T-Mobile challenged the district court's affirmation of the Board's denial of the church tower, contending that 1) the Board's decision was not supported by substantial evidence, 2) the decision prohibited T-Mobile from providing customers with service, and 3) the County had based its decision on environmental effects of RF emissions, as it had with the silo tower. As for the first issue, the Fourth Court noted that the record showed significant opposition from citizens about the proportion of the tower in reference to the surrounding environment, the property devaluation as a result of the tower and the unwanted noise the tower's generator would bring to the area. T-Mobile argued these were illegitimate reasons since the zoning already allowed the church to construct a bell tower with similar visual impacts. The Circuit Court rejected this argument pointing out that the fact that zoning allows for something does not mean citizens would not have legitimate complaints about putting in the allowed item – whether a bell tower or a cell tower. The court held these were legitimate reasons for denying the application.

The Circuit Court noted that when a local government denies a single tower at one site (in contrast to a situation where the local government has a general policy of rejecting facilities), the provider must prove "(1) that there is an "effective absence of coverage" in the area surrounding the proposed facility, and (2) that there is a "lack of reasonable alternative sites to provide coverage" or that "further reasonable efforts to gain approval for alternative facilities would be 'fruitless.'" Here, the second test was fatal to T-Mobile's argument: it failed to show there was a lack of appropriate alternate sites. Moreover, T-Mobile failed to show it would have been fruitless to try and obtain permission for towers in those sites – for example, using collocation (the preferred option under the comprehensive plan) and more numerous, but smaller, towers.

As for RF emission as a basis of this denial, the Court again sided with the County noting that, unlike, the silo tower, RF emission was mentioned in passing, and by the citizens speaking against the church tower, not the elected decision makers. Additionally, the Board's written order for the church tower never referenced RF emissions as an issue at this site, unlike the silo site. As a result, the church tower denial was upheld.

http://www.ca4.uscourts.gov/Opinions/Published/122396.P.pdf (last accessed April 17, 2014).

Zoning: Animal Cages in Home Are "Legally Constructed Accessory Building" For Enforcement Purposes Against Residential Exotic Animal Keeper

Salton v. Town of Mayfield Zoning Board of Appeals, 2014 NY Slip Op 02362 (N.Y. App. Div. Apr. 3, 2014)

A New York Appellate Division Court has upheld enforcement of a home business ordinance against a homeowner who was keeping large exotic animals including tigers and leopards in cages in his home and showing them to the public for a fee.

The plaintiff was allegedly running a business in his home by keeping exotic animals, including three tigers and two leopards, under state and federal licenses that required him to exhibit the

large cats. A code enforcement officer of the Town of Mayfield in upstate New York informed plaintiff that the Town deemed he was operating a home occupation without authorization. Plaintiff challenged the Town's determination, and the Town's Zoning Board of Appeals upheld the code enforcement officer's determination, finding that the plaintiff's activities qualified as a home occupation and did not predate the enactment of the zoning law. The plaintiff sued to challenge that determination, and the trial court dismissed the petition. The plaintiff appealed to the Appellate Division.

HELD: The court found that the Plaintiff was operating a home occupation, because he was carrying on business activities in legally constructed accessory structures. As to timing, the court rejected the argument that his actions predated the zoning ordinance.
DISCUSSION: The Town's zoning law states that "home occupations are defined as businesses where the owner resides on the property and where the activities of the business are conducted inside the residence, a legally constructed accessory building, or at off-site locations." The issue in the case was whether the plaintiff was operating a home occupation, and if so, whether his actions were grandfathered in by predating the zoning ordinance.

The plaintiff asserted that he was not operating a business because he did not have any employees, did not file business taxes, did not carry business insurance, and made no profit. The factual findings however, demonstrated that he listed a business name on one of his license applications, and he had business cards which displayed the business name and list prices for adults and children to view the animals. The plaintiff also argued that the activities occurred in the cages on his property, not in any building on the property, not in his residence, and not at any off-site location, and that the activities were therefore outside of the scope of the ordinance.

The court also rejected this argument, finding that the cages were structures which were included in the Town ordinance definition of "building," and since the cages were not illegally constructed they fell within the ordinance's definition of a "legally constructed accessory building."

On the issue of whether the plaintiff's actions were 'grandfathered' in, the court found that he did not lawfully have any large cats in his possession prior to the enactment of the relevant zoning ordinance. The court found that the plaintiff's applications for the state and federal licenses necessary to own the big cats were not filed until after the enactment of the zoning ordinance, and thus he could not possibly have been in lawful possession of the cats prior to commencement of the zoning action.

http://decisions.courts.state.ny.us/ad3/decisions/2014/516523.pdf (last accessed Apr. 17, 2014).

IMLA thanks Patricia Salkin for flagging this case in her blog "Law of the Land."