

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

USCOC OF GREATER MISSOURI, L.L.C.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08-41-JPG
)	
CITY OF ALTON, ILLINOIS,)	
an Illinois political subdivision,)	
)	
Defendant.)	

COMPLAINT

Plaintiff USCOC of Greater Missouri, L.L.C. (“USCOC” or “Plaintiff”), for its cause of action against Defendant City of Alton, Illinois (“City” or “Defendant”), states as follows:

THE PARTIES

1. Plaintiff is a Delaware limited liability company engaged in providing telecommunications services in Illinois.
2. Defendant is a political subdivision of the State of Illinois.

JURISDICTION AND VENUE

3. This matter arises under the Federal Telecommunications Act of 1996, 47 U.S.C. § 332, *et seq.* (“TCA”). This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and § 1367.
4. This Court is the proper venue for this action because the cause of action accrued within the City of Alton, Illinois.

GENERAL ALLEGATIONS

5. Plaintiff locates potential telecommunications facility sites based on the service coverage plans prepared by its radio frequency (RF) engineers, in accordance with overall

network plans designed to meet the service provision needs of particular markets. A site is suitable only if it is high enough and close enough to the adjacent sites required for the system so that antenna signals are transmitted with strength and clarity over varying terrain, but spaced far enough away from adjacent sites to minimize interference between the sites. In addition to the technical factors for site selection, suitable site location depends on finding a landowner willing to sell his property or give a long-term lease for placement of the telecommunications facility.

6. Plaintiff proposes to install a 90-foot wireless stealth telecommunications tower (“Tower”) on the property located at 1200 G Milton Road, Alton, Illinois 62002.

7. On or around September 10, 2007, Plaintiff filed its Application for a Special Use Permit for construction of the Tower on the Property (“SUP Application”).

8. On November 20, 2007, Defendant’s Plan Commission voted to recommend approval of Plaintiff’s SUP Application.

9. On November 28, 2007 Defendant’s City Council approved a resolution approving Plaintiff’s SUP Application.

10. On December 19, 2007, Defendant’s City Council voted to deny Plaintiff’s SUP Application.

COUNT I - VIOLATION OF 47 U.S.C. § 332(c)(7)(B)(iii)
(DENIAL NOT IN WRITING OR SUPPORTED BY SUBSTANTIAL EVIDENCE)

Comes now Plaintiff, and for Count I of its cause of action against Defendant, states to the Court as follows:

11. Plaintiff hereby restates and incorporates herein by reference the allegations set forth in Paragraphs 1-10 above.

12. Defendant's denial of Plaintiff's SUP Application was not in writing or supported by substantial evidence, and is therefore in violation of 47 U.S.C. § 332(c)(7)(B)(iii), which states:

"Any decision by a State or local government or instrumentality thereof to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." 47 U.S.C. § 332(c)(7)(B)(iii).

WHEREFORE, Plaintiff requests the Court to issue the following orders:

- A. An injunction directing Defendant City of Alton, Illinois to issue an approval of the SUP Application submitted by Plaintiff on or around September 10, 2007;
- B. An injunction directing Defendant City of Alton, Illinois to issue all other necessary permits to construct Plaintiff's Tower; and
- C. For any further orders and relief which the Court deems just and proper.

COUNT II – VIOLATION OF 47 U.S.C. § 332(c)(7)(B)(i)(I)
(UNREASONABLE DISCRIMINATION)

Comes now Plaintiff, and for Count II of its cause of action against Defendant, states to the Court as follows:

13. Plaintiff hereby restates and incorporates herein by reference the allegations set forth in Paragraphs 1-12 above.

14. Upon information and belief, permit applications for telecommunications towers similar to Plaintiff's Tower have been approved by Defendant.

15. Defendant unreasonably discriminated against Plaintiff by denying Plaintiff's SUP Application, due to Defendant's reliance upon factors other than those permitted under the TCA.

16. Defendant's denial of Plaintiff's SUP Application discriminates among providers of functionally equivalent personal wireless services in violation of 47 U.S.C. § 332(c)(7)(B)(i)(I), which states:

"The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof...(I) shall not unreasonably discriminate among providers of functionally equivalent services..." 47 U.S.C. § 332(c)(7)(B)(i)(I).

WHEREFORE, Plaintiff requests the Court to issue the following orders:

- A. An injunction directing Defendant City of Alton, Illinois to issue an approval of the SUP Application submitted by Plaintiff on or around September 10, 2007;
- B. An injunction directing Defendant City of Alton, Illinois to issue all other necessary permits to construct Plaintiff's Tower; and
- C. For any further orders and relief which the Court deems just and proper.

COUNT III – VIOLATION OF 47 U.S.C. § 332(c)(7)(B)(i)(II)
(PROHIBITING WIRELESS SERVICE)

Comes now Plaintiff, and for Count III of its cause of action against Defendant, states to the Court as follows:

17. Plaintiff hereby restates and incorporates herein by reference the allegations set forth in Paragraphs 1-16 above.

18. Defendant's denial of Plaintiff's SUP Application prohibits or has the effect of prohibiting the provision of personal wireless services, in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II), which states:

"The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof...(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services..." 47 U.S.C. § 332(c)(7)(B)(i)(II).

19. Defendant is not administering its zoning authority in accordance with Defendant's Zoning Code or the TCA, which will have the result that all possible sites in a given area will be rejected.

WHEREFORE, Plaintiff requests the Court to issue the following orders:

- A. An injunction directing Defendant City of Alton, Illinois to issue an approval of the SUP Application submitted by Plaintiff on or around September 10, 2007;
- B. An injunction directing Defendant City of Alton, Illinois to issue all other necessary permits to construct Plaintiff's Tower; and
- C. For any further orders and relief which the Court deems just and proper.

COUNT IV – SUBSTANTIVE DUE PROCESS

Comes now Plaintiff, and for Count IV of its cause of action against Defendant, states to the Court as follows:

20. Plaintiff hereby restates and incorporates herein by reference the allegations set forth in Paragraphs 1-19 as if fully set forth herein.

21. There is no substantial evidence in the record to support Defendant's denial of Plaintiff's SUP Application.

22. Defendant's denial of Plaintiff's SUP Application was not valid under either Defendant's Zoning Code or the TCA, and such denial was arbitrary, capricious and irrational, and not given in good faith.

23. Defendant's actions were not rationally related to a legitimate public purpose.

24. Defendant's actions constitute a violation of Plaintiff's substantive due process rights granted by the Fourteenth Amendment of the United States Constitution.

25. Defendant's actions constitute a violation of Plaintiff's substantive due process rights granted by the Illinois Constitution, Article I, Section 2.

WHEREFORE, Plaintiff requests the Court to issue the following orders:

A. An injunction directing Defendant City of Alton, Illinois to issue an approval of the SUP Application submitted by Plaintiff on or around September 10, 2007;

B. An injunction directing Defendant City of Alton, Illinois to issue all other necessary permits to construct Plaintiff's Tower;

C. A judgment against Defendant for such sum as will fairly and justly compensate Plaintiff for its damages;

D. Plaintiff's costs incurred in filing this action, including attorney's fees; and

E. For any further orders and relief which the Court deems just and proper.

COUNT V – PROCEDURAL DUE PROCESS

Comes now Plaintiff, and for Count V of its cause of action against Defendant, states to the Court as follows:

26. Plaintiff hereby restates and incorporates herein by reference the allegations set forth in Paragraphs 1-25 as if fully set forth herein.

27. Plaintiff met Defendant's requirements for the approval of Plaintiff's SUP Application, and Defendant was therefore required to approve Plaintiff's SUP Application.

28. Further, under 47 U.S.C. § 332(c)(7)(B)(iii), Defendant's denial should have been in writing and supported by substantial evidence contained in a written record.

29. Defendant failed to follow the requirements of 47 U.S.C. § 332(c)(7)(B)(iii), and Defendant's denial of Plaintiff's SUP Application was not in writing or based on substantial evidence.

30. Defendant's actions taken in an effort to block the installation of Plaintiff's Tower are a violation of Plaintiff's procedural due process rights granted by the Fourteenth Amendment of the United States Constitution.

31. Defendant's actions constitute a violation of Plaintiff's procedural due process rights granted by the Illinois Constitution, Article I, Section 2.

WHEREFORE, Plaintiff requests the Court to issue the following orders:

A. An injunction directing Defendant City of Alton, Illinois to issue an approval of the SUP Application submitted by Plaintiff on or around September 10, 2007;

B. An injunction directing Defendant City of Alton, Illinois to issue all other necessary permits to construct Plaintiff's Tower;

C. A judgment against Defendant for such sum as will fairly and justly compensate Plaintiff for its damages;

D. Plaintiff's costs incurred in filing this action, including attorney's fees; and

E. For any further orders and relief which the Court deems just and proper.

COUNT VI – EQUAL PROTECTION

Comes now Plaintiff, and for Count VI of its cause of action against Defendant, states to the Court as follows:

32. Plaintiff hereby restates and incorporates herein by reference the allegations set forth in Paragraphs 1-31 as if fully set forth herein.

33. There is no substantial evidence in the record to support Defendant's denial of Plaintiff's SUP Application.

34. Defendant's denial of Plaintiff's SUP Application was not valid under either Defendant's Zoning Code or the TCA, and such denial was arbitrary, capricious, and irrational, and not given in good faith.

35. Upon information and belief, permit applications for telecommunications towers similar to Plaintiff's Tower have been approved by Defendant.

36. Defendant's Zoning Code discriminates against Plaintiff in relation to other telecommunications providers which have already constructed towers within Defendant's jurisdiction.

37. Defendant's denial of Plaintiff's SUP Application was intentional selective treatment based on impermissible considerations which are unrelated to any legitimate state objective.

38. Defendant's denial of Plaintiff's SUP Application improperly favors existing service providers over Plaintiff.

39. Defendant's denial of Plaintiff's SUP Application is a violation of Plaintiff's Equal Protection Rights granted by the Fourteenth Amendment to the United States Constitution.

40. Defendant's denial of Plaintiff's SUP Application is a violation of Plaintiff's Equal Protection Rights granted by the Illinois Constitution, Article I, Section 2.

41. Plaintiff's actions taken hereunder in furtherance of its rights will confer a substantial benefit on a class of persons if Defendant is forced to uniformly apply its Zoning Code and follow the requirements of the TCA as a result of this lawsuit. An award of damages, fees and costs will operate to spread the cost among the members of the class.

WHEREFORE, Plaintiff requests the Court to issue the following orders:

A. An injunction directing Defendant City of Alton, Illinois to issue an approval of the SUP Application submitted by Plaintiff on or around September 10, 2007;

B. An injunction directing Defendant City of Alton, Illinois to issue all other necessary permits to construct Plaintiff's Tower;

C. A judgment against Defendant for such sum as will fairly and justly compensate Plaintiff for its damages;

D. Plaintiff's costs incurred in filing this action, including attorney's fees; and

E. For any further orders and relief which the Court deems just and proper.

COUNT VII – INVERSE CONDEMNATION/TAKING

Comes now Plaintiff, and for Count VII of its cause of action against Defendant, states to the Court as follows:

42. Plaintiff hereby restates and incorporates herein by reference the allegations set forth in Paragraphs 1-41 as if fully set forth herein.

43. Plaintiff met or exceeded all of Defendant's standards for approval of Plaintiff's SUP Application.

44. There is no substantial evidence in the record to support Defendant's denial of Plaintiff's SUP Application under the Zoning Code or the TCA.

45. Defendant's denial of Plaintiff's SUP Application was arbitrary, capricious and irrational, and not given in good faith.

46. Plaintiff had the legitimate expectation of using the Property to operate a wireless telecommunications tower if its SUP Application met the requirements of Defendant's Zoning Code.

47. Defendant's denial of Plaintiff's SUP Application did not advance any legitimate state interest, and the denial deprived Plaintiff of all economically viable use of the Property.

48. Plaintiff expended substantial time and money in connection with the Property, and Defendant's conduct interfered with Plaintiff's investment-backed expectations.

49. The Fifth Amendment of the United States Constitution prevents government entities from taking private property without providing just compensation.

50. Under the Illinois Constitution, Article I, Section 15, "private property shall not be taken or damaged for public use without just compensation."

51. Defendant's denial of Plaintiff's SUP Application constitutes a taking of Plaintiff's property for public use, without just compensation.

WHEREFORE, Plaintiff requests the Court to issue the following orders:

A. An injunction directing Defendant City of Alton, Illinois to issue an approval of the SUP Application submitted by Plaintiff on or around September 10, 2007;

B. An injunction directing Defendant City of Alton, Illinois to issue all other necessary permits to construct Plaintiff's Tower;

C. A judgment against Defendant for such sum as will fairly and justly compensate Plaintiff for its damages;

D. Plaintiff's costs incurred in filing this action, including attorney's fees; and

E. For any further orders and relief which the Court deems just and proper.

COUNT VIII – VIOLATION OF 42 U.S.C. § 1983

Comes now Plaintiff, and for Count VIII of its cause of action against Defendant, states to the Court as follows:

52. Plaintiff hereby restates and incorporates herein by reference the allegations set forth in Paragraphs 1-51 as if fully set forth herein.

53. There is no substantial evidence in the record to support Defendant's denial of Plaintiff's SUP Application.

54. Defendant's denial of Plaintiff's SUP Application was not valid under either Defendant's Zoning Code or the TCA, and such denial was arbitrary, capricious and irrational, and not given in good faith.

55. Defendant's denial of Plaintiff's SUP Application was a violation of Plaintiff's substantive and procedural due process rights, and equal protection rights, as detailed in Counts IV, V and VI hereinabove.

56. The actions of Defendant constitute a deprivation of Plaintiff's rights in the Property and Plaintiff's expectation of approval of its SUP Application.

57. Defendant was acting under color of law at all times hereunder.

WHEREFORE, Plaintiff requests the Court to issue the following orders:

A. An injunction directing Defendant City of Alton, Illinois to issue an approval of the SUP Application submitted by Plaintiff on or around September 10, 2007;

B. An injunction directing Defendant City of Alton, Illinois to issue all other necessary permits to construct Plaintiff's Tower;

C. A judgment against Defendant for such sum as will fairly and justly compensate Plaintiff for its damages;

D. Plaintiff's costs incurred in filing this action, including attorney's fees; and

E. For any further orders and relief which the Court deems just and proper.

COUNT IX - STATE LAW VIOLATIONS

Comes now Plaintiff, and for Count IX of its cause of action against Defendant, states to the Court as follows:

58. Plaintiff hereby restates and incorporates herein by reference the allegations set forth in Paragraphs 1-57 above.

59. Plaintiff's SUP Application fully complied with Defendant's requirements for approval of Plaintiff's SUP Application.

60. There is no substantial evidence in the record to support Defendant's denial of Plaintiff's SUP Application.

61. Defendant's denial of Plaintiff's SUP Application was arbitrary, capricious and irrational, and not given in good faith.

WHEREFORE, Plaintiff requests the Court to issue the following orders:

A. An injunction directing Defendant City of Alton, Illinois to issue an approval of the SUP Application submitted by Plaintiff on or around September 10, 2007;

B. An injunction directing Defendant City of Alton, Illinois to issue all other necessary permits to construct Plaintiff's Tower; and

C. For any further orders and relief which the Court deems just and proper.

/s/ Michael C. Seamands
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