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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SPECTRASITE COMMUNICATIONS,	.	
INC., and NEXTEL SOUTH	.	
CORPORATION d/b/a NEXTEL	.	
COMMUNICATIONS,	.	
	.	Docket No. 200-CV-753
Plaintiffs,	.	
	.	Atlanta, Georgia
v.	.	July 7, 2000
	.	9:30 a.m.
GWINNETT COUNTY, GEORGIA,	.	
ET. AL,	.	
	.	
Defendants.	.	
.....	.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS W. THRASH,
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Plaintiffs:	WOODEN, RAY, FULTON & SCARBOROUGH, P.C. TRACY C. WOODEN, Esq. 737 Market Street, Suite 620 Chattanooga, Tennessee 37402
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For the Defendants:	GWINNETT COUNTY DEPARTMENT OF LAW GLENN P. STEPHENS, Senior Assistant County Attorney 75 Langley Drive Lawrenceville, Georgia 30045
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Court Reporter:	Donna C. Keeble, RPR, CRR Official Court Reporter Room 121 U.S. Courthouse 121 Spring Street Gainesville, Georgia 30501 (770) 539-9906
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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription

P R O C E E D I N G S

(Friday, July 7, 2000; Atlanta, Fulton County, Georgia, in open court.)

* * *

THE COURT: This is a hearing in the case of Spectrasite Communications and others versus Gwinnett County, Georgia; case number 2:00-CV-753.

First, let me ask counsel for the parties to identify yourselves for the record and the parties you represent.

MR. WOODEN: Yes, your Honor, my name is Tracy Wooden and I'm here on behalf of the plaintiffs, Spectrasite Communications, Incorporated, and Nextel South, Incorporated.

THE COURT: Good morning, Mr. Wooden.

MR. WOODEN: Good morning.

MR. STEPHENS: Your Honor, I'm Glenn Stephens; I'm here on behalf of Gwinnett County, Georgia; F. Wayne Hill; Tommy Hughes; Patti Muise; Judy Waters; Kevin Kenerly; and all of the members of the Gwinnett County Board of Commissioners.

THE COURT: Good morning, Mr. Stephens.

MR. STEPHENS: Good morning.

THE COURT: All right. This is a hearing on the plaintiffs' request for relief pursuant to the Telecommunications Act of 1996.

I have reviewed the plaintiffs' complaint and the attachments thereto, including the transcript of the hearing

1 before the Gwinnett County Board of Commissioners; I've
2 reviewed both parties' responses to the mandatory disclosures.

3 Of course, I'm familiar with the discovery motion.

4 I've also reviewed the defendants' hearing brief and
5 the attachments thereto and the plaintiffs' motion for partial
6 summary judgment, so I think I'm familiar with the facts of the
7 case.

8 Mr. Wooden, you have the burden of proof on your
9 claims, so I'll hear from you first, give Mr. Stephens an
10 opportunity to respond and then I'll give you the last word.

11 MR. WOODEN: Thank you, your Honor.

12 Again, my name is Tracy Wooden; I'm with the law firm
13 of Wooden, Ray, Fulton & Scarborough, Attorneys, and I am here
14 on behalf of Spectrasite Communications, Incorporated, and
15 Nextel South, for the plaintiffs in this case.

16 This is a case that we have brought and are here
17 today requesting expedited equitable relief in the form of a
18 mandamus order from the Court requiring Gwinnett County to
19 issue the tall structure permits that we need to proceed with
20 constructing a cellular communications tower in Gwinnett
21 County, Georgia. Specifically, Section 704(a)7(b)3(i) provides
22 as follows: "Any decision of state or local government or
23 instrumentality thereof to deny a request to place, construct
24 or modify personal wireless service facilities shall be in
25 writing and supported by substantial evidence contained in a

1 written record," end of quote.

2 Here, there is no evidence in a written record, much
3 less substantial evidence, to support the denial of the
4 allocation for the tall structure permit and, in effect, in the
5 brief that was filed by the defendants a couple of days ago on
6 this issue, they admit that there is no evidence in the record
7 to support the denial of the application.

8 We have steadfastly maintained, the plaintiffs have,
9 that this site meets every requirement of the applicable
10 ordinance for Gwinnett County and we have provided proof of
11 that. If it would be appropriate, I would lay just a little
12 background as to how this case has developed, the zoning steps
13 and procedures.

14 In December of 1999, the plaintiffs filed their
15 application for the tall structure permit. As a part of that
16 process, it was known then by the defendants that this land
17 owned by a single landlord consisted of two tax parcels.
18 Everyone knew that up-front; we provided an affidavit in the
19 record to that effect that hasn't been challenged in any kind
20 of testimony by the defendants. And, to my knowledge, again,
21 there is no proof in the record otherwise.

22 At that time, the officials for the Gwinnett County
23 Office of Planning and Development instructed the plaintiffs
24 that a combination form needed to be filed to combine these two
25 tax parcels owned by the single landlord, the single owner,

1 property owner, into a single parcel. The office of Gwinnett
2 County Planning and Development, the office that is vested with
3 the oversight in the zoning and land use regulations in the
4 county, provided to our clients the form and said that this is
5 the form you need to take to the landowner, get it completed by
6 the landowner, take it to the Gwinnett County Assessors of
7 Properties Office, file it, get a stamped filed copy, bring it
8 back to us as proof that you have done this.

9 Our client followed those steps and followed through
10 and did those things as instructed by the Gwinnett County
11 Office of Planning and Development.

12 The Gwinnett County Office of Planning and
13 Development then, with full knowledge of the facts, provided or
14 prepared a written tall structure permit analysis, which is
15 customary for them to do as a part of these types of
16 applications, and sent that to the Board of Commissioners for
17 Gwinnett County. We, our client, was provided a copy of that
18 and it provides within that written analysis unequivocally that
19 this site meets all of the requirements of the Gwinnett County
20 ordinance, including the setback requirements, with no
21 qualifications; and the reason it did so is that the site does,
22 indeed, meet all of the setback requirements and all other
23 requirements of the ordinance.

24 As further proof and manifestation that the County
25 had full knowledge of the process that was being undertaken

1 with this application and the combination of these two tax
2 parcels owned by the single landowner into a single parcel,
3 Mr. Williams, with the office of planning and development, came
4 to the zoning hearing which took place on February 22nd of this
5 year and he made an announcement at the beginning of that
6 hearing as is set forth in the transcripts of those proceedings
7 and he provided as follows, and I quote: "It's an application
8 for a tower on a property in what is a rural residential
9 portion of Gwinnett. It's characterized by large lots,
10 single-family development with agricultural uses and an
11 emerging subdivision development. The proposal is on a parcel
12 that's been combined. The tower would meet the minimum
13 standards of the tall structure ordinance and, therefore, the
14 staff would recommend approval," end of quote.

15 So that is proof positive that the County knew that
16 the two tax parcels had, indeed, been combined; they, indeed,
17 directed the process, oversaw the process and that process was
18 completed with full knowledge of the County. It's clear from
19 those statements, again, that this process was complied with
20 full knowledge of the defendants.

21 During the hearing, the February 22nd zoning hearing,
22 the plaintiffs' case was presented attesting that all of the
23 requirements of the ordinance were met. There was no challenge
24 whatsoever by anyone at the hearing that the setbacks were not
25 complied with, because, indeed, they were.

1 After the hearing, at the end of the hearing, that
2 is, the defendants voted to deny the application, without
3 stating any reasons for that denial. Only after the
4 denial -- pardon me, only after we filed this appeal with this
5 court of the denial, only at that time did the defendants
6 articulate or raise the issue that the setbacks were not
7 complied with. And that's undisputed in the defendants' brief
8 that was filed a couple of days ago, they indeed acknowledge
9 that setbacks weren't the reason for denial. They give
10 conflicting positions that, well, maybe that's because they
11 didn't know about it and then they go on to say, well, they
12 can't rely on what our folks tell them but they admit that for
13 the first time was the issue of setbacks raised after the
14 denial of the application and after this appeal was filed and
15 we believe it's clear that this issue, the setback issue, is
16 really an attempt to create a smoke screen to basically raise
17 an issue that really does not exist.

18 Immediately after they raised the issue of the
19 setbacks, after this appeal was filed, we said, you know, we
20 did everything that you told us, we have done everything that
21 we know to do, what is it now that you are saying that was
22 missed? We will gladly do it, you know, if there is anything
23 that needs to be done. We have diligently searched and tried
24 to study your position, what was it?

25 And their answers have ranged from, well, we are not

1 sure to it's not our position to tell you what it is. And it
2 has evolved into a position in their brief that it's up to us
3 to determine, we can file a new application, guess what it is
4 that they think needs to be done and they will review the
5 application; and the net result of that is that we would never
6 get approval, we are being sent on a wild goose chase and we
7 would never catch the goose, so-to-speak.

8 We have, again, done everything that we know to do
9 and have done everything that needs to be done to have combined
10 these parcels to meet all of the setback requirements.

11 However, if this Court has any doubt or wants to give
12 the defendants any chance to articulate what needs to be done,
13 which we, again, think they have had ample time to do so and
14 have refused to do so, we would not object to that.

15 If the Court chose to issue a mandamus order and
16 chose to condition that in some manner to provide the
17 defendants the opportunity to tell us what steps they think
18 need to be done to combine the two parcels, we would be glad to
19 do that as a part of the order, if the Court deemed to do that.

20 What the defendants are asking for, again, is that
21 our relief be denied, that we be sent back to file a new
22 application. There are several problems with that issue, with
23 that approach.

24 I mean, first, it would defeat the purposes of the
25 Telecom Act, which this Court has recognized, for example, in

1 the case of BellSouth Mobility v. Gwinnett County, you know,
2 that further delay would only frustrate the purpose of the
3 Telecom Act to provide expedited, equitable relief to the
4 plaintiff.

5 Secondly, the defendants have basically now admitted
6 that they really denied our application for this property, to
7 begin with, for no reason. On one position that they are
8 taking, they are saying, well, we didn't know about the setback
9 issue but we denied it, anyway, so, therefore, retroactively,
10 that should be some basis for denying relief. And they have
11 refused to discuss any resolution that would allow us to locate
12 this site anywhere else on this landowner's property, so,
13 again, any delay in that regard would only frustrate the
14 purpose of the Telecom Act and deny the plaintiffs relief in
15 this case.

16 And there are several reasons why the order of
17 mandamus is the only reasonable resolution of this case.
18 First, the defendants admit at the bottom of page eight and the
19 top of page nine of their brief that most courts have,
20 including this court, determined that mandamus relief is the
21 most appropriate remedy in these types of cases.

22 The defendants further, on page 6 of their brief,
23 admit that the setback issue was not the reason for the denial;
24 therefore, the defendants admit that there was no evidence in
25 the record to deny this application when it came before them

1 but they denied it anyway, without evidence in a written
2 record.

3 They go on at the beginning of page 14 of their brief
4 to suggest that the Court should simply put us in the position
5 of having to re-file the application. However, based upon
6 their admission in their brief that the plaintiffs original
7 application was denied for no reason, it's clear that any
8 additional application would continue to be denied.

9 This is particularly true in light of the defendants'
10 refusal and in light of our request, the plaintiffs' request,
11 to allow for the location of the site somewhere else on the
12 property as a means of resolving the issue and they have
13 refused to talk about that.

14 If we are denied the equitable relief that we are
15 requesting, then what would be the net effect of that, we
16 think, is clear, that the defendants would continue to take
17 illusory positions in future positions as to what it would take
18 to combine these two parcels, they would never admit that the
19 two parcels have been combined and we would never, ever get
20 approval for this site and the defendants' past actions are
21 proof of that.

22 We believe that, first, we have obtained -- and I've
23 filed with the clerk this morning, provided courtesy copies to
24 the Court and to Mr. Stephens, counsel for Gwinnett County, an
25 affidavit from Mr. James Eckert (phonetic). He is a

1 licensed -- let me correct that: James W. Eckert, Jr., he is a
2 licensed civil engineer with over ten years' experience. He
3 has testified in his affidavit that he has reviewed the
4 positions of Gwinnett County that they have filed and set forth
5 with this court; that he can't understand what those positions
6 are; that the parcels have been combined; that he knows of no
7 other reason anything else should have been done or that should
8 be done to combine the parcels and they constitute a single
9 parcel.

10 Of course, the affidavit speaks for itself but I'm
11 mentioning this for the purpose that we have put expert
12 testimony into the record to show that this is a single parcel,
13 it's not two parcels. We have provided that proof and the
14 defendants have provided no proof whatsoever or any
15 articulation of their position and it's clearly not equitable
16 and puts the plaintiffs in an extremely unreasonable situation
17 to never be able to get from these defendants the zoning
18 permits or the tall structure permit to proceed with this
19 project.

20 The defendants' contradictory positions, including
21 but not limited to those in the brief that was filed a couple
22 of days ago, further undercuts the credibility of the
23 defendants' position.

24 First, defendants assert that the plaintiffs admit
25 that the setback requirements were not met. I was astounded by

1 that statement in the brief that we admit, awkwardly, that we
2 did not meet the setbacks. Everything that we put in the
3 record, everything that we discussed with the defendants, our
4 position has always been steadfast that our application met all
5 of the requirements of the ordinance, including the setbacks,
6 and we trust that the Court won't be confused or we want to
7 make clear that that is and always has been our position.
8 Contrary to the statements in the brief of the defendants, that
9 statement is absolutely incorrect and we have maintained that
10 position because the setback requirements are indeed met in
11 this case.

12 Secondly, on page 6 of the brief, of the defendants'
13 brief, defendants suggest that they were somehow unaware of the
14 setback issue, which clearly the record shows otherwise,
15 including the hearing transcript.

16 And then they go on to acknowledge, for example, on
17 page 15 of their brief, that Gwinnett County officials provided
18 a specific combination form to the plaintiffs to be completed
19 in order to combine the parcels into one parcel, so it defies
20 logic as to why, how the defendants could not know about this
21 on the one hand and for no reason provide a combination form to
22 the plaintiffs in order to use to combine the parcels.

23 And they have not denied, the defendants haven't,
24 that that combination form was indeed provided by Gwinnett
25 County with directions as to how to complete and file that

1 form. And it's undeniable, based on transcripts of the
2 hearing, that Gwinnett County did know about it because of the
3 statements of Mr. Williams at the beginning of the hearing, so
4 these points are absolutely clear.

5 The defendants now admit in their brief that the
6 application was denied for no reason and with no basis in the
7 written record to support the denial. That is a specific
8 requirement of the language that I quoted at the beginning of
9 my remarks with regard to the Telecommunications Act of 1996.
10 The proof is undeniable that Gwinnett County knew that the
11 property had been combined, had been previously treated as two
12 parcels, two types of parcels, and that the combination form
13 was completed to combine those parcels.

14 The defendants refused and have continuously refused,
15 up to and including their brief filed a couple of days ago, to
16 articulate why they take the position that the parcels were not
17 combined, what should have been done to combine them or what
18 now should be done in order to combine those parcels.

19 And it's also clear from the admission of the
20 defendants that there was no reason to support the denial of
21 the application and that to apply before this same body would
22 result in us not obtaining -- it would result in the same
23 result as we got the first time before these defendants.

24 One final, I guess, point in my initial remarks, the
25 defendants take the position for the first time, we believe, in

1 their brief filed a couple of days ago that there was a latent
2 defect in the application. Well, I only got that brief
3 yesterday and have read it hurriedly but I did check in Black's
4 Law Dictionary or, actually, had someone in my office check and
5 read to me the provisions in Black's Law Dictionary as to what
6 a latent defect is. And, in effect, it's a defect that's not
7 only not obvious but not discoverable with reasonable
8 diligence.

9 Here, there was no defect. Again, the County knew
10 exactly what was going on, directed every procedure. And,
11 certainly, the Gwinnett County Office of Planning and
12 Development has elaborate plans of the properties in Gwinnett
13 County and knew exactly the status of this property and that
14 this combination form was being used to combine those parcels,
15 they directed that that be done; there was no latent defect;
16 there was no defect, period, in the application.

17 I appreciate the Court's patience on my initial
18 remarks.

19 THE COURT: Thank you, Mr. Wooden.

20 All right. Mr. Stephens?

21 MR. STEPHENS: Thank you, your Honor.

22 Your Honor, again, I'm Glenn Stephens, Senior
23 Assistant County Attorney with Gwinnett County.

24 I think that for a case like this, we seem to be
25 disagreeing on facts that both sides have admitted in their

1 briefs.

2 And I think maybe a visual aid would help the Court.
3 And I showed this to Mr. Wooden prior to the hearing and he
4 said it was acceptable for him if I would present this to the
5 Court. I think it will show the two tracts of land at issue in
6 this case, a red line which would indicate the property line
7 which Gwinnett County contends still exists. And I've put a
8 red push pin on this certified copy of the plat of the property
9 involved, which would be our best estimate of where the tower
10 would be located.

11 We asked the plaintiffs in discovery, when this Court
12 originally scheduled this hearing for, I think, late May and
13 rescheduled it for this date and we sent discovery in the form
14 of requests for admissions, requests for production of
15 documents and interrogatories to the plaintiffs.

16 The plaintiffs, of course, timely responded to our
17 request for admissions, and we have attached those to our
18 hearing memorandum, but they did not timely respond to the
19 requests for production of documents, nor did they timely
20 respond to the interrogatories. In fact, they were faxed to me
21 last night at 5:30, about six days too late, and did not
22 include any copies of maps, which I hoped would have shown the
23 Court exactly where the property line is indicated.

24 I think if I could get this, would the Court be
25 interested in --

1 THE COURT: I'll be glad to look at it, if you will
2 hand it up.

3 MR. STEPHENS: Okay. Thank you, your Honor.

4 Let me describe briefly what you will be looking at.
5 As I've stated before, the red push pin would indicate our best
6 guess as to where the tower would be, based on the drawings
7 that they have on file with Gwinnett County.

8 The property that is marked in blue is owned by Linda
9 Brady; she acquired this property by deed April 29, 1987. The
10 property that is shaded in green is also owned by Ms. Brady;
11 she acquired this property in 1994 by a deed to herself.

12 We inquired in our requests for admissions to the
13 plaintiffs that they had taken no other steps to combine those
14 two parcels, the one shaded in blue and the one shaded in
15 green, separated by a clearly existing property line, other
16 than the combination form which they filed with the Gwinnett
17 County Board of Assessors. And contrary to Mr. Wooden's
18 position, they admitted the fact that they had taken no other
19 steps to combine those two parcels of land and I'll get into
20 that argument in detail in a little bit.

21 First of all, I wanted to respond briefly to the
22 affidavit that was filed this morning by the plaintiffs from
23 Mr. Eckert.

24 Mr. Eckert was the engineer who prepared what turns
25 out to be not only one set of drawings but at least two sets of

1 drawings, which at one time or another have been submitted in
2 this case. I think if the Court will compare the copies of the
3 drawings that we have submitted in our discovery request to the
4 plaintiffs, you will note a difference between the drawing that
5 is attached to the plaintiffs' complaint and the drawing which
6 was attached to our request for admissions, which is the actual
7 drawing that we have on file in Gwinnett County.

8 And as to the affidavit specifically, I need to
9 object. Mr. Eckert does not state in the affidavit anywhere in
10 the document his basis, factual background or any other
11 foundation on which to base his conclusions that the two
12 parcels do not exist and that he cannot understand the
13 positions of Gwinnett County. He is not an attorney, and I
14 understand that the Court will look at that for what it's worth
15 but I just wanted to note on the record our objection to the
16 contents of the affidavit from Mr. Eckert.

17 THE COURT: Well, Mr. Stephens, I'll disregard any
18 legal conclusions in Mr. Eckert's affidavit.

19 MR. STEPHENS: Okay.

20 THE COURT: Otherwise, I think it is admissible, but
21 I'll disregard the legal conclusions.

22 MR. STEPHENS: Okay. Okay. Thank you, your Honor.

23 I think Mr. Wooden adequately went over the facts and
24 if your Honor has reviewed all of the matters, as you've
25 indicated, prior to the beginning of this hearing, then I think

1 you're quite aware of the facts and I won't belabor that point
2 anymore.

3 Gwinnett County says and asserts very strongly that
4 this case boils down to a case where a plaintiff comes to
5 federal court under the Telecommunications Act, files a
6 complaint. In that complaint, they allege we complied with
7 each and every requirement of the Gwinnett County Code of
8 Ordinance. They do that for one reason and one reason only and
9 that is to obtain from this court a writ of mandamus, which
10 would direct the Gwinnett County Board of Commissioners or an
11 employee of Gwinnett County to immediately issue a tall
12 structure permit to the plaintiffs. And as adequately briefed
13 in our submission to the Court, a writ of mandamus is only
14 available when they have met all of the requirements contained
15 in the Code of Ordinance of Gwinnett County.

16 When we were sued with this case, I received a copy
17 of it and immediately began to investigate the allegations made
18 in the complaint. Lo and behold, it turns out that they rely
19 solely upon a combination form, which is filed with the board
20 of tax assessors to combine those two parcels of land, which I
21 have shown you on the plat. That's what this case is about,
22 whether or not they meet a setback requirement from a property
23 line that we contend exists today.

24 It's clear that Ms. Brady owns two parcels of land
25 today, the one shaded in blue and the one shaded in green; she

1 is free today to convey either one.

2 In fact, she has a security deed outstanding on the
3 property shaded in blue; she could file for a rezoning
4 application on either of those separate tracts of land.

5 If you went to the record room, as I did, in Gwinnett
6 County -- and I attached certified copies of the deeds to our
7 requests for admissions to the plaintiff -- you would find
8 those deeds and those deeds alone. You would not find a
9 combination form.

10 And as I pointed out to the Court in our hearing
11 memorandum, the law in Georgia is clear that when you have
12 parcels combined to do anything that would affect the title to
13 the property, those documents need to be filed in the clerk's
14 office of the superior court. So we contend that there
15 certainly was a latent defect in the application that was
16 presented to the Gwinnett County Board of Commissioners.

17 THE COURT: Well, let me ask you something,
18 Mr. Stephens.

19 MR. STEPHENS: Yes, sir?

20 THE COURT: Now, the purpose of the setback
21 requirement is that you don't put one of these towers too close
22 to another property owner's property line; isn't that correct?

23 MR. STEPHENS: You know, without the benefit of being
24 present in Gwinnett County when they adopted this ordinance, I
25 think that would be one reasonable reason for a setback line.

1 THE COURT: Well, tell me what reasonable
2 governmental or nongovernmental purpose would be required of
3 having a setback requirement for your own property.

4 MR. STEPHENS: Well, the plaintiffs made that
5 argument and I understood that would probably be a question
6 from this Court.

7 The purpose of a setback line and, in fact, all
8 setback requirements, whether they are a tall structure or not,
9 are to provide protection to adjoining property owners.

10 Ms. Brady may not always own this property, your
11 Honor, she could sell it today. And that was a point that we
12 raised in our brief, that if she--

13 THE COURT: Well, that could be true of any property.

14 MR. STEPHENS: Absolutely.

15 THE COURT: Anyone could sell any part of their
16 property, that doesn't mean that you draw artificial lines on
17 people's property and say, well, you can't put a cell phone
18 tower close to some artificial line that might conceivably at
19 some time in the future represent a dividing line on the
20 property.

21 MR. STEPHENS: Well, we, of course, disagree that
22 line would be considered artificial. We think it clearly shows
23 up on a plat to which she took title to the property, so the
24 property line is, in fact, there.

25 THE COURT: Well, let's go back to my earlier

1 question, though.

2 MR. STEPHENS: Okay.

3 THE COURT: What conceivable purpose would be served
4 by requiring this cell phone tower to have a setback
5 requirement to a line separating two parcels of property owned
6 by the same person?

7 MR. STEPHENS: Well, I tried to articulate that and I
8 probably didn't do a good enough job, your Honor. I think the
9 purpose of all of our setback requirements in all of our
10 ordinances in Gwinnett County are to ensure adequate
11 separation, whether it's a building, a structure, a tower,
12 anything from a property line that we have deemed needs to be
13 separated from a property line, and is to protect, in this
14 instance, whether or not Ms. Brady still owns the property, a
15 subsequent purchaser from coming in and saying to Gwinnett
16 County, "How did this tower get so close to my property line?"

17 THE COURT: All right. So you're saying that if Ms.
18 Brady had gone to a lawyer's office and had a quitclaim deed
19 drawn up which described the two parcels of property in metes
20 and bounds and quitclaimed that piece of property to herself
21 before the zoning hearing, that that would have eliminated the
22 problem?

23 MR. STEPHENS: Your Honor, if it removed the property
24 line, it would have eliminated the problem, yes, sir.

25 And I've explained that to plaintiffs' counsel, in

1 spite of his --

2 THE COURT: What purpose would be served by making a
3 property owner do that?

4 MR. STEPHENS: To comply with the terms of the
5 ordinance, your Honor, for the very reason that I just
6 indicated; she may sell the tract of land, we may have a
7 subsequent purchaser who will never see the combination form
8 when their lawyer goes to search the title.

9 THE COURT: Well, I mean, she could do what I just
10 said; she goes to the lawyer, gets the new deed drawn up and
11 she could still sell the property.

12 MR. STEPHENS: She sure could but there would not be
13 a setback problem with the tower that a subsequent purchaser
14 could argue against Gwinnett County.

15 THE COURT: I don't follow you there, Mr. Stephens,
16 because once she does what I indicated, then they are going to
17 build the tower there and anybody that buys the property after
18 that is going to buy it subject to a tower being there.

19 MR. STEPHENS: No, I think I misunderstood what the
20 Court was saying. I apologize, I was arguing as if the line
21 still existed.

22 You're right, if the line was gone, no subsequent
23 purchaser could come -- you know, if she did exactly what you
24 said, and that is quitclaim that tract to herself to remove the
25 property line, no, I would not argue that a subsequent

1 purchaser could come for any reason to Gwinnett County and
2 complain about the presence of the tower, they would have
3 bought subject to something they saw at the record room,
4 something clearly in the chain of title and, obviously, with
5 the tower on it.

6 THE COURT: Well, I mean, if Gwinnett County had
7 issued the permit, then the tower would be on the property and
8 a subsequent purchaser would be in exactly the same position,
9 they are going to see that they are buying a piece of property
10 either with a tower on it or adjacent to their property, aren't
11 they?

12 MR. STEPHENS: Well, your Honor, I think that goes
13 probably to some of the cases that we cited in our hearing
14 memorandum about what exactly would the plaintiff obtain if
15 they put a tower and constructed a tower in violation of the
16 ordinances of Gwinnett County, would they have a lawful right
17 as against a purchaser of the adjacent property who challenged
18 Gwinnett County's issuance of a permit in error.

19 And I think Corey Outdoor Advertising versus The City
20 of Atlanta case is applicable and analogous here, because a
21 building permit was issued in error by the City of Atlanta to
22 Corey Outdoor Advertising to put a billboard which turned out
23 to be located too close to a historic district and not only did
24 the supreme court say you don't have vested rights because the
25 building permit was invalid but Corey was required to take down

1 the billboard.

2 THE COURT: Well, but there is no issue in this case
3 about the tower complying with the setback requirement with
4 respect to the property owner on the north side of this
5 property, is there?

6 MR. STEPHENS: I would have to look at a plat.

7 (Pause in the proceedings.)

8 MR. STEPHENS: Only to one side of the property, your
9 Honor.

10 THE COURT: Well, the property line that's indicated
11 by the blue lines, there is no question?

12 MR. STEPHENS: No, sir. They appear from their
13 plans, even though we haven't gotten all of the plans we asked
14 for in discovery, that the only setback problem is from the
15 line that I outlined in red, which is the line that separates
16 the two parcels owned by Ms. Brady.

17 THE COURT: And Ms. Brady wanted to build the tower
18 on her property, so she is not going to object, and the person
19 that owns the property on the other side of the blue line has
20 no standing to object because the setback requirement is met,
21 correct?

22 MR. STEPHENS: Correct. And I think that's indicated
23 in the record.

24 THE COURT: All right, Mr. Stephens.

25 MR. STEPHENS: Okay. Your Honor, obviously, there

1 are some practical concerns that you're having with the fact
2 that same owner owns both parcels and we think, you know, those
3 are reasonable concerns to have but I think that the overall
4 policy considerations which Gwinnett County has chosen to apply
5 to all setbacks, whether they are zoning setbacks, whether they
6 are tower setbacks, whether they are in the tower ordinance or
7 zoning ordinance, apply in this case and must be applied
8 uniformly, lest we have properties that end up with
9 nonconforming uses. And that's our argument with regard to the
10 fact that although this property may be in the same ownership,
11 it doesn't always have to be that case and these are not the
12 only types of hidden defects which could show up, and so for
13 this Court to order Gwinnett County to issue a tall structure
14 permit for a site that clearly violates a setback requirement,
15 we think would be improper and not appropriate considering the
16 law for mandamus in this case.

17 THE COURT: Well, excuse me again for continuing to
18 interrupt you, Mr. Stephens --

19 MR. STEPHENS: That's okay.

20 THE COURT: -- but your planning -- I've forgotten
21 his formal title but Mr. Williams --

22 MR. STEPHENS: He is the director of the planning and
23 development department.

24 THE COURT: The planning and development director, he
25 obviously didn't consider it to be in violation of the setback

1 requirement because he said that the proposal is on a parcel
2 that's been combined, the tower would meet the minimum
3 standards of the tall structure ordinance and, therefore, the
4 staff would recommend approval.

5 MR. STEPHENS: Your Honor, Mr. Williams attends all
6 public hearings held by the Gwinnett County Board of
7 Commissioners concerning zonings and tall structure permits in
8 the evenings, he reads all of the recommendations written by
9 staff members beneath him; he verified our answer to
10 plaintiffs' complaint, obviously disagreeing with the fact that
11 they met all of the requirements under oath.

12 In our response, which is obviously not yet due, to
13 plaintiffs' motion for a partial summary judgment as to this
14 matter, we would anticipate that Mr. Williams would state in an
15 affidavit that the site clearly does not meet the setback
16 requirements in spite of his representations, which were based
17 primarily on a review of their plans, their plans show no
18 property line. And that's our argument, that once it got past
19 the initial individual who reviewed the plans, who --

20 THE COURT: Well, but he knew it was a combined
21 parcel.

22 MR. STEPHENS: It is written in the recommendation
23 that he read; yes, sir, your Honor, he read that it was a
24 combined parcel.

25 THE COURT: All right.

1 MR. STEPHENS: He assumed, obviously, by verifying
2 our complaint that they had combined the parcels by deed, that
3 there no longer was a property line present and that was what
4 was before our board of commissioners and that's why we called
5 it a latent defect. None of the documents submitted by the
6 plaintiffs show this line, so except for the initial --

7 THE COURT: So if Ms. Brady goes out this afternoon
8 and files a quitclaim deed, quitclaiming all of this property
9 to herself, is Gwinnett County going to withdraw its opposition
10 to the cell tower permit?

11 MR. STEPHENS: Your Honor, we think they need to file
12 a new application for a tall structure permit. And this is
13 something that they have had the ability to do since our answer
14 was filed, I have made this position completely known in our
15 answer --

16 THE COURT: Why? Why do they need to do that?

17 MR. STEPHENS: -- in our mandatory disclosures.

18 THE COURT: Why do they need to do that?

19 MR. STEPHENS: Why do they need to do that?

20 THE COURT: Yes, sir.

21 MR. STEPHENS: To meet the requirements of our
22 ordinance, we need to have another public hearing regarding the
23 proposed location of the tall structure.

24 THE COURT: What purpose would that serve?

25 MR. STEPHENS: To, once again, follow the ordinances

1 of Gwinnett County and to allow the public to comment on the
2 proposed site.

3 THE COURT: Go ahead, Mr. Stephens.

4 MR. STEPHENS: And I think he is trying to indicate
5 to the Court that it would be futile and that Gwinnett County
6 would give yet another reason to deny this tower but their own
7 application reveals that in Gwinnett County alone, Nextel has
8 47 tower sites. And in my tenure at Gwinnett County and in
9 reviewing our records prior to that, we have only had three
10 lawsuits by tower providers, one by BellSouth, which is
11 reported; one by PowerTel two years ago, which was not
12 reported; and this case.

13 Gwinnett County is not willy-nilly going around with
14 no reason denying permits and I think the record of the lack of
15 lawsuits against Gwinnett County and the sheer number of sites
16 that Nextel has within Gwinnett County would indicate that
17 fact.

18 So we would take their application, process it in
19 compliance with our ordinance and our Board would have occasion
20 to vote on it after a public hearing.

21 Your Honor, I just want to briefly address -- I think
22 I've touched on the issues of mandamus. You know, they have
23 requested mandamus relief and we think the law in Georgia is
24 clear, the federal courts have chosen to apply the state law
25 requirements for the issuance of mandamus in the cases in which

1 local governments in this district have lost tower cases,
2 including Gwinnett County.

3 And in the BellSouth versus Gwinnett County case, the
4 plaintiff had met at the time of their application, not at the
5 time of the hearing in front of a federal judge but at the time
6 of their application, all of the requirements of the County's
7 ordinance. And we contend, as evidenced by the drawing in
8 front of the Court, that the plaintiffs still have not complied
9 even before the Court today with the setback requirements and
10 we believe under the cases cited in our hearing memorandum that
11 mandamus would not be appropriate.

12 A second point that we filed and argued in our
13 hearing memorandum was simply the fact that they make much of
14 the fact that they relied on an employee of Gwinnett County's
15 advice on how to combine these parcels. That may or may not be
16 wise. Clearly, here it was not wise. Obviously, Nextel,
17 Spectrasite, who's the largest tower owner in this country,
18 have legal counsel. We believe that the provision of our
19 ordinance that says that a tower shall be set back one-third of
20 its height from property lines on the latter parcel on which
21 it's located is very clear language.

22 ~~We think if they were concerned about meeting the~~
23 setback, which they obviously were, they should have consulted
24 their lawyer, they should not consult a low-level employee in
25 the Gwinnett County Department of Planning and Development and

1 rely on that person's advice on how to do it, because in this
2 case, all they filed was a combination form with the board of
3 tax assessors which simply outlines for tax purposes two
4 parcels so that Ms. Brady would get but one tax bill. It does
5 nothing to change the property lines, it does nothing to change
6 the evidence of title in the record room.

7 And we think that we have cited cases as well as the
8 Georgia code, which is directly on point, that when you do
9 something like this, when you rely on an opinion of a public
10 officer, an employee of Gwinnett County in this case, that this
11 is what you need to do to solve this problem or this is what
12 you need to do to solve that problem and you don't check with
13 your own counsel, that you're doing that to your own detriment.

14 The employee that they dealt with was not an
15 attorney, was not an attorney for Spectrasite or Nextel; they
16 are an employee charged with processing the applications for
17 tall structure permits and special use permits in Gwinnett
18 County and we contend that their reliance on that employee's
19 representation that the combination form was all that they
20 needed to do is misplaced.

21 And we also contend that their removal after filing
22 that combination form of the property line from their drawings
23 made it impossible for anyone above that employee, including
24 the ultimate reviewers of this application, which were the
25 Gwinnett County Board of Commissioners, to discern the defect

1 in this application, which was a violation of a setback. In
2 spite of their concern or discussions about the fact that these
3 properties are owned by the same person, if this application
4 would have gone before the Board, the Board would have denied
5 it as violative of the setback.

6 THE COURT: Can you give me a single example, other
7 than this case, of an instance where the Gwinnett County Board
8 of Commissioners interpreted the setback requirement as
9 applying to a property line dividing parcels of property owned
10 by the same property owner?

11 MR. STEPHENS: Your Honor, I don't have a specific
12 instance at the top of my head today. We could review our
13 records, I'm sure they have dealt with many cases such as that
14 in the zoning of properties as well as in probably special use
15 permits and maybe tall structure use permits. We would have to
16 check.

17 But, obviously, the plaintiffs were concerned to
18 remove the setback problem. If it didn't matter that she owned
19 both parcels of land, why would they file the combination form
20 so clearly we are following?

21 I think in trying to answer your question, clearly
22 even at the lower level, the employee recognized the need, even
23 though the parcels were owned by Ms. Brady, to remove the
24 impediment which was a violation of the setback. So I think
25 that's clearly showing that Gwinnett County applies that rule

1 whether or not the properties are owned by the same person or
2 by two different people, so I hope that answers the Court's
3 question.

4 Now, we could look, your Honor, but I hope and I
5 think we are required by our ordinances to apply the setback to
6 a property line no matter who owns it. The ordinance, that we
7 have certified a copy of with this court, doesn't make an
8 exception for properties which are owned by the same property
9 owner. And I think I've articulated the reason that I think
10 that that requirement is there, I cannot get into the minds of
11 the board of commissioners.

12 And finally, your Honor, I guess as to the request
13 for some type of conditional mandamus, we think mandamus is
14 basically an all or nothing proposition. You come to court
15 seeking a writ of mandamus, whether it's in the state courts or
16 the federal courts, and you are saying, as a matter of law,
17 that you're entitled to the issuance of a permit, that the law
18 not only authorizes the issuance of the permit but it requires
19 the issuance of a permit. And we think that the plaintiffs
20 cannot state and cannot prove this morning before this Court
21 that there is no property line dividing those two parcels. As
22 such, we believe that it is completely appropriate for this
23 Court to deny them mandamus relief which would directly cause
24 Gwinnett County to issue a tall structure permit and certainly
25 not to condition mandamus relief upon their compliance with any

1 directions Gwinnett County may give them with regard on how to
2 better site their tower on Ms. Brady's property.

3 We think that's a concern for the plaintiffs to
4 address and we think -- and I've stated this earlier in my
5 argument and I stated it to counsel for the plaintiff on
6 several occasions -- that they are free at any time to file the
7 application. If they would have filed it in April, it may be
8 heard in the July meetings, and if what they are saying is
9 correct and it removes the red line, which is the setback
10 requirement, and we denied it, I assume we would be back in
11 front of this Court again with absolutely no reason to support
12 an argument that Gwinnett County denied a site for a
13 telecommunications facility under the Telecommunications Act of
14 1996.

15 But that's not the case today and I think the
16 Telecommunications Act, your Honor, directs that this Court
17 review the record of the February decision by the board of
18 commissioners and we respectfully submit for Gwinnett County
19 that our board of commissioners reviewed an application that
20 did not show a defect which existed; that it's our duty as the
21 attorneys for Gwinnett County, as well as Gwinnett County's
22 ~~duty, to see that their ordinances are complied with.~~

23 When the defect was discovered, it was brought to the
24 plaintiffs' attention and it has been brought to this Court's
25 attention and we think that's a fatal flaw to their application

1 as it currently exists and requires this Court to deny their
2 writ of mandamus.

3 And as the last point, before I forget it, unless
4 directed otherwise by the Court today, we will file a response
5 to the plaintiffs' motion for partial summary judgment.

6 Our hearing memorandum, although I hope was thorough
7 and that our arguments were presented adequately, we would like
8 a chance, if the Court would allow us, to have the affidavits
9 of Mr. Williams as well as any other person, and probably a
10 title lawyer, attached to our response to the partial motion
11 for summary judgment.

12 THE COURT: Thank you, Mr. Stephens.

13 MR. STEPHENS: Thank you, your Honor.

14 THE COURT: Please excuse my interruptions.

15 MR. STEPHENS: That's okay. I actually enjoyed the
16 dialogue.

17 THE COURT: Okay. Anything further, Mr. Wooden?

18 MR. WOODEN: Very briefly, your Honor.

19 Mr. Stephens mentions his citation to some Georgia
20 state law guidance on mandamus in the State of Georgia. I've
21 read that, I don't see any limitations in that. However, he
22 provided nothing that would in any way discount the clear
23 ability of federal courts under the Telecommunications Act to
24 craft an equitable result in cases. There is nothing to
25 prevent that, this Court has recognized that principle.

1 For example, in the case of BellSouth Mobility v.
2 Gwinnett County and clearly the denial of an order of mandamus
3 in this case as set forth in the BellSouth Mobility v. Gwinnett
4 County case frustrate the purposes of the Telecommunications
5 Act to provide to plaintiffs in similar situations expedited
6 equitable relief.

7 Mr. Stephens indicated he made a statement that we
8 could have up to this point in time filed a quitclaim deed
9 related to these properties from the landowner to the
10 landowner. He went as far as to say that he had told me, as I
11 understood him to say just now, that he had told me to do
12 that. That's not correct. It's clear that that's not correct
13 from the pleadings and the briefs filed. Not only did I
14 indicate to him through discussions, I indicated by phone that
15 I saw this as a smoke screen. If it's not, I said you will
16 tell me what needs to be done to satisfy whatever concerns you
17 have, we will do it, we will get it out of the way, we will
18 resolve this. There was absolute refusal.

19 Up to the time of the brief day before yesterday, I
20 had assumed that at least in the brief, right before the
21 hearing, they would hold that card back and say that here is
22 what they need to do. But in that very brief---and I can
23 provide a page citation from my notes -- they say that it's up
24 to the plaintiff to determine that, let them determine what
25 they need to do. Re-file another application again, the net

1 result of that would be lost time, it would result in the
2 frustration and the denial of the purposes of the
3 Telecommunications Act of 1996.

4 Thank you very much, your Honor.

5 THE COURT: Thank you, Mr. Wooden.

6 Well, I'm going to follow the same approach that I
7 did in this case as I did in the Nextel versus City of Roswell
8 case. There are dozens and dozens of cases, reported cases
9 dealing with Section 704 of the Telecommunications Act, and I
10 don't think any important public policy or any jurisprudential
11 consideration requires a written order in this case by me.

12 The facts basically are undisputed, both parties have
13 extensively briefed the legal issues and I think that the
14 purpose underlying the act would be served by me deciding the
15 case today and articulating as best I can my reasons for
16 deciding the Telecommunications Act claim on the record and
17 then simply entering a written order, a brief written order
18 consistent with that.

19 So let's take a 15-minute recess, I'll collect my
20 thoughts and then let you know what my decision is after the
21 recess.

22 Court is in recess for 15 minutes.

23 (A recess was had.)

24 (Following proceedings continued in open court.)

25 THE COURT: Thank you, be seated.

1 All right. I'm going to grant the relief requested
2 by the plaintiffs under their Telecommunications Act claim and
3 the following constitute my findings of fact and conclusions of
4 law on that claim. And for the reasons stated previously, I
5 think it would be consistent with the Act's mandate that these
6 claims be heard on an expedited basis for me to simply issue
7 this ruling orally rather than delay the matter, delay the
8 matter further by taking the time that would be required to
9 issue a written order.

10 It's my judgment that the following facts are
11 undisputed: First, that Spectrasite, the plaintiff, is a firm
12 in the business of developing wireless telecommunications sites
13 for firms licensed by the FCC to provide wireless
14 telecommunications services to the public. Spectrasite has
15 contracted with Nextel to construct facilities to be owned by
16 Spectrasite upon which Nextel is to lease space for installing
17 antennas and other equipment to be used in providing wireless
18 telecommunications services to the public.

19 Three, pursuant to its license with the Federal
20 Communications Commission, Nextel is authorized to operate a
21 wireless telecommunications system within its designated
22 frequency spectrum in the area of metropolitan Atlanta.

23 Four, Nextel currently operates wireless
24 telecommunications facilities within boundaries established by
25 the FCC rules and regulations. In doing so, it complies with

1 all tower marking and lighting requirements established by the
2 Federal Aviation Commission and utilizes only equipment that
3 has been approved by the FCC and the FAA.

4 Five, on December 17, 1999, the plaintiffs filed an
5 application for a special use permit to construct a wireless
6 telecommunications tower on a proposed site in Gwinnett County,
7 Georgia. A copy of the application is attached as Exhibit A to
8 plaintiffs' complaint.

9 Six, the application was reviewed by the Gwinnett
10 County Planning and Development Department; the planning and
11 development department determined that the application met all
12 of the requirements of the Gwinnett County zoning ordinance and
13 recommended approval of the application.

14 Seven, on February the 22nd, 2000, the plaintiffs
15 appeared before the Gwinnett County Board of Commissioners. A
16 copy of the transcript of the hearing before the board of
17 commissioners is attached as Exhibit C to the plaintiffs'
18 complaint. At the end of the hearing, the board of
19 commissioners rejected the plaintiffs' application for the
20 special use permit. The board of commissioners provided no
21 reason for the rejection.

22 Nine, the proposed site consisted of two parcels of
23 land owned by one individual, that is, Ms. Linda Brady. On
24 January 7, 2000, at the direction of the Gwinnett County
25 Planning and Development Department, a combination form was

1 filed in order to combine the two parcels into one parcel.

2 Prior to consideration of the plaintiffs'
3 application, Mr. Williams, Director of the Gwinnett County
4 Planning and Development Department, made the following
5 statement at the February 22nd, 2000, hearing: Quote, "It's an
6 application for a tower on a property in what is a rural
7 residential portion of Gwinnett. It's characterized by large
8 lots, single-family development with agricultural uses and
9 emerging subdivision development. The proposal is on a parcel
10 that's been combined. The tower would meet the minimum
11 standards of the tall structure ordinance and, therefore, the
12 staff would recommend approval," close quotes.

13 Ten, the Gwinnett County Planning and Development
14 Department prepared a document entitled "Gwinnett County
15 Planning and Development Department Tall Structure Permit
16 Analysis" in which it analyzed the plaintiffs' proposed tower
17 erection or construction and concluded that the plaintiffs had
18 met the setback requirements of the Gwinnett County Tall
19 Structure Ordinance.

20 The report specifically stated, quote, "The proposed
21 tower location meets the minimum residential property setback
22 requirements of the telecommunications tower and antenna --
23 ordinance of one-third the tower height from all external
24 property lines. At its nearest point, the tower would be
25 located approximately 86 feet from the subject tract's northern

1 property line."

2 I adopt as my conclusions of law the law as stated by
3 Judge Tidwell of this court in the case of BellSouth Mobility,
4 Inc., versus Gwinnett County, Georgia, 944 Fed.Supp 923, a 1996
5 case.

6 With those undisputed facts and the law as stated by
7 Judge Tidwell in the BellSouth Mobility versus Gwinnett County
8 case, I'm going to grant the plaintiffs' request for relief for
9 two reasons: Number one, the denial of the permit was not
10 based upon a written record as required by 47 U.S.C., Sections
11 332(c)7(b)(2) and (3).

12 Second, in my judgment, based on the undisputed facts
13 of the case, the decision to deny the permit for construction
14 of the tower was not supported by substantial evidence as
15 required by the same code section. As Judge Tidwell said in
16 the BellSouth Mobility versus Gwinnett County case,
17 "Substantial evidence means more than a scintilla, it means
18 such relevant evidence as a reasonable mind might accept as
19 adequate to support a conclusion."

20 Although the Court is not free to substitute its
21 judgment for that of the board of commissioners', it must
22 overturn the Board's decision under the substantial evidence
23 test if it cannot consciously find that the evidence supporting
24 the decision is substantial when viewed in the light of the
25 record in its entirety furnished, including the body of

1 evidence opposed to the Board's view.

2 In this case, there was no evidence presented to the
3 board of commissioners that construction of the tower as
4 requested would result in any significant reduction of
5 neighboring property values; there was no evidence presented to
6 the Board that the construction and operation of the tower
7 would present any health or safety concerns; there was no
8 evidence presented to the Board that the tower would result in
9 any unusual or exceptional adverse esthetic effects.

10 Basically, as I read and review the transcript of the
11 hearing, the only reasons given for objection to the towers was
12 that the neighbors wanted it somewhere else, and although that
13 may be an understandable feeling, the fact of the matter is
14 that in this day and time, the public demands cellular
15 telephone services and if that service is to be provided, cell
16 towers are going to have to be located in residential
17 communities in cases such as this and it's my judgment that the
18 opposition to the tower was simply the source of generalized
19 concerns that do not constitute substantial evidence as that
20 term is defined in the BellSouth Mobility versus Gwinnett
21 County case and, therefore, the rejection of the permit was not
22 supported by substantial evidence.

23 Furthermore, it's my judgment that the requested
24 order to require Gwinnett County to issue the permit should be
25 issued whether that is described as an order of mandamus or

1 simply an order granting equitable relief.

2 It's my judgment that the plaintiffs did comply with
3 the Gwinnett County Telecommunications Tower and Antenna
4 Ordinance in all respects, including the setback requirements.

5 The report of the Gwinnett County Planning and
6 Development Department indicates that those setback
7 requirements are to be applied to, quote, "all external
8 property lines," close quotes. In this case, the property line
9 dividing Ms. Brady's two parcels would not constitute an
10 external property line. If the ordinance was interpreted to
11 apply the setback to internal property lines, in my judgment,
12 it would be unreasonable and would not constitute substantial
13 evidence to support a denial of a permit.

14 Finally, in my judgment, for the same reasons stated
15 by Judge Tidwell in BellSouth Mobility versus Gwinnett County,
16 no purpose would be served by remanding this matter to the
17 Gwinnett County Commission. To quote Judge Tidwell, quote, "In
18 the Court's view, simply remanding the matter to the board of
19 commissioners for their determination would frustrate the
20 Telecommunication Act's intent to provide aggrieved parties
21 full relief on an expedited basis," close quote.

22 I think the same thing is true here: In this case,
23 the board of commissioners did not grant the permit and then
24 find, in Mr. Stephens' words, some latent defect in the
25 application and then revoke the permit; they denied the permit

1 based on the opposition of some members of the neighborhood
2 without even being aware that there was any sort of latent
3 defect in the application. There is simply no reason for me to
4 believe they would do anything different if the alleged latent
5 defect was corrected and, therefore, remanding the matter to
6 the commission would simply cause additional delay in this
7 permit being issued, as I believe it's required to be issued by
8 the Telecommunications Act.

9 So for those reasons, I'm granting the relief
10 requested by the plaintiffs under their Telecommunications Act
11 claim and I order the defendants to issue to the plaintiffs a
12 tall structure permit as recommended in the Gwinnett County
13 Planning and Development Department Tall Structure Permit
14 Analysis, case number TSP-1999-00036, with the conditions
15 recommended by the planning and development department tall
16 structure permit analysis and no others and that the defendants
17 further take all steps necessary to otherwise permit the
18 plaintiffs to proceed with the construction of the proposed
19 tower consistent with the planning and development department
20 recommendation.

21 Mr. Wooden, if you will, prepare a written order
22 simply stating the relief requested. It's not necessary to go
23 into all of the reasons why I'm doing it; you can simply state
24 "For the reasons stated on the record at this hearing that the
25 following relief is granted" and state what the defendants are

1 ordered to do and let Mr. Stephens review the proposed order,
2 be sure it's consistent with what I've said here in court and
3 submit it to me and then I will be glad to sign it.

4 MR. WOODEN: Would his Honor desire that I put a time
5 limit on the issuance of the permits on the date of the order
6 or use the words -- what would be the Court's desire in that
7 regard?

8 THE COURT: I'll be glad to hear from counsel on
9 that. If you request such a limit, I'll consider it, after
10 hearing from Mr. Stephens.

11 Do you want a time limit?

12 MR. WOODEN: I would go ahead, I guess, and
13 propose -- would five days be a reasonable time period?

14 MR. STEPHENS: Your Honor, I think we would like to
15 have ten days so that we might have a chance to meet with our
16 board of commissioners on the ruling by this Court.

17 THE COURT: Ten days will be fine.

18 Ten days from the date of the docketing of the
19 written order?

20 MR. STEPHENS: Right.

21 MR. WOODEN: Thank you, your Honor.

22 THE COURT: All right. Anything further, Counsel?

23 MR. WOODEN: No, your Honor.

24 MR. STEPHENS: No, your Honor.

25 THE COURT: All right. Thank you very much, Counsel,

1 enjoyed your presentations and appreciate having had you in my
2 court this morning.

3 Let me ask a question before you all leave, if you
4 don't mind. Let's go back on the record.

5 Mr. Wooden, in light of my ruling on the
6 Telecommunications Act claim, what are your intentions as far
7 as your other claims are concerned?

8 MR. WOODEN: Probably, I would prefer to update the
9 Court on that perhaps next week, after speaking with my client
10 regarding those issues.

11 THE COURT: All right. Well, how about giving me a
12 status report next week on whether you intend to pursue the
13 other claims?

14 MR. WOODEN: Be glad to, your Honor.

15 THE COURT: All right. Thank you very much.

16 (Proceedings concluded.)

17 * * * * *

18 CERTIFICATE

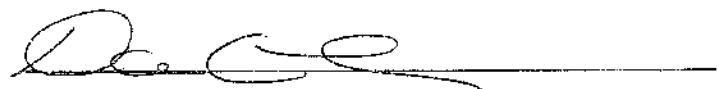
19 I, DONNA C. KEEBLE, Official Court Reporter, certify
20 that the foregoing pages are a correct transcript from the
21 record of proceedings in the above-entitled matter.

22

23

24

25



Donna C. Keeble