determine if your school system is doing all it can to eradicate violence and other crimes, we suggest you consult with Metrogard loss prevention personnel. Our L/P staff will help you with analysis, evaluation, action plans, training, and other needs to improve your security and diminish violent exposures and risks. Simply call your Metrogard program agent. Your agent can also help you determine if you have the proper insurance coverage for property and vehicle damage, professional liability, security guards, school boards, investigations, defense costs, and loss of income.

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Defensive Driving Programs for Municipal Fire Departments

Metrogard's Loss Prevention Department conducted "Coaching the Emergency Vehicle Operator" training with the Chelsea Fire Department on June 11, 16, 18, and July 15, 2003. The training was



The city of Chelsea is a National Board Rated 1 community, the best rating any fire department can attain.

conducted by Ron Quattrocchi, Director of Training, and Gerry Davis, Senior LP Consultant - Training, of Metrogard Loss Prevention. Over 15 fire fighters attended the training session, which reviewed safe driving procedures during and after emergency calls, inspection guidelines, cushion of safety, lights and sirens procedures, review of traffic situations, and special hazards. In addition, a video tape presentation reviewed the adverse effects of a police chase gone wrong in the emotional "Michele Norton Story."

The goal of this training was to heighten an awareness of safe driving practices, and thereby help prevent serious accidents when emergency responders and fire fighters are responding to emergency calls.



Metrogard LP trainers Ron Quattrocchi (left) and Gerry Davis (right) pose with Acting Chief H.C. Fothergill, Jr., of the Chelsea Fire Department.



Chelsea's bravest are noted for battling some of the largest blazes in New England history, particularly a series of headline-news fires during the 1970's.

*..... more on the Michele Norton Story at:
<http://www.theiacp.org/foundation/projects.htm#>*



Metrogard's Ron Quattrocchi (right) and Gerry Davis conducted the training at the Chelsea Fire House.

Metrogard LP training is

HOT!



**Check us out online, at
www.metrogard.com**

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Risk Management Programs & Workshops

Session	Date	Location(s)
<u>Boiler Maintenance</u> Hartford Steam Boiler Professional Lines	October 23, 2003 Nov/ Dev, tbd*	Holiday Inn, Dedham, MA
<u>Employment Seminars</u> Employment Practices Discrimination Workers' Compensation Clinic Minimizing Abuse Molestation Exposure	November 20, 2003 December 4, 2003 tbd* tbd* tbd*	Holiday Inn, Dedham, MA Holiday Inn, Dedham, MA

***Please note:** Check our website - www.metrogard.com - for new dates and/or changes. Be sure to enroll and RSVP for specific topics and dates, as seminars fill quickly. Massamont will attempt to post any notifications of last-minute changes and/or cancellations on the site as well, so please check prior to your departure. Thank you.

Non-Metrogard members are welcome to attend!!

Would you like to be on our mailing list?

Want more info on our programs?

Contact:

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Schools***

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