

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF OPTASITE TOWERS LLC
AND OMNIPOINT COMMUNICATIONS, INC.
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
FACILITY AT 651 PADDOCK AVENUE IN
CITY OF MERIDEN, CONNECTICUT

DOCKET NO. 329

Date: April 27, 2007

**RESPONSES FROM CO-APPLICANTS OPTASITE TOWERS LLC AND
OMNIPOINT COMMUNICATIONS, INC. TO COMMENTS FROM THE
PLANNING COMMISSION OF THE CITY OF MERIDEN**

Co-applicants Optasite Towers LLC ("Optasite") and Omnipoint Communications, Inc. ("T-Mobile") submit the following responses to the correspondence from the Planning Commission of the City of Meriden ("City") dated February 22, 2007 and attached to the City of Meriden's Request for Party Status. The City's Comments are indicated in bold and the co-applicants' (the "Co-Applicants") responses follow.

- 1a. Page 15 of the application notes that "towers" can be located without securing a Special Exception ...". This statement is incomplete in that the applicant has failed to include the rest of this paragraph which gives the proviso that "all mutes shall be submitted to the Planning Commission ..."**

Response:

The City's comment claims that the zoning section is cited incompletely in the Application. To ensure that the full section has been included in the record we have cited it below:

The text of the entire section quoted (§ 213-35 (A)), states:

1) Spires, chimneys, elevator housings, machinery, towers, radio and television towers, penthouses, scenery lofts cupolas, water tanks and similar architectural structures may be built and used to a height of not more than 15 feet above the height limit established for the district in which the structure is located, provided that no such architectural structures in excess of the allowable height be used for sleeping or eating quarters or for any commercial advertising.

(2) Public utilities, gas and electric transmission lines and towers and poles adjacent thereto may be allowed in all districts to greater heights than established for the district in which the structures are located without the securing a special exception therefore, provided that all routes of transmission lines shall be submitted to the Planning Commission prior to installation of such routes.

Of note, the City of Meriden's zoning regulations do not contain any regulations applicable to telecommunications facilities.

1b. The Zoning Regulations are what is known in Planning jargon as "positive zoning regulations" meaning that only uses listed are those uses that are allowed within certain zones all other uses are not allowed. This S-R zone is the second least dense zone of the City. Communication towers are not allowed. This is a highly residential zone and, therefore, said towers are not compatible with other uses.

Response:

The City's zoning regulations do not contain any telecommunication regulations Pursuant to § C.G.S. 16-50x, telecommunications facilities do not require any local approvals nor are such facilities required to comply with local zoning regulations. Based upon the City's analysis of its zoning regulations, telecommunications facilities are prohibited in the City of Meriden because they are not specifically permitted in the zoning regulations. This is in direct contradiction to the Telecommunications Act of 1996.

- 1c. The height of the proposed use is nearly three and 1/2 times higher than the maximum height allowed in said residential zone and would thus be totally out of scale and incompatible, not only with the area in general but also specifically in the case of adjacent residences.**

Response:

The City's zoning regulations do not contain any regulations applicable to telecommunications facilities. Pursuant to § C.G.S. 16-50x, telecommunications facilities do not require any local approvals nor are such facilities required to comply with local zoning regulations. As is always their practice, during the site search process, the co-applicants first looked for a site location in industrial or commercially-zoned property. Since there were no industrial or commercially-zoned properties in the search area, Optasite focused its search efforts on larger tracts of land and non-residential uses, even though the target area is zoned residential. The proposed site, while residentially zoned, is used as a church and is therefore a non-residential use.

- 1d. According to Section 213-12.2 of the Zoning Regulations in this zone, only one principal use is allowed in any particular parcel in the zone. Therefore, because of the existence and continuance of the church use in this zone, this would be considered a second use as it is not an accessory use to said church.**

Response:

The City's zoning regulations do not contain any regulations applicable to telecommunications facilities. Pursuant to § C.G.S. 16-50x, telecommunications facilities do not require any local approvals nor are such facilities required to comply with local zoning regulations. Most telecommunications sites are secondary uses on a single parcel of property. Based upon the City's analysis of its zoning regulations, telecommunications facilities are prohibited in the City of Meriden because they are not specifically permitted in the zoning regulations. This is in direct contradiction to the Telecommunications Act of 1996.

- 1e. Proposal is inconsistent with previous ZBA and Planning Commission permits and approvals. Application conflicts with the approved site plan of the church;**

Response:

The City's zoning regulations do not contain any regulations applicable to telecommunications facilities. Pursuant to § C.G.S. 16-50x, telecommunications facilities do not require any local approvals nor are such facilities required to comply with local zoning regulations. Based upon the City's analysis of its zoning regulations, telecommunications facilities are prohibited in the City of Meriden because they are not specifically permitted in the zoning regulations. This is in direct contradiction to the Telecommunications Act of 1996.

- 3a. The statement that "minimum" grading and "minimal" clearing will take place on the site, in a residential zone, the City of Meriden does not consider the grading or clearing of 8,400 sq. ft. minimal. Much of the area in question slopes steeply into the wetland.**

Response:

There is approximately 3,900 square feet of clearing required for the compound, access road and grading area. In the opinion of URS, the project engineer, 3,900 square feet of cut and fill is minor.

- 3b. The wetland buffer area where clearing, grading and development is proposed is clearly an inseparable extension of this watercourse/wetland area that also serves as a habitat.**

Response:

Soil Science and Environmental Services, Inc. has concluded that the wetlands on the Property are not high quality and will not be impacted by construction of the proposed Facility due to the soil erosion and sedimentation

controls URS proposed to implement.

4a. Site has historically been address identified as 601 Paddock Avenue.

Response:

The address of the Site listed in the Certificate Application is based upon the assessor's records of the City of Meriden. A copy of that assessor's card (which indicates and address for the property as 651 Paddock Avenue) is attached hereto as Exhibit 1.

4b. Three different parcel sizes are noted in the application, parcel is likely smaller than claimed.

Response:

Although the City tax records indicate the area of the subject parcel being 2.98 acres, those maps are inaccurate. The actual area of the subject property calculates to 3.89 acres based upon the in-field, survey information.

4c. Different project area sizes are noted, which is correct?

Response:

The leased area is approximately 5,000 square feet and Optasite proposes to construct a 50' by 90' compound within that leased area.

4d. Application erroneously states that no wetlands or watercourses are located within 50 feet of the proposed site.

Response:

The Co-Applicants have stated that the distance to the nearest wetland is approximately 18 feet. See Co-Applicants' Interrogatory Responses dated April 2, 2007.

- 4e. The location for the tower and equipment shown in the environmental assessment is significantly different from the location proposed (much closer to the wetlands and watercourse) and any conclusions made in such assessment are therefore invalid.**

Response:

The change of location of the Facility and associated equipment compound has been addressed in pre-filed testimony. Of note, VHB, Soil Science and Environmental Services, Inc. and URS have all concluded that the compound shift has not altered any conclusions set forth in the Visual Resource Evaluation, wetlands report or Phase I Environmental Assessment.

- 4f. The Visual Resource Evaluation done by the same firm that did the environmental assessment does not identify a specific tower location; it can be assumed that the information and photos contained in this report are also is [sic] based upon a location different from the location proposed and are therefore invalid.**

Response:

The shift of the Facility and compound of 155 feet is considered minor and does not have a substantial effect on the conclusions regarding the visibility of the Facility. In fact, the 155 foot shift to the east places the compound in a location that will help reduce the visual impact of the compound itself to abutting properties. Specifically, the compound has been moved from an area of the Property with little natural screening to its new location which is tucked into existing vegetation and trees. This natural screening will help minimize any potential direct views of the compound from abutting properties.

4g. The application incorrectly states that there are no nearby historic sites.

Response:

The co-applicants have forwarded this proposal to the State Historic Preservation Office ("SHPO"). On June 21, 2006, SHPO responded stating that:

The State Historic Preservation Office has reviewed the above-named project. This office expects that the proposed undertaking will have no effect on historic, architectural, or archeological resources listed on or eligible for the National Register of Historic Places.

See Application at Exhibit L. In addition, in conformance with requirements of the National Environmental Policy Act, VHB notified the City's Planning and Zoning Department and the Meriden Historic Society in writing of the proposed Facility. VHB did not receive any comments back regarding this proposal from the Meriden Historic Society.

4h. The application incorrectly states that there was a meeting with City Planning staff on December 1, 2006.

Response:

The initial meeting with Mr. Thomas Skoglund, Assistant City Planner took place on December 19, 2007.

4i. The application erroneously indicates that the City of Meriden rejected alternative sites.

Response:

The City of Meriden has rejected all proposals regarding the development of a facility on City-owned property thus far.

- 5a. The proposed location for 120 foot high tower is within 100 feet of the utilized lawn areas of two adjacent residences. Information in the application that adjacent properties are not within the tower's fall zone is incorrect. The structure therefore would be potentially unsafe. Obvious negative impacts arise from the incompatible scale of such a structure this close to residences.**

Response:

The tower fall zone encroaches on three abutting properties. It encroaches on the Wilbur Cross Parkway to the northwest by approximately 11 feet, on property of Donald W. and Charlotte J. Jahnke to the southwest by 27 feet and on property of Mario V. and Judy E. D'Acunto to the southwest by 26 feet. Optasite will construct the tower with a pre-engineered break point to mitigate any potential safety concerns.

- 5b. Also, there are about 15 adjacent or nearby residential single family dwellings that are within 500 feet of the proposed tower and numerous others just over that distance.**

Response:

This is generally a true comment and the Visual Resource Evaluation depicts these conditions.

- 5c. All visual photos, simulations, and projected visual impacts appear to ignore the fact that almost all vegetation in the area is deciduous vegetation that will not screen the view of the tower for the hundreds of nearby residences for the months of November through April.**

Response:

The photographs were obtained in August, when the leaves are on deciduous trees. However, seasonal views (during "leaf off" conditions) are accounted for in the view shed map and addressed in the conclusion section of the Visual Resource Evaluation report.

- 5d. The Visual Assessment does show Elmwood Drive, a street within 300 feet of the proposed tower as a direct focal point. The photo simulation shown is misleading in that there are two dozen residences closer to the tower than the location where a photo simulation was based; said tower will be a higher more prominent, more incompatible view for those homes and all users of this road traveling north (most commonly taken route).**

Response:

All photographs and simulations in VHB's Visual Resource Evaluation are intended to be representative of the likely viewscape. It is not logistically possible to photo-document conditions from every portion of each street. There is no intention of attempting to mislead readers of the report; using the representative photos, one can draw their own conclusions as to the extent and character of visibility. Please note that the viewshed map depicts visibility from the area in question.

- 5e. The Visual Assessment fails to recognize that the tower will be a prominent incompatible direct view focal point for the heavily used off ramp from the Wilbur Cross Parkway.**

Response:

The viewshed map depicts portions of this infrastructure from which views of the Facility will be attained. The nature of this area, a busy limited access highway, generally limits our ability to obtain photographs due to safety concerns. Numerous facilities of this kind are visible along commuter routes.

- 5f. Tower will also be prominent from Paddock Avenue and Miller Avenue, both primary residential arterial roads and regional commuting routes.**

Response:

Numerous facilities of this kind are visible along commuter routes.

5g. The Tower design is unusual. Why are no comparable tower sites listed? If the intent is to make the tower appearance a tree-like brown color, why is the tower not disguised as a tree with branches?

Response:

The tower design is not unusual. Because of the location of the proposed Facility, Optasite sought to reduce any potential visual impact of the Facility to the greatest extent possible. Therefore, rather than proposing a monopole with full antenna platforms, Optasite chose to design the tower as a brown stick.

The design of the proposed tower, a flush-mounted monopole painted brown, will allow the proposed Facility to better blend into the surrounding environment and act to minimize its potential visual impact. Installation of flush-mounted antennas eliminated the need for traditional 14-foot wide platforms to extend outward from the monopole, ultimately reducing the overall girth of the Facility. A "stealth" monopine would present a wide profile, similar to a standard array, and not be compatible with existing vegetation that is contained within the area.

5h. The application incorrectly states that there are no nearby historic sites. The proposed site is adjacent to the Deacon Silas Rice House, built in 1796, one of the oldest structures in this part of Meriden. According to the City's planning consultant, the house is on the Local Register of Historic Places; such sites were previously identified as potentially eligible for nomination to the National Register of Historic Places. In addition, the Wilbur Cross Parkway itself is an historic scenic landscaped highway. The Meriden section was completed in 1946, as one of the earliest parkways in the United States. Parkway includes Art Deco style bridges, one only a few hundred feet from the proposed site.

Response:

The co-applicants have forwarded this proposal to the State Historic

Preservation Office ("SHPO"). On June 21, 2006, SHPO responded stating that:

The State Historic Preservation Office has reviewed the above-named project. This office expects that the proposed undertaking will have no effect on historic, architectural, or archeological resources listed on or eligible for the National Register of Historic Places.

See Application at Exhibit L. In addition, in conformance with requirements of the National Environmental Policy Act, VHB notified the City's Planning and Zoning Department and the Meriden Historic Society in writing of the proposed Facility. VHB did not receive any comments back regarding this proposal from the Meriden Historic Society. In addition, this portion of the Wilbur Cross Highway is not designated as a National Scenic Byway.

- 6. Insufficient efforts were made to afford residents of Meriden an opportunity at the local level**
- 6a. Immediately upon receiving the initial report (on 11/17/06), Planning staff sent a request in writing for a public hearing to be held in Meriden before the Zoning Board of Appeals and staff repeatedly asked for standard development project information to be provided.**

Response:

During the municipal consultation, the co-applicants met with Mr. Thomas Skoglund, Assistant Planner for the City of Meriden. As is Optasite's customary practice (and as confirmed by Mr. Skoglund's 12.1.06 letter to the co-applicants), Optasite offered to appear in a public forum to discuss the proposed facility. Mr. Skoglund advised that he would like Optasite to appear before the Planning Commission, Inland Wetland Watercourses Commission and the Zoning Board of Appeals meeting. When asked what dates we should appear, Optasite was informed that we would not be allowed to appear before any of these commissions without filing for the relevant approvals (i.e. special permit, wetland approval, variance) and that we must file for these approvals before the City would include this project on any of these agendas.

When Optasite explained that the project was within the exclusive jurisdiction of the Siting Council and that the purpose of appearing before the City agencies would be to solicit City comment, not obtain approvals or variances for the project, Mr. Skoglund informed us that the Siting Council's approval was not a matter of the City's concern and that the project could not continue further without special permit, wetland approval and a variance. Despite repeated attempts, the City refused to place this project on any of the City's planning agency agendas unless Optasite filed for City approvals.

6b. At a meeting held on 12/19/06, the above request was repeated; Applicant was also asked to contact the Planning Director but this was apparently not done.

A. See response above to 6a.

6c. Scores of nearby residences that will be affected were not notified; for instance, no Elmwood Drive properties were notified of this application.

Response:

The co-applicants have complied with all notice requirements of the Connecticut General Statutes concerning this application. Prior to this application being filed with the Connecticut Siting Council, a legal notice of intent to file was published twice in both the Hartford Courant and the Journal Inquirer. Copies of the affidavits of publication have been forwarded to the Council. In addition, a certified mailing to all abutting landowners was sent out prior to the filing of this Application. Of the 22 abutting property owners, the co-applicants have received return receipts from 21 abutters. In addition, on April 2, 2007, the co-applicants have published legal notices notifying the public of the balloon float to take place on May 3rd, the day of the scheduled public hearing (weather permitting). Finally, the co-applicants erected a 4' by 6' sign on the property on April 16, 2007, again notifying the public of this pending application. Finally, there will be a public hearing on May 3, 2007 in Meriden which will allow the public to comment on this application.

- 7. Public need for the proposed tower is not clear. The application is inaccurate in its claim that there are no feasible alternatives to the application. City Planning staff (as not in a recent letter of 1/31/07) and the Planning Commission desire an alternative that creates less impacts.**

Response:

The propagation maps provided by T-Mobile in the Application (at Exhibit F) clearly establish T-Mobile's coverage gap along Route 15, The Wilbur Cross Parkway and demonstrate T-Mobile's need for a facility in this area.

- 7a. There are at least three City controlled properties (noted below) at higher elevations with existing vertical structures that are within one half mile of proposed location, one within 1,000 feet.**

Response:

Optasite has investigated numerous City-controlled properties in this area of Meriden. The City has rejected the possibility of utilizing any of these properties for the development of a facility.

- 7b. The applicant, not the City, apparently rejected Kogut Field/Hooker School flag pole structure alternative locations, ironically noting nearby wetlands as a reason, then applicant proposed a project in a wetland buffer area.**

Response:

Optasite investigated three different locations at Kogut Field and Thomas Hooker School. All three of those locations were rejected by City officials: one was rejected because it was in a location where possible future development of the school may occur, the second was rejected because of wetlands concerns and the third was rejected because of the existence of an easement in the area. See Pre-filed Testimony of Charles Reguibuto.

- 7c. The applicant's non-detailed alternative for a taller (150 foot high) tower at 883 Paddock Avenue would appear to create even greater negative impacts.**

Response:

Optasite investigated City-owned property at 883 Paddock Avenue at the specific request of the City.

As is normal practice, co-applicant T-Mobile analyzed this property to determine what the minimum height necessary would be to reach its coverage objective in this area. In this case, T-Mobile would require 155' above ground level ("AGL") to meet the coverage objective it can reach at the proposed Site at 117' AGL.

Once T-Mobile determined the minimum height required for a facility at 883 Paddock Avenue, Optasite forwarded to the City a detailed proposal to the City including a draft lease, financial terms and terms for negotiation and agreement. The only response received from the City was that the property was "near residential uses and in a residential district" and "the site has a current principal (institutional) use; a long term lease of a portion of the site could diminish the ability to sell or redevelop the site." In addition, the City stated that it could not comment on financial terms.

- 7d. The nature of the area points to the need for a more flexible approach. The company seems not to have considered lower impact alternatives utilizing two sites. Alternatives include City sites:**

Response:

Due to the terrain in the area and the fact that this area of Meriden is comprised mainly of small, residential lots, the use of several, lower sites is not a viable alternative to meet T-Mobile's coverage needs.

7d1. 883 Paddock Avenue. The ground elevation is approximately 40-45 feet higher than the proposed location at 651 Paddock Avenue, and antennas at a height much lower than 150 feet could be an alternative to serve much of the area. There is an existing antenna atop the building approximately 50-55 feet high that is not problematic. Equipment could also be stored atop this building. The site has always had a memorial and a telecom equipped flag pole at 883 Paddock Avenue could be appropriate.

Response:

In order to meet its coverage objective for this area, T-Mobile would require an antenna height of 155' AGL at 883 Paddock Avenue. Therefore, any installation at 883 Paddock Avenue, either a new tower or a rooftop installation, would still require an antenna height of 155' AGL. To date, the City has rejected all proposals put forth by Optasite concerning the development of a facility at this property.

7d2. 528 Murdock Avenue - Nessing Field is a softball complex located adjacent to 1-91 that has numerous existing light towers approximately 60-65 feet in height. Multiple existing structures could host multiple carriers or a new light tower could host equipment, in either case serving much of the area.

Response:

In order to meet its coverage objective for this area, T-Mobile would require an antenna height of 160' AGL at 528 Murdock Avenue. Therefore, any installation at this location, either a new tower or an installation on existing structures, would still require an antenna height of 160' AGL. To date, the City has rejected all proposals put forth by Optasite concerning the development of a facility at this property.

7d. Either of the above sites could be utilized in combination with antennas at a lower height at the Connecticut DOT facility off Miller Avenue. This facility is located near the topographical apex of the parkway. Such a combination would appear to easily serve

the area sought at least as effectively, possibly serving additional areas beyond more effectively, apparently with less impact to the residents of Meriden. If the need is a statewide need, why is the State of Connecticut DOT not more accommodating?

Response:

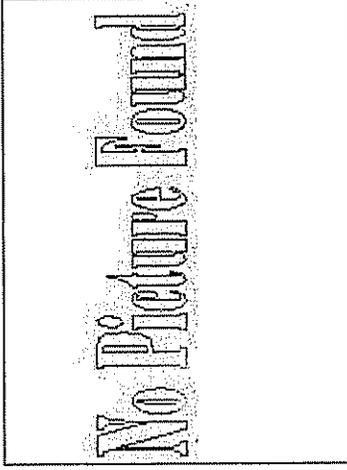
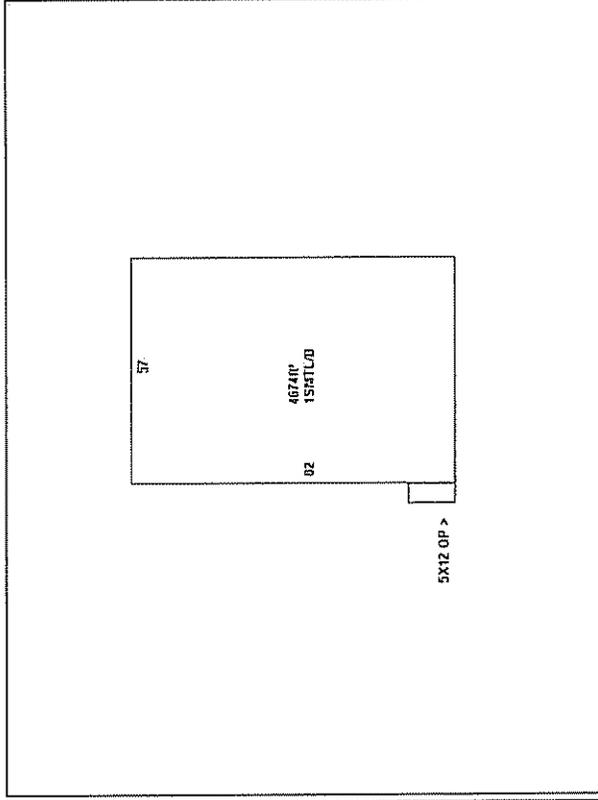
Optasite has contacted DOT on numerous occasions to discuss the possible development of a facility on the property located off Miller Avenue. As recent as March 23, 2007, DOT has stated that it is not willing to lease this property for the development of a facility and that there is insufficient acreage at this property to develop a facility. In addition, due to the terrain in the area and the fact that this area of Meriden is comprised mainly of small, residential lots, the use of several, lower sites is not a viable alternative to meet T-Mobile's coverage needs.

Respectfully Submitted,

By: 
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EXHIBIT 1

PLAT/LOT:0906-098D-0020-0005	
LOCATION: 651 PADDOCK AVE	
OWNER'S MAILING ADDRESS	
FIRST ASSEMBLY CHURCH OF GOD	
CHURCH OF MERIDEN INC-CHURCH	
651 PADDOCK AVE	
MERIDEN CT	
Building Characteristics	
USECODE	
ROOF	
EXT. WALLS	
BASEMENT	
#ROOMS	
STYLE	
COLOR	NOT AVAILABLE
#BEDROOMS	
INT FLOORS	
INT WALLS	
ATTIC	
FIN. BSMNT	
BATHS	/
HEATING	
INT. CONDITION	
AC COOLING	
BSMT GARAGE	
FIREPLACE	
UNFIN AREA	
DWELLING COST LADDER	
BASEPRICE	
ATTIC	
UNFINISH	
BASEMENT	
B. FINISH	
B. GARAGE	
SUBTOTAL	
ROOFING	
EXT. WALLS	
HEATING	
ADD. HEAT	
COOLING	
PLUMBING	
FIREPLACE	
SUBTOTALS	
ADDITIONS	
GRADE	
UNGRD. FEATRS	
TOTAL	



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ADDITIONS		S.F	RATE	YEAR BLT	COND	VALUE	BUILDING SUMMARY			ASSESSMENT	
TYPE CONST.	SIZE	GRADE	YEAR BLT	COND	VALUE	REPL COST	NORM	OBSOL	VALUE	RATIO	
Paving (Medium)	17000	C	1968	AVERAGE	28900	28900	24	0	22000	70%	15400
Open Porch	60	C	1968	AVERAGE	1404	1404	24	0	1100	70%	770
Utility Shed	160	C	2006	AVERAGE	2400	2400	0	0	2400	70%	1680

Certification

This is to certify that a copy of the foregoing has been mailed, this date to all parties and intervenors of record.

Deborah L. Moore
Acting City Attorney, City of Meriden
Legal Department, City Hall
142 East Main Street
Meriden, CT 06450



Carrie L. Larson