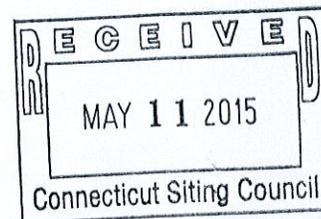


STATE OF CONNECTICUT
SITING COUNCIL



PETITION OF NEW CINGULAR
WIRELESS PCS, LLC ("AT&T") TO THE
CONNECTICUT SITING COUNCIL FOR
A DECLARATORY RULING THAT NO)
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED IS
REQUIRED FOR A PROPOSED
TEMPORARY TOWER TO BE
LOCATED OFF OF ANCIENT HIGHWAY
IN THE TOWN OF EAST LYME, CONNECTICUT

PETITION NO. 1152

ORIGINAL

MAY 8, 2015

LIMITED APPEARANCE STATEMENT

OF THE TOWN OF EAST LYME

The undersigned, on behalf of the Town of East Lyme ("the Town"), requests that the Siting Council deny Petition No. 1152, which New Cingular Wireless PCS, LLC ("AT&T") filed on April 9, 2015. AT&T's petition seeks a declaratory ruling that a certificate of environmental compatibility and public need is not required for a cellular tower that AT&T plans to install on Ancient Highway in East Lyme, Connecticut.

AT&T's petition should be denied for the following reasons:

1. **CSC Regulations Include a Presumption that Telecommunication Towers Have "Substantial Adverse Environmental Effects" and AT&T Fails To Satisfy Any of the Exceptions to that Presumption in its Petition**

Pursuant to Regulations of Connecticut State Agencies § 16-50j-71, the Siting Council has found that all telecommunications towers may have "a substantial adverse environmental effect" except as specified in Regulations of Connecticut State Agencies §§

16-50j-72 and 16-50j-88. None of the exceptions to this presumption apply to the proposed facility, therefore AT&T should be required to file an application for a certificate pursuant to General Statutes § 16-50k et seq. and a public hearing should be held.

2. The Proposed Site is a Hill Adjacent to a Residential Neighborhood and Will Have a Significant Visual Impact on the Scenic Vistas

The proposed facility is located immediately next to a residential neighborhood, a fact which would not be evident from the petition materials which utilize a map that is so old that it does not accurately depict the number and proximity of nearby homes. As such, the tower will have a significant visual impact both for the children and families who live in the area and especially for abutting property homeowners.

3. Several Alternative Locations Exist for the Proposed Facility That Would Have a Lesser Environmental Effect and A Less Significant Visual Impact

The Town has provided ATT a map with six alternate locations within the Town to place a tower. A copy of the map is attached as Exhibit A.

4. The Petitioner Failed to Give Notice to All Abutters

The petition failed to give notice of the petition to abutters whose property is located along Ancient Highway. Therefore, the petition is incomplete and should not be granted until this procedural and jurisdictional non-compliance is corrected.

I. INTRODUCTION

On April 9, 2015, AT&T filed a petition seeking a declaratory ruling that a certificate of environmental compatibility and public need was not required for a proposed cellular phone tower on Ancient Highway to replace its Scott Road facility. The petition was presented so as to

suggest that the proposed facility would be a temporary structure while downplaying the fact that it would be placing the facility where it intends to site its permanent facility. Notably the petition fails to give notice to all abutters.

More importantly, it appears that the Applicant is attempting to circumvent the full certificate process by locating a temporary tower on an expedited basis because "it is only temporary" and then claiming the new tower should be located at the same location because it is replacing an existing facility. Such a calculated maneuver appears to be an abuse of the Council regulations.

The Applicant claims that it needs the temporary tower because the underlying owner of a residential development located on the same parcel as the Scott Road facility chose not to renew its lease. Incredibly, the residential community under the Scott Road tower was approved ten years ago. (Petition 1152 at p. 2-3). Those homes were constructed with full knowledge of the proximity of the tower and the Applicant should have been aware of the possibility that the lease might not be renewed long before the present.

That situation whether tactic or negligence, should not come at the expense of public participation.

II. ARGUMENT

A. AT&T ATTEMPTS TO SIDESTEP THE REGULATORY PRESUMPTION THAT CELL TOWERS HAVE "A SUBSTANTIAL ADVERSE ENVIRONMENTAL EFFECT" BY MISCHARACTERIZING THE PROPOSED FACILITY AS AN TEMPORARY TOWER FOR A DISMANTLED FACILITY WHEN THE SCOTT ROAD FACILITY IS FULLY FUNCTIONAL AND THAT DOES NOT QUALIFY FOR ANY EXEMPTION UNDER CSC RULES

Siting Council regulations state that there is a presumption that a

telecommunications tower has "a substantial adverse environmental effect," unless one of four exceptions apply. See Reg. Conn. State Agencies § 16-50j-71, 16-50j-72, and 16-50j-88.¹ If no exception applies, then a telecommunications provider must file an application for a certificate of environmental compatibility and public need. See Conn. Gen. Stat. § 16-50k.

By presenting its proposal as the "to address the need for a temporary tower to be deployed in a new site location to avoid service disruptions related to decommissioning of an existing tower," AT&T hopes that the Council will assume that the agency's exception for certain existing structures applies. See Reg. Conn. State Agencies § 16-50j-72(1).²

That exception, however, requires two things. First, the installation of antennas must be on an existing structure. By AT&T's own admission, there is no existing facility on the Drabik property on Ancient Highway. The proposed temporary tower is being built on

¹ The four exceptions to the presumption contained in Conn. Reg. State Agencies § 16-50j-71 are set forth in Conn. Reg. State Agencies § 16-50j-72 and 16-50j-88. Of the exceptions contained in the regulations, only one requires any analysis, namely the exception for exceptions are for facilities installed adjacent to damaged telecommunications towers pursuant to Section 16-50j-72(2). That exception is addressed in the principal argument. The other three exceptions are for certain existing structures contained in Reg. of Conn. State Agencies §§ 16-50j-72(1); replacement of an existing facility pursuant to Section 16-50j-72(3), or tower sharing on an existing facility pursuant to Section 16-50j-88. Because there is no existing facility on the proposed site and the Scott Road facility is not damaged, none of these exceptions apply.

² The exception to the presumption of a substantial adverse environmental effect contained in Conn. Reg. State Agencies § 16-50j-72(1) states in full that:

A facility or any modification to a facility that the Council, or its designee, has determined satisfies the criteria of this section shall be deemed not to have a substantial adverse environmental effect and shall not require a certificate pursuant to Section 16-50k of the Connecticut General Statutes. Facilities or modifications to facilities, including, but not limited to, change-outs and installations of antennas on existing telecommunications towers, existing radio towers, functioning smokestacks, functioning water tanks and on or in existing buildings, upon Council acknowledgment or acknowledgment of its designee, may qualify for such exemption.

previously unoccupied land. Second, the installation must be on an existing telecommunications tower, radio tower, functioning smokestack, functioning water tank, or an existing building. See Conn. Gen. Stat. § 1-2z (requiring the “plain meaning rule” in statutory interpretation). Quite simply, AT&T’s proposal fails both requirements necessary for Section 16-50j-72(1) to apply.

The petitions to which the Applicant refers as examples, Petitions #1062 and #626T are not equivalent. First, Petition 1062 involved a site with an existing water tank structure and a temporary tower needed to maintain that facility. Second, Petition 626T involved a 55ft *wood laminate* tower with only three antennas and there were no plans to locate another significantly higher tower a year later on the same parcel.

The Applicant is essentially petitioning for a development and management phase element for a 175ft monopole disguised as an innocuous petition. Applicant clearly states its intent to locate its permanent facility at this location:

AT&T has entered into a license agreement with AHT to allow AT&T to install the temporary tower and otherwise coordinate an application for a permanent tower site relocation to the AHT Site.

Petition 1152 at p. 3 – 4.

More significantly, AT&T’s petition indicates that there is no reason it could not have submitted its permanent facility design with any temporary tower element at this time:

AT&T anticipates filing a technical report with the Town of East Lyme for a permanent relocated tower site in calendar year 2015.

Petition at p.3

The Council’s rules require that a petitioner state which statutes or regulations the petitioner seeks a declaratory ruling on. See Conn. Reg. State Agencies § 16-50j39. AT&T

did not do that, but instead attempted, by slight of hand, to suggest the exception for certain preexisting structures applies or that this petition falls into a catch-all case-by-case exemption. Because no exception applies, the presumption of a substantial adverse environmental effect contained in Sections 16-50j-71 does apply. Because that presumption applies, AT&T should be required to file an application for a certificate pursuant to General Statutes § 16-50k et seq. instead of a petition for declaratory ruling.

B. AT&T'S PETITION SHOULD BE DENIED BECAUSE OF THE "SCENIC, NATURAL, HISTORIC, AND RECREATIONAL CHARACTERISTICS" OF THE NEIGHBORHOOD

Among its many deficiencies, AT&T's petition does not adequately address "the scenic, natural, historic, and recreational characteristics of the proposed site and surrounding area." See Conn. Reg. State Agencies § 16-50j-74. Due to inadequate notice and the speed of these expedited proceedings, the Town has had insufficient time to develop and prepare the evidence of this aspect of its case and requests an opportunity to do so.

C. THERE ARE ALTERNATIVE LOCATIONS THAT WOULD HAVE A LESS ENVIRONMENTAL IMPACT AND LESS SIGNIFICANT VISUAL IMPACT THAT WOULD ALSO BE IN ACCORD WITH THE STATE PUBLIC POLICY OF ENCOURAGING SHARED CO-LOCATION OF CELL TOWERS

Several alternative sites to the Ancient Highway location would have less of an environmental impact than the proposed AT&T tower and would have a less striking visual impact while also being in accord with the State public policy of encouraging co-location of telecommunications towers. See Conn. Gen. Stat. § 16-50aa, Conn. Reg. State Agencies § 16-50j-1(5). Most notably, the East Lyme Emergency Services Department has a property

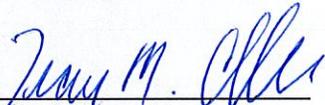
on Boston Post Road which already has an existing communications tower and is located one half-mile from the proposed site.

There are also potential alternate sites at which either a temporary or permanent tower might be located as set forth in Exhibit A.

III. CONCLUSION

For the foregoing reasons, the Town urges the Siting Council to deny AT&T's petition for a declaratory ruling and to require that AT&T file an application pursuant to General Statutes § 16-50k.

Respectfully Submitted,

By 
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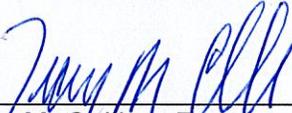
CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 8th day of May, 2015 and addressed to:

Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, 15 copies, plus 1 electronic) (US Mail/electronic).

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Keith R. Ainsworth, Esquire, Evans Feldman & Ainsworth, LC, 261 Bradley Street, P.O. Box 1694, New Haven, CT 06507



Tracy M. Collins; Esq.

ALTERNATIVE TOWER LOCATIONS, EAST LYME, CT

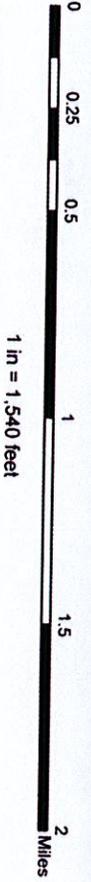
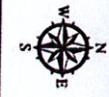


EXHIBIT
A

Legend

	Scott Rd. Water Tower
	True Value (Behind)
	EOC
	Nonwhich Orthopedic
	US8 Lumber
	KSK Property co Steve Hamay
	Current Proposed Site
	Parcel/Polygon
	Gateway
	Parcel/Polygon

DISCLAIMER:
Although every effort has been made to ensure that the spatial data on this map is accurate, the accuracy and quality of the information is not guaranteed. The information is provided for planning purposes only. The information is provided as is and is not intended for the legal interpretation of boundaries or property lines, other municipal or private.

Town of East Lyme
Department of Planning
April 2015