

DOCKET NO: HHB-CV07-4012403S	:	SUPERIOR COURT
	:	
MALCOLM MCCLUSKEY AND EDWARD J. HANNAFIN, TRUSTEE	:	J.D. OF NEW BRITAIN
	:	
VS.	:	AT NEW BRITAIN
	:	
STATE OF CONNECTICUT SITING COUNCIL AND OPTASITE, INC. AND NEW CINGULAR WIRELESS PCS, LLC	:	APRIL 16, 2007
	:	

**STIPULATION FOR JUDGMENT**

IT IS STIPULATED, by and between the undersigned parties that:

The parties consent and stipulate that a Judgment in the form set forth below shall be entered by the Court at any time following the date of filing of this Stipulation, without further notice to any party or other proceeding. Said Judgment shall be determinative of the rights of the undersigned parties against or to each other in the above-entitled action regarding the subject matter of the decision of the State of Connecticut Siting Council (Council) in Council Docket No. 315, "Optasite, Inc. and New Cingular Wireless PCS, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility at 29 Bogus Hill Road in New Fairfield, Connecticut." By executing this Stipulation, the defendants expressly declare that they fully understand the terms of the Judgment to be entered as set forth below, and agree and desire to be bound thereby.

## **JUDGMENT ON STIPULATION**

Plaintiffs MALCOLM McCLUSKEY and EDWARD J. HANNAFIN, TRUSTEE, the Defendants STATE OF CONNECTICUT SITING COUNCIL, OPTASITE, INC., and NEW CINGULAR WIRELESS PCS, LLC (collectively called "the Parties"), through their respective attorneys, having come before this Court; and

The Parties, having consented to the making and entry of this judgment in settlement of the above-captioned administrative appeal of the final decision in Council Docket No. 315; and

Upon due consideration of the matters before the Court,

NOW, THEREFORE, before any testimony has been taken herein, without trial or adjudication on any issue of fact or law herein, without admission of liability and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. With the consent of the Parties, the Court hereby AFFIRMS the Council's Findings of Fact dated September 28, 2006 in its final decision in Council Docket No. 315.
2. With the consent of the Parties, the Court hereby ORDERS that Site A, as described in the Council's said Findings of Fact, shall be approved.
3. With the consent of the Parties, the Court hereby AFFIRMS the Council's Opinion dated September 28, 2006 (which is attached hereto as Exhibit A and made part of this Stipulation) in its final decision in Council Docket No. 315, AS MODIFIED BY

THIS STIPULATION to delete the penultimate paragraph and modify the last sentence of the final paragraph to read "Either Site A or Site B meet the criteria for issuance of a Certificate and upon balancing all the relative environmental effects of both Sites, no one factor requires approval of one Site over the other". .

4. With the consent of the Parties, the Court hereby APPROVES Exhibit B to this Stipulation, a revised Decision and Order, and hereby AFFIRMS the Council's final decision dated September 28, 2006 in Council Docket No. 315, AS MODIFIED BY THIS STIPULATION in the form attached hereto as Exhibit B and made a part of this Stipulation.

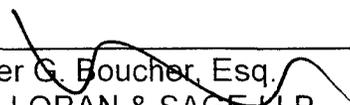
5. With the consent of the parties, the Court hereby holds that this Stipulation for Judgment is unique to this case and shall not constitute precedent against the Council in any other docket before the Council or appeal therefrom.

This Judgment shall be effective immediately upon entry.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

PLAINTIFFS,  
MALCOLM MCCLUSKEY AND EDWARD  
J. HANNAFIN, TRUSTEE

4/16/07  
Date

By   
Peter G. Boucher, Esq.  
HALLORAN & SAGE LLP  
One Goodwin Square  
225 Asylum Street  
Hartford, Connecticut 06103  
Juris No. 26105

DEFENDANT,  
STATE OF CONNECTICUT  
SITING COUNSEL

13 April 2007  
Date

By   
Robert L. Marconi, Esq. (404518)  
Assistant Attorney General  
10 Franklin Square  
New Britain, CT 06051  
(860) 827-2682

DEFENDANTS,  
OPTASITE, INC. AND NEW  
CINGULAR WIRELESS PCS, LLC

9/11/07  
Date

By   
Christopher B. Fisher, Esq. (409919)  
Cuddy & Feder, LLP  
445 Hamilton Avenue  
White Plains, NY 10601  
(941) 761-1300

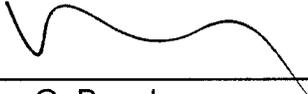
**CERTIFICATION**

This is to certify that on this 16<sup>th</sup> day of April, 2007, a copy of the foregoing was either mailed, postage prepaid, or hand-delivered to:

AAG Robert Marconi  
Atty Gen-Finance  
10 Franklin Square  
New Britain, CT 06051

Christopher Fisher  
445 Hamilton Avenue  
14<sup>th</sup> Floor  
White Plains, NY 10601

Pinney Payne P.C.  
83 Wooster Heights  
Danbury, CT 06810

  
\_\_\_\_\_  
Peter G. Boucher



<p><b>DOCKET NO. 315</b> – Optasite, Inc. and New Cingular Wireless PCS, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility at 29 Bogus Hill Road in New Fairfield, Connecticut.</p>	<p>} Connecticut          } Siting          } Council</p>
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September 28, 2006

### Opinion

On April 7, 2006, Optasite, Inc. and New Cingular Wireless PCS, LLC (Cingular) applied to the Connecticut Siting Council (Council) for the issuance of a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, maintenance and operation of a wireless telecommunications facility at 29 Bogus Hill Road in New Fairfield, Connecticut. The applicants sought to develop a facility at one of two locations on property owned by the Girl Scout Council of Southwestern Connecticut, Inc. The applicants' objectives in locating a facility in this area were to provide service in the Towns of New Fairfield and Sherman along State Route 39, over parts of Candlewood Lake and Squantz Pond State Park, as well as in adjacent areas. In addition to the applicants, Edward J. Hannafin and Malcolm McCluskey and the Tax District of Bogus Hill participated as intervenors in this proceeding. The Tax District withdrew as an active participant after the public hearing held on July 12, 2006.

Optasite and New Cingular proposed two possible locations on the 90 acre parcel owned by the Girl Scouts. Proposed Site A was located in the southwestern portion of the property. Proposed Site B was located in the north-center portion of the property. At either location, the applicants proposed developing a 70-foot by 70-foot fenced-in compound within a 100-foot by 100-foot lease parcel and erecting a 150-foot monopole tower. The tower would be designed to accommodate up to five carriers.

At Site A the proposed tower's setback radius would lie completely within the Girl Scout property. At Site B the tower's setback radius would extend approximately 50 feet onto the adjacent property to the north. Optasite could reduce or eliminate this encroachment by moving the location of the tower within the lease parcel. Utilities would be brought to either site overhead along existing roads and then along a new access drive built to the proposed site.

Although each tower would be visible on a year-round basis from a relatively large area — 859 acres for Site A and 778 acres for Site B — much of the areas of year-round visibility would be over the waters and along the shore lines of Candlewood Lake and Squantz Pond. A tower at Site A would have a greater visual presence than Site B at Squantz Pond State Park. Thirty-two homes would have a year round view of a tower at Site A. Twenty-seven homes would have a year round view of a tower at Site B.

Thirty-one trees with 6" diameter at breast height (dbh) or greater would be removed to develop an access road for Site A, and 15 such trees would be removed to develop the compound. At Site B, fifteen trees with a 6" dbh or greater would be removed to develop an access road and 18 such trees would be removed to develop the compound. Developing Site A would require 140 cubic yards of cut and 65 cubic yards of fill. Site B would require 72 cubic yards of cut and

120 cubic yards of fill. The average slope of the access road to Site B would be approximately 6.7 percent. Building the access road to Site B would be more difficult than to Site A because of the steeper topography in the vicinity of Site B and the presence of rock outcroppings.

The federally threatened and state endangered bald eagle (*Haliaeetus leucocephalus*) and a Species of Special Concern, the Eastern hognose snake (*Heterodon platirhinos*), occur within the vicinity of Optasite's proposed sites. The bald eagles use the lands adjacent to Candlewood Lake and Squantz Pond as feeding and perching areas in the winter. To help protect the eagles and their habitat, the Department of Environmental Protection (DEP) recommended that no on-site work take place between December 31 and March 1 and that all old growth trees at or exceeding 12" dbh should be left standing especially near the waterside. Optasite hired a consultant to conduct a herpetological study of the area in the vicinity of the two proposed sites to determine if there was any habitat favored by the hognose snake. The consultant determined that the area near the two sites did not contain any snake habitat. Nevertheless, the DEP recommended that, during construction, large cover objects such as logs and moveable rocks should be moved out of the way of heavy machinery in case some snake habitat was overlooked and snakes are sheltered underneath. Neither site would have any effect on Connecticut's archaeological heritage.

According to a methodology prescribed by the FCC Office of Engineering and Technology Bulletin No. 65E, Edition 97-01 (August 1997), the combined radio frequency power density levels of the antennas proposed to be installed on the tower have been calculated by Council staff to amount to 6.9% of the FCC's Maximum Permissible Exposure, as measured at the base of the tower. This percentage is well below federal and state standards established for the frequencies used by wireless companies. If federal or state standards change, the Council will require that the tower be brought into compliance with such standards. The Council will require that the power densities be recalculated in the event other carriers add antennas to the tower. The Telecommunications Act of 1996 prohibits any state or local agency from regulating telecommunications towers on the basis of the environmental effects of radio frequency emissions to the extent that such towers and equipment comply with FCC's regulations concerning such emissions.

Although Site A would provide slightly better coverage along Route 39, it would also have a greater visual presence for the nearest residential areas and Squantz Pond State Park than Site B. In this instance, the Council deems it important to protect the aesthetic qualities of Squantz Pond State Park from the visual intrusion a tower at Site A would present. The Council feels that the requested tower height of 150 feet was unwarranted by the record and that a tower 130 feet high at Site B would be sufficient to meet New Cingular's coverage needs.

Based on the record in this proceeding, the Council finds that the effects associated with the construction, operation, and maintenance of the proposed telecommunications facility, including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are not disproportionate either alone or cumulatively with other effects when compared to need, are not in conflict with policies of the State concerning such effects, and are not sufficient reason to deny this application. Therefore, the Council will issue a Certificate for the construction, operation, and maintenance of a 130-foot monopole tower at the proposed Site B at 29 Bogus Hill Road in New Fairfield, Connecticut.



<b>DOCKET NO. 315</b> - Optasite, Inc. and New Cingular Wireless PCS, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility at 29 Bogus Hill Road in New Fairfield, Connecticut.	} } }	Connecticut  Siting  Council
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September 28, 2006  
 as revised  
 April 10, 2007

**Decision and Order**

Pursuant to the foregoing Findings of Fact and Opinion, the Connecticut Siting Council (Council) finds that the effects associated with the construction, operation, and maintenance of a telecommunications facility including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are not disproportionate either alone or cumulatively with other effects when compared to need, are not in conflict with the policies of the State concerning such effects, and are not sufficient reason to deny the application and therefore directs that a Certificate of Environmental Compatibility and Public Need, as provided by General Statutes §16-50k, be issued to Optasite, Inc. for the construction, maintenance and operation of a wireless telecommunications facility to be located at Site A at 29 Bogus Hill Road in New Fairfield, Connecticut. The Council denies certification of Site B located at 29 Bogus Hill Road in New Fairfield, Connecticut.

The facility shall be constructed, operated, and maintained substantially as specified in the Council's record in this matter, and subject to the following conditions:

1. The tower shall be designed as a monopole and shall be constructed no taller than 150 feet above ground level to provide telecommunications services to both public and private entities.
2. No on-site construction work shall take place between December 31 and March 1 to avoid disturbing bald eagles that may be in the vicinity.
3. During construction, large cover objects such as logs and moveable rocks shall be moved out of the way of heavy machinery to minimize any potential harm to hognose snakes that might be in the area.
4. The Certificate Holder did prepare a Development and Management (D&M) Plan in compliance with Sections 16-50j-75 through 16-50j-77 of the Regulations of Connecticut State Agencies. The D&M Plan was served on the Town of New Fairfield and all parties and intervenors, as listed in the service list, and submitted to and approved by the Council on October 31, 2006 and did include:
  - a) a final site plan(s) of site development to include specifications for the tower, tower foundation, antennas mountings, equipment building, access road, utility line, and landscaping; and

- b) construction plans for site clearing, water drainage, and erosion and sedimentation control consistent with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control, as amended.

The Certificate Holder shall file a copy of its construction plans for Site A with the Council and may commence with construction of Site A immediately without the need for amended D&M Plan approval from the Council.

- 5. The Certificate Holder shall, prior to the commencement of operation, provide the Council worst-case modeling of electromagnetic radio frequency power density of all proposed entities' antennas at the closest point of uncontrolled access to the tower base, consistent with Federal Communications Commission, Office of Engineering and Technology, Bulletin No. 65, August 1997. The Certificate Holder shall ensure a recalculated report of electromagnetic radio frequency power density is submitted to the Council in the event other carriers locate at this facility or if circumstances in operation cause a change in power density above the levels calculated and provided pursuant to this Decision and Order.
- 6. Upon the establishment of any new state or federal radio frequency standards applicable to frequencies of this facility, the facility granted herein shall be brought into compliance with such standards.
- 7. The certificate Holder shall permit public or private entities to share space on the proposed tower for fair consideration, or shall provide any requesting entity with specific legal, technical, environmental, or economic reasons precluding such tower sharing.
- 8. The Certificate Holder shall provide reasonable space on the tower for no compensation for any Town of New Fairfield municipal antennas, provided such antennas can be accommodated and are compatible with the structural integrity of the tower.
- 9. If the facility authorized herein is not fully constructed and providing wireless services within eighteen months from the date of the mailing of the Council's Findings of Fact, Opinion, and Decision and Order (collectively called "Final Decision"), this Decision and Order shall be void, and the Certificate Holder shall dismantle the tower and remove all associated equipment or reapply for any continued or new use to the Council before any such use is made. The time between the filing and resolution of any appeals of the Council's Final Decision shall not be counted in calculating this deadline.
- 10. If the facility ceases to provide wireless services for a period of one year, this Decision and Order shall be void, and the Certificate Holder shall dismantle the tower and remove all associated equipment or reapply for any continued or new use to the Council before any such use is made.
- 11. The Certificate Holder shall remove any nonfunctioning antenna, and associated antenna mounting equipment, within 60 days of the date the antenna ceased to function.
- 12. Any request for extension of the time periods referred to in Conditions 9, 10, and 11 shall be filed with the Council not later than sixty days prior to the expiration date of this Certificate and shall be served on all parties and intervenors and the Town of New Fairfield, as listed in the service list. Any proposed modifications to this Decision and Order shall likewise be so served.

13. In accordance with Section 16-50j-77 of the Regulations of Connecticut State Agencies, the Certificate Holder shall provide the Council with written notice two weeks prior to the commencement of construction activities. In addition, the Certificate Holder shall provide the Council with written notice of the completion of site construction and the commencement of site operation.

Pursuant to General Statutes § 16-50p, we hereby direct that a copy of the Findings of Fact, Opinion, and Decision and Order as revised be served on each person listed below, and notice of issuance shall be published in the Danbury News-Times and in The Fairfield Citizen-News.

By this Decision and Order, the Council disposes of the legal rights, duties and privileges of each party named or admitted to the proceeding in accordance with Section 16-50j-17 of the Regulations of Connecticut State Agencies.

The parties and intervenors in this proceeding are:

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
<b>Applicant</b>	Optasite, Inc. New Cingular Wireless PCS, LLC	Christopher B. Fisher, Esq. Lucia Chiocchio, Esq. Cuddy & Feder, LLP 90 Maple Avenue White Plains, NY 10601  Ms. Jennifer Young Gaudet 345 Taylor Street Talcottville, CT 06066
	Edward J. Hannafin Malcolm McCluskey	Thomas W. Beecher, Esq. Collins, Hannafin, Garamella, Jaber & Tuozzolo, P.C. 148 Deer Hill Avenue Danbury, CT 06810 (203) 744-2150 (203) 791-1126 - fax <a href="mailto:tbeecher@chgitlaw.com">tbeecher@chgitlaw.com</a>  Peter G. Boucher, Esq. Halloran & Sage, LLP One Goodwin Square 225 Asylum Street Hartford, CT 06103 860-297-4650 860-548-0006 - fax
<b>Intervenor</b> (approved on 7/12/06)	Tax District of Bogus Hill	Allan Deutscher P.O. Box 8240 New Fairfield, CT 06812