

**JULIE D. KOHLER**  
Please Reply to Bridgeport  
Writer's Direct Dial: (203) 337-4157  
E-Mail: jkohler@cohenandwolf.com

September 29, 2006

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mayor Mark Benigni  
City of Meriden  
142 East Main Street  
Meriden, CT 06450

**Re: Proposed Development of a Telecommunications Facility  
651 Paddock Avenue, Meriden, Connecticut**

Dear Mayor Benigni:

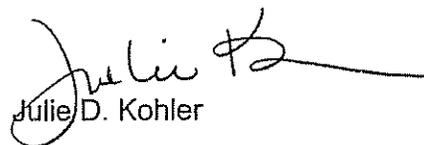
Enclosed please find two (2) copies of the technical report in compliance with Connecticut General Statutes Section 16-501(e) and in anticipation of filing an application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility at the above-referenced location. The technical report includes information regarding the public need for the facility, the site selection process, and the environmental effects of the facility.

The municipality may conduct public hearings and meetings as it deems necessary to provide recommendations or comments to Optasite, Inc. concerning this proposal. If a hearing or meeting is scheduled, we request notice and will be pleased to provide an informational summary of the proposal. If the City has any recommendations or comments, it must provide them to us within sixty (60) days of the receipt of this filing.

We would like to meet with you (or your designee) to review the proposed project and will contact you next week to set up an appointment at your convenience.

If you have any questions, please do not hesitate to contact me directly.

Very truly yours,

  
Julie D. Kohler

JDK:dlo  
Enclosures

cc: Keith Coppins, Optasite, Inc.  
Charles Regulbuto, Optasite, Inc.  
Jackie Slaga, T-Mobile USA, Inc.

# PLANNING COMMISSION-DIVISION



CITY OF MERIDEN  
November 17, 2006

Tel. (203) 630-4081 Fax (203) 630-5883

Carrie Larsen and/or Julie Kohler  
Cohen and Wolf, Attorneys at Law  
1115 Broad Street  
P.O. Box 1821  
Bridgewater, CT 06604

RE: Proposed Development of a Telecommunications Facility at 651 Paddock Avenue in Meriden

Dear Ms. Kohler/Ms Larsen:

Yesterday, your fax dated November 1, 2006 was forwarded to me. The City of Meriden has a process to receive public comments, review and approve applications for telecommunication facilities. The process is fair and expedient. Mr. Regulato, representative of Opta-site was informed of this process. Neither I nor the Zoning Officer (2 primary contacts for such projects) have been personally contacted by your office to initiate our process or to arrange a meeting. Please contact the Planning Division, City of Meriden immediately at the number above for assistance in initiating the process in a proper manner.

The City of Meriden strongly opposes any attempt to short circuit the rights of the City and its residents to make public comments and fully review applications for new telecommunication tower facilities. This specific proposal is for a new tall tower in a residential district. It clearly needs to be carefully considered.

In a cooperative manner, I did meet and provide feedback to Mr. Regulato regarding potential telecommunication sites under control of the City in southeast/south central area of Meriden. Mr. Regulato did note some constraints or unresolved issues but the City of Meriden has not rejected any potential alternative site. Staff noted that any alternative would need to be specifically documented and be compatible with the site before staff could recommend such; it would need to go through the standard public process and use of City property would need to be approved by the City Council.

Sincerely,

Thomas Skoglund  
Assistant City Planner

Cc: Lawrence Kendzior, City Manager  
Dominick Caruso, Director of Planning  
James Anderson, Zoning Officer

December 1, 2006

**VIA FACSIMILE (203-630-5883) AND U.S. MAIL**

Mr. Thomas Skoglund  
Assistant City Planner  
City of Meriden, City Hall  
142 East Main Street  
Meriden, CT 06450

**Re: Proposed Development of a Telecommunications Facility  
651 Paddock Avenue, Meriden, Connecticut**

Dear Mr. Skoglund:

I am writing in response to your letter dated November 17, 2006 and to confirm our telephone conversation of same date.

First, I want to clear up any misunderstanding. Your letter seemed to indicate that there was an intent on the part of Optasite, Inc. ("Optasite") to avoid filing the above-referenced project with the Meriden Planning and Zoning Department. As we discussed during our phone conversation, you were unaware at the time you wrote the letter that the telecommunications facility proposed by Optasite falls within the exclusive jurisdiction of the Connecticut Siting Council, and not the Meriden Planning Department.

As more specifically set forth in the attached legal memorandum:

- Connecticut General Statutes § 16-50x grants the Connecticut Siting Council ("Siting Council") exclusive jurisdiction over the location and permitting of telecommunications facilities and therefore the applicant is required to file its application to the Siting Council, not local commissions or agencies.
- Section 16-50l requires an applicant to submit a technical report to the municipality where a proposed facility is proposed to be located 60 days prior the submitting the application to the Siting Council. This is the report that was filed with Meriden on September 29, 2006.
- During that 60 day period, § 16-50l requires the applicant to make good faith efforts to meet with the chief elected official of that municipality.

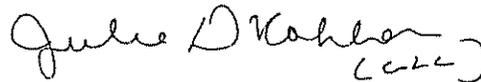
This office has made numerous attempts to set up a meeting with Mayor Benigni. When we spoke with Mayor Benigni directly, he stated that we should meet with the

planning staff in lieu of meeting with him personally and that he would forward the technical report that we had sent to him on September 29, 2006 to the City Planner, Mr. Caruso.

Since that time, we have spoken with Mr. Caruso several times but have been unable to set up a meeting to discuss this proposal. As I mentioned, we would welcome the opportunity to meet with you and any members of the planning staff. If requested, we will also be pleased to attend a Planning Commission meeting to discuss this proposed facility further. As I've indicated, Optasite will not be submitting applications for local zoning approval as the proposed facility is within the regulatory jurisdiction of the Siting Council (as set forth herein and in the attached legal memorandum). Therefore, our attendance at the Planning and Zoning meeting will be informational only.

We are available to be present at the following Planning Commission meeting dates: December 13, 2006 and January 10, 2006. Please let us know when you'd like us to attend and if you have any questions.

Very truly yours,



Julie D. Kohler

JDK:dlo

cc: Keith Coppins, Optasite Towers, Inc  
Chuck Regulbuto, Optasite Towers, Inc.  
Christine Ferrell, T-Mobile

Enclosures

## RESEARCH MEMORANDUM

### QUESTION PRESENTED

Does the Connecticut Siting Council have exclusive jurisdiction over the application for a proposed cellular tower?

### DISCUSSION

Connecticut General Statute §§ 16-50g *et seq.*, sets forth the provisions of the Public Utilities Environmental Standards Act (“PUESA”). Under PUESA, the Connecticut Siting Council (the “Council”): “shall have exclusive jurisdiction over the location and type of facilities and over the location and type of modifications of facilities subject to the provisions of subsection (d) of this section.” Conn. Gen. Stat. § 16-50x(a). Subsection (d) cross references the definition of “facility” found in § 16-50i, which includes cellular towers. *See Conn. Gen. Stat.* § 16-50i(a)(6). Connecticut courts have uniformly interpreted this section as giving the Council exclusive jurisdiction over wireless towers and not requiring permits or review by local planning and zoning commissions.

The leading case on the matter is Westport v. Connecticut Siting Council, 260 Conn. 46 (2002), where the Supreme Court affirmed the trial court’s judgment and adopted its memorandum of decision affirming that the Council has exclusive jurisdiction over cellular towers. In Westport, the trial court held that the Council has exclusive jurisdiction over location and type of telecommunications tower even though the cellular service carrier involved would be sharing the tower with non-cellular telecommunications carriers. Westport v. Connecticut Siting Council, 47 Conn. Sup. 382, 400 (2001).

Further, the court found that PUESA precluded the town from having jurisdiction on the matter. Id.

The Appellate Court has also found that a local planning and zoning commission does not have authority or jurisdiction to review the Council's decisions. Preston v. Connecticut Siting Council, 20 Conn. App. 474, 482-3 (1990). In Preston, the court called the planning and zoning commission's assertion of jurisdiction an "erroneous hypothesis" and ruled in favor of the Council on the issue.

In light of the statute and subsequent decisions, it is clear that local planning and zoning commissions cannot assert jurisdiction to hear or review applications that have been brought before the Council. While PUESA grants exclusive jurisdiction to the Council in the certification process, the municipality in which the proposed tower is intended is also given ample opportunity for input in the process. Conn. Gen. Stat. §§ 16-50l (e) requires that the applicant "consult" with the municipality at least sixty days before filing an application with the Council. The statute further discusses that at the consultation, the applicant will provide the "chief elected official" with technical reports regarding public need, the site selection process, and the environmental effects of the proposed facility. Id.

In conclusion, while a municipality may not usurp the Council's exclusive jurisdiction over the certification process of a proposed cellular tower, a municipality is still given ample opportunity to be fully briefed in the application process and prepare its own recommendations.

# PLANNING COMMISSION-DIVISION



CITY OF MERIDEN

Tel. (203) 630-4081 Fax (203) 630-5883

December 1, 2006

Julie Kohler  
Cohen and Wolf, Attorneys at Law  
1115 Broad Street  
P.O. Box 1821  
Bridgeport, CT 06604

RE: Proposed Development of a Telecom Tower at 651 Paddock Avenue

Dear Ms. Kohler (Julie):

Thank you for faxing additional information today (12/1/06) I will forward appropriately.

Your office had mentioned that we could have a public hearing of our choice. As I noted in my 11/17/06 fax to you, our preference is for:

- 1) A Public Hearing at the Zoning Board of Appeals meeting. This can be done within the time frame you suggested as the next open agenda for a ZBA meeting is January 2<sup>nd</sup>, 2007. This is an appropriate forum for a public hearing to receive valuable and important testimony, and;
- 2) Project representatives to appear before the Inland Wetlands Watercourses Commission due to the close proximity of the proposal to the water resource. Again, this can be done within the time frame you suggested as the next open agenda for an IWWC meeting is January 3<sup>rd</sup>, 2007, and;
- 3) Project representatives to appear before the Planning Commission. The Commission fully considers development projects within the context of input and recommendations from the above noted boards. The January 10<sup>th</sup>, 2007, date you suggested appears appropriate.

Please confirm that project representatives will appear at these meetings

Your proposal is inconsistent with City planning and development procedures, plans and laws put in place to protect the health, safety and welfare of our City. While you offer to hear public input, we are still awaiting all project information that we typically receive for any development project to enable full public input and to avoid or mitigate damaging

impacts to neighborhoods, the environment, etc. We do not want the public input process to be rendered inferior or inadequate.

Planning staff can meet to discuss your proposal and we would be glad to further discuss any alternative that may serve to protect the health, safety and welfare of our City. Director Caruso has very limited time this month. I suggest you contact him by phone next Tuesday afternoon. Otherwise, please call me to arrange a meeting that can be held well in advance of the board and commission meetings.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Skoglund". The signature is stylized and includes a large, sweeping flourish at the end.

Thomas Skoglund  
Assistant City Planner

Cc: Lawrence Kendzior, City Manager  
Dominick Caruso, Director of Planning  
James Anderson, Zoning Officer