

Cingular sues Aquinnah over cell tower denial

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By Nelson Sigelman

Cingular Wireless, a national digital voice and data company with more than 50 million subscribers and \$32 billion in annual revenue, filed suit on Nov. 2 against Aquinnah in state Land Court and US First District Court in Boston, complaining that its application for permission to place a cellular antenna in the steeple of the Gay Head Baptist Church has been unlawfully denied.

The dual lawsuits follow the rejection of the company's request by the Aquinnah planning board on Oct. 6. The company claims that the town's actions violated the Telecommunication Act of 1996, a federal law that limits the obstacles towns may place in the way of wireless communication companies seeking to provide service. Cingular argues that the denial was rooted in the supposed health effects of wireless communication, a ground that is expressly proscribed as a reason for rejection.

Cingular's legal action was taken even as the town has begun an effort to identify appropriate town-owned property, preferably the landfill off State Road, on which to site wireless facilities.

Peter Temple, a member of the planning board, said the church site was rejected in part because it does not meet several town setback requirements for wireless facilities. He described the lawsuit as an attempt by the company to bully the town into giving it what it wants.

Mr. Temple said the company was made aware months ago that the town's zoning bylaws made the church site problematic and that the town was exploring more appropriate sites in anticipation of generating lease revenue for its cash-strapped treasury while positioning Aquinnah to benefit from future changes in electronic communication.

Selectmen last week agreed to spend up to \$3,500 for the consulting services of David Maxson of Broadcast Signal Lab, which provides wireless technology consulting services for municipalities. As part of the consulting contract, Mr. Maxson is to evaluate the strengths and weaknesses of the landfill site and identify alternatives or complementary sites that could be made available to more than one wireless company.

However, the town's interest in finding a site that could accommodate several wireless companies and meet setback requirements was not enough to stave off legal action from Cingular Wireless, after the planning board turned down a company proposal to conceal an antennae inside a 48-high replacement steeple on the Gay Head Community Baptist Church.

On Nov. 2, attorneys from the Cambridge law firm of Anderson & Kreiger filed separate complaints in US District Court and Land Court.

For members of the Gay Head Baptist Church, the Cingular proposal is more than a matter of improved wireless telephone service. June Manning, a member of the church congregation and the Wampanoag Tribe of Gay Head, said the church was established in 1693 and is the oldest Native American Baptist church in continuous ministry in the United States. Ms. Manning said the church now survives on contributions from a dwindling and aging congregation and rental income from the parsonage. The approximately \$1,500 per month Cingular will pay to lease the steeple space is sorely needed to keep the church going, she said.

Ms. Manning said it has been a great deal of work to get to this point, but Cingular has assured the church it will fight the decision of the planning board, a decision that she called "very discouraging."

The Telecommunications Act of 1996 (TCA) bars towns from arbitrarily rejecting an application to site a wireless facility or citing the perceived environmental or health effects of radio frequency emissions. While the law empowers cities and towns to control where the facilities are sited, town governments are not granted the right to say no to any carrier. At the same time the burden is on the carrier to demonstrate that there is a need for coverage and to make efforts to share wireless facility sites.



Cingular Wireless wants to replace the steeple of the Gay Head Baptist Church with a replica that contains a wireless antenna. MV Times file photo by Kathleen Doran

To court

On August 10, Cingular filed an application with the town for the appropriate permits needed to replace the current steeple with a replica steeple indistinguishable from the original that would contain a cellular antenna.

In a letter dated August 16, Jeff Burgoyne, Aquinnah town administrator, informed the attorneys representing Cingular that the town had begun to lay the groundwork for a town-owned site that would allow for maximum signal distribution in the up-Island area.

The letter invited Cingular "to consider the approach" being offered by the board of selectmen for enhanced signal distribution as the best means of addressing the needs of its customers.

On Oct. 6, the Aquinnah planning board review committee held a public hearing on the Cingular requests and denied the request that same night.

Aquinnah's bylaws prohibit wireless communication facilities within 500 feet of any residence and within 1,500 feet of a playground or school. The church is located in close proximity to a playground and the Aquinnah library.

According to a 23-page complaint filed by Cingular in US District Court, the company currently has a significant gap in wireless coverage it wants to address in Aquinnah, including seasonally high demand. The complaint claims that the setback requirements are rooted in the supposed health effects of wireless communication and therefore invalid.

The suit describes the existing church steeple as ideally suited for providing wireless service and said there would be no adverse visual impact. As an example, the company points to the use of the steeple of the Stone Church in Tisbury for an antenna.

The company also claims the planning board failed to underpin its decision with the applicable law and demonstrated hostility to wireless communications facilities that needs to be addressed by the court.

The lawsuit asks the court to declare that the Aquinnah bylaw and the planning board decision violate the federal Telecommunication Act and asks that it be permitted to immediately install its equipment in the steeple.

The company is also seeking attorneys' fees and costs.

Shaping the future

Cingular and town leaders agree on one goal, the need to provide improved cellular service for residents and visitors. Peter Temple has been interested in the idea for years, both as a means of generating revenue for the town and preparing the foundation for an electronic future.

Mr. Temple said the decision to hire a consultant was made with several goals in mind, including generating revenue for the town and controlling the town's destiny regarding the placement of wireless communication equipment.

He said the town wants to find a place where it can accommodate more than one company and be utilized by public safety organizations, including the police and fire department.

Looking ahead, Mr. Temple said it is not only about planning for cellular telephone coverage but for the technology of the wireless future. He said even the best-informed member of a volunteer committee can quickly become overwhelmed when speaking with large companies. Which is why the town decided to look for professional help.

"The real question," said Mr. Temple, "is do we have a location that will work?"

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