

**STATE OF CONNECTICUT
SITING COUNCIL**

DOCKET NO. 502 – Cellco Partnership d/b/a Verizon Wireless Application for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance, and Operation of a Telecommunications Facility Located at 118 Newton Road, Woodbridge, Connecticut

NOVEMBER 18, 2021

**POST-HEARING BRIEF OF OCHSNER PLACE, LLC ,
INTERVENORS MARK AND MICHELE GREENGARDEN**

Intervenors Mark Greengarden and Michele Greengarden (each an “Intervenor” and together “Ochsner Place LLC” Party and CEPA Intervenor status), appearing *pro se*, respectfully request the Council deny this Application and allow the Applicant more time to pursue other, viable alternatives for a wireless communications tower in Woodbridge, CT.

Since May 2020, having received informal notification of the proposed site location from a neighbor and then directly from the Applicant, the Greengardens obtained Party and CEPA intervenor status and since then have been active observers and participants in the assessment process conducted by the Applicant.

As residents of Soundview Drive in the Town of Woodbridge for over twenty-five years, the Greengardens are not opposed to a cell tower in the town but they are vehemently opposed to a tower at 118 Newton Road. The Applicant’s decision to locate a cell tower facility at 118 Newton Road was made without fully investigating both the true impact of locating the cell tower at that location as well as fully and properly exploring other viable alternatives to the proposed facility, options which would likely cause less irreparable harm to a neighborhood and its homeowners than the proposed site. Further, the Intervenors note that the 118 Newton Road site fails to meet the Applicant’s original goal of installing a single tower to remedy

Woodbridge's service issues – by virtue of the fact they have admitted to needing to supplement with a small cell unit. The Applicant's evaluation process is therefore essentially an inadequate partial solution in a process that by the regulation's requirements must balance the needs of the proposed facility with the impact on the public trust and scenic views. The Applicant can only fulfill this mandate by properly assessing whether there is a feasible alternative that can provide coverage with less impact to scenic views and private property values.

In the Office of Legislative Research report of October 7, 2013, it states that “The law requires the Council to consider a number of factors when deciding to grant, deny, or modify an application, including the tower's environmental impact, safety standards, the feasibility of sharing already existing towers, and municipal preferences” (p.2). An application may be denied when the Council determines that “... the proposed tower would substantially affect the scenic quality of its location or surrounding neighborhood...” (p.6). This is indisputably the case of the impact of the 118 Newton Road cell tower on Soundview Drive and surrounding neighborhoods. The pending application should be denied so the Applicant can properly complete the analysis required to meet the intent of the governing regulations.

As it is stated on the CSC website: “The Council is responsible for balancing the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values” (<https://portal.ct.gov/CSC>) should be what continues to guide the CSC members in their decision with emphasis on “balancing”. Although the Telecommunications Act of 1996 is blatantly unbalanced and so heavily lies in favor of the telecommunications companies, and this has been disappointing and disturbing to the Intervenors, the Intervenors have persevered and tried to work collaboratively with the

Applicant, keeping in mind the CSC responsibilities. The Act still does not guarantee wireless service providers the right to place towers wherever they wish. For that reason, specific procedures are outlined and cell tower companies are required to follow those mandates. The Applicant leads one to believe to concur in writing with that approach, noting that it intends to “...avoid the unnecessary proliferation of towers and to reduce the potential adverse environmental effects of the cell site...” and goes on to state that “...proposed sites are selected by eliminating those that have greater potential for adverse environmental effects, ...or in densely populated residential areas...” (p. 1 Celco Partnership d/b/a Verizon Wireless, Woodbridge North 2 Facility, Site Search Summary, Attachment 8).

A. Concerns about the 118 Newton Road location

The proposed site continues to be referred to by the 118 Newton Road address, admittedly the legal address assigned to the property owner, but misleading and inaccurate as to where the tower will actually be situated, i.e., on Soundview Drive. As is it currently proposed, the lessor at the 118 Newton Road residence will not be in close proximity to the tower and will not be affected by the trucks, workers, equipment, construction, maintenance, etc. that will ensue if the application is approved. If it's 118 Newton Road, as it is referred, then that should be the sole access and egress for all dealings with the tower, not Soundview Drive. One of the Applicant's witness' testified that using the 118 Newton Road driveway was indeed feasible (Mr. Libertine, p. 54-55 of the Continued Evidentiary Hearing Transcript 10/19/21).

Without a heavy line of trees on the north side of the property, in particular, the “brush” that is referred to is negligible and the subject property consists of a very, wide open field directly in view of Soundview Drive residents. The proposed tower would be irrefutably visible and

offensive. The 'scenic view' will be forever and irreparably harmed by the work required to install the cell tower and its looming presence thereafter.

In addition, there are concerns about the generator and flood light planned for the 118 Newton Road tower. During the October 19, 2021 "Continued Evidentiary Hearing", in response to questioning by the Intervenor (Michele Greengarden), the Applicant's witness (Mr. Bhembe) testified (Continued Evidentiary Hearing Transcript, 10/19/21, pp.58-59) that the generator is tested during the day and the flood light works on a timer. However, power outages are unpredictable and subsequently those that occur in the evening hours will cause the generator to operate and this could last for several days. As shown on p.16 of the "Applicant's Responses to Council Interrogatories, Set One, 6/30/21", the noise emitted during evening hours from the proposed generator and equipment cabinets (51.6 dBA) would be over the allowable level per the town of Woodbridge noise ordinance. This is of obvious concern to nearby neighbors, especially if it's necessary to run nonstop during an outage. In addition, the flood light stands to also be on during maintenance and emergency calls in the evening and would therefore be imposing and disruptive to the nearby property owners.

An inquiry was also made by the CSC siting analyst questioning whether it was possible to move the 118 proposed tower and compound to a location "...equidistant from the north, south and west property lines" (Late-Filed Exhibits Responses of Cellco Partnership D/B/A Verizon Wireless, 8/17/21, LFE 4, p.2). The response from Verizon representatives was that this "...would be feasible". However, it should be noted that being "equidistant" to the west would have no consequences since it's nothing more than an open piece of land, nothing else. Moving it, however, as queried, **would** put it closer to the north side and Soundview Drive, and not just the property lines of the homes. It would be much closer to the homes themselves. There's a

difference between distance from property lines vs. proximity to the homes on those properties. And, no revised scenic impact studies have been conducted which would give a true assessment of just how imposing and close it would be nor were any “fall zone” studies performed from this location. The Applicant’s witness (Mr. Gaudet) also stated that no simulations were done for the alternative location at 118 Newton Road (Continued Evidentiary Hearing Transcript, 8/31/21, p. 65). Again, the lessor party would not be at all impacted. However, it would most certainly cause an unfair burden to the homeowners on Soundview Drive.

The virtual field review of 118 Newton Road is not accurately reflected in the photographic documentation submitted by the Applicant. The remote field review lacks accuracy and does not provide the clear picture of how offensive this tower would be. It simply does not give an authentic visual representation. A field review was requested to give Council members an opportunity to familiarize them with the proposed site but unfortunately it was denied. This also added to the imbalance of the process. It must be said that if the council members were to visit the two sites, that is, 118 Newton Road and 15 Meetinghouse Lane, it would be quite obvious as to why the latter location would be most suitable. The pictures on pages 65-78 of the “Applicant’s Responses to Council Interrogatories, Set One, 6/30/2121”, do not give accurate views. They make it look as if the tower would be hidden but it needs to be emphasized that it would be in a wide, open field.

The topical geography of the Soundview Drive cul-de-sac is insufficient to support the addition of a cell tower abutted to it. Catch basins at the end of the cul-de-sac on Soundview Drive and which are at the entrance to the proposed site were only designed to handle the water run-off from Soundview Drive. The Applicant clearly understands the risks involved in locating the cell tower at this location, by virtue of the need to install crushed stone to “foster rainwater

infiltration". There is concern for the potential of flooding in the area, which could cause irreparable harm to the neighborhood, especially if the tower and compound are moved closer to the northern side.

It is irrefutable that the scenic impact will be negatively affected by the installation of the cell tower at 118 Newton Road. The tower is not in keeping with the residential neighborhood and will spoil its rural and picturesque scenic character. The beauty, peacefulness, privacy, safety, absence of traffic and enjoyment of wildlife will be gone as the cell tower will drastically alter the character and natural surroundings of the neighborhood and will negatively affect the quality of life for those nearby.

B. Applicant Failed to Provide Proper Notice to Town Residents of Hearings Related to the Process.

A critical step in the process is a public hearing, as required by CGS 16-50j-21(a)(3). Although such a hearing was held remotely on July 13, 2021, the Applicant failed to meet notice requirements for this hearing, the posting of signs that would clearly and accurately notify town residents of the purpose of the proceedings as well as the time and date of such hearings.¹ This failure to abide by the requirements of the statute belie an approach to the critical formalities of the process by the Applicant that is at least dismissive of the interests of the town residents and a clear indication of the Applicant's belief that such formalities were just that, formalities that if breached would not interfere with the Applicant's pursuit of its chosen location. The Council's October 19, 2021 denial of WNNET's Motion to Dismiss for Failure of Mandatory Notice based

¹ CGS 16-50j-21(a)(3) Notice of Hearings (3) The applicant or petitioner shall post a sign that is visible to the public at least 10 days prior to the public hearing not less than six feet by four feet at or in the vicinity of where the proposed facility would be located informing the public of the name of the applicant or petitioner, the type of facility, the hearing date and location, and contact information for the Council.

on published notice in the New Haven Register effectively chooses to negate a specific requirement of the notice provision, the one most likely to notify local residents and to give those residents an opportunity to voice their concerns/opinions on the matter.

Despite the Applicant's failure to properly provide notice of the required hearing, approximately 100 people attended the hearing, leaving open the question of how many more would have attended if properly notified. The **unanimous** testimony of the participants was in **opposition** of the 118 Newton Road location, a clear indication of the negative impact the 118 Newton Road cell tower location would have on the community. It is important to emphasize that not one person spoke in favor.

In addition, the Board of Selectmen voted unanimously to oppose the 118 Newton Road cell tower site. Also, state and federal legislators representing Woodbridge supported the residents in opposing the tower at 118 Newton Road and sent letters to the CSC expressing their constituents' concerns and requesting the parties work together and collaborate.

C. Applicant Has Failed to Meet its Obligations in Identifying and Fully Reviewing Alternative Locations for the Cell Tower Placement

Whether or not the Newton Road site is 'acceptable' (and this in no way concedes that point), the Applicant is obligated to identify and properly assess alternative sites as an essential part of the evaluation process. The intent of this requirement is not a *pro forma* 'check the box' instruction – it is to meet the intent of the statute to balance the costs and benefits of locating a cell tower in an acceptable location with less negative scenic impact.

In fact, CSC Executive Director (Attorney Bachman) commented that "...the entire application process is a collaborative process between the Applicant and Town, and the municipal consultation that's required by statute" (Continued Evidentiary Hearing Transcript

8/31/21, p.46). Ms. Bachman continues "...this proceeding is meant to discuss possibilities, collaboration, to look at alternatives, and see what would be the best option in ruling on this Application in the end. But this entire proceeding is basically working with the carriers and the Town and the neighbors to see if there are any viable alternatives" (Continued Evidentiary Hearing Transcript, 8/31/21, p.47). In addition, a Council member (Mr. Edelson) states (on p.21 of the September 21, 2021 Continued Evidentiary Hearing transcript) that "...it's important in our work that we're always trying to balance public benefit versus environmental and community impact. So, we always have to look at both sides of the ledger".

Unfortunately, despite its marketing language, the Applicant has not complied with the intent of the statute or in the public interest. The Applicant conducted its initial site search in 2014 and then reportedly again in 2016. Five years later, no real active site search was conducted by the Applicant. In an effort to work collaboratively with the Applicant, multiple alternate sites were investigated by residents and the town. The Intervenor (Mark Greengarden, a licensed CT Real Estate Broker), personally researched potential sites in the Applicant's target area and provided the Applicant's attorney, Mr. Baldwin, with over eight (8) new locations. All those alternate sites presented to Mr. Baldwin were confirmed to be available through conversations with the owners or their representatives and all indicated to have a strong interest in leasing land for a tower. Further, the town as well as other Woodbridge residents also offered alternate sites. The repeated response from the Applicant's attorney was that each proposed alternate site was not acceptable. It appeared that no real thorough investigation of any of the suggested sites was conducted.

D. A Viable Alternate Site

In the “Town of Woodbridge Responses to Council Interrogatories, Set 1, 8/17/21”, p.2, it indicates that the town would be interested in having a tower at 15 Meetinghouse Lane, the public works site. The Applicant did not appear responsive to investigating this site further, so WNNET (an ad hoc voluntary association of citizens) took it upon themselves and spent their own money, got permission from the town, hired an RF engineer and crane operator to conduct a crane test in order to “compare apples-to-apples” as suggested by a Council Member (Mr. Silvestri, Continued Evidentiary Hearing Transcript, p. 60, 8/31/21) and alluded to by another council member (Mr. Edelson in discussions with Mr. Maxson, Continued Evidentiary Hearing Transcript, pp. 115-117, 8/31/21).

The Intervenors (WNNET) conducted the gold standard CW drive test with the RF Engineer, whose findings showed that 15 Meetinghouse Lane yields similar results if not better, than 118 Newton Road, with less scenic and environmental impact. The Meetinghouse Lane location is at least 500 feet away from the nearest home, unlike the 118 Newton Road location which is in the middle of a residential neighborhood and also is less than 140 feet to the nearest homes. When questioned as to why the Applicant didn’t perform their own drive test of 15 Meetinghouse Lane, the Applicant’s witness (Mr. Cheiban) testified under oath that the reason the test was not performed was because of “time and cost” (Continued Evidentiary Hearing Transcript, 10/19/21, p. 71-72). Since same witness said several times during his testimony that 118 Newton Road was “not an ideal location” (Continued Evidentiary Hearing Transcript, 10/19/21, p.52), it stands to reason that the Council would reject without prejudice the 118 Newton Road application to give the Applicant time to further investigate and do the gold standard CW drive test at the 15 Meetinghouse Lane location or other alternate sites.

The Meetinghouse Lane site is much less intrusive than the 118 Newton Road site.

The Meetinghouse Lane location has the support of the town and would be on town-owned property which would benefit all residents of the town as opposed to one property owner.

On p. 2 of “Applicant’s Responses to WNNET’s Interrogatories, 8/17/21”, item number 3 in the response states: “no drive test was performed on any of the alternate sites”, this includes 15 Meetinghouse Lane.

Now that it has been determined that a small cell unit will be used to accomplish their objectives of serving parts of Rtes. 63 and 67, they failed to seriously investigate 15 Meetinghouse Lane as a viable option and this site was identified by the Applicant’s real estate representatives themselves! (Applicant’s Responses to Council Interrogatories, Set One, 6/30/21, p. 6).

E. SHPO Issues

Verizon’s concern as to SHPO issues are unwarranted. It is all speculation on the part of Verizon as no official contact has been made with SHPO pertaining to the 15 Meetinghouse Lane site and therefore it is not up to the Applicant to surmise. It should be noted that currently, there is a tower on the Police Department property which is in the Woodbridge Town Green Historic District and SHPO gave the town their designation knowing the Police tower was there (as noted on p. 2 of the September 16, 2021 Motion for Hearing Continuation by WNNET). The proposed tower at 15 Meetinghouse Lane would not even be visible to most of the district as has been determined by pictures taken from various locations around the area while a balloon test was conducted. There would be no concern for the “viewshed” of the tower from this location (as was noted of concern on p.3 of “Applicant’s Late-Filed Exhibits, 9/14/21”). However, once again, Verizon imposes unfair reasoning in their refusal to consider this viable, alternate location.

CONCLUSION

The Intervenors, on their own and in collaboration with WNNET, have done their due diligence. An inordinate amount of time and financial resources have been expended to prove that the Applicant has not worked collaboratively with all interested parties to find an appropriate site for a cell tower in Woodbridge, in a location that balances their purported needs along with maintaining the integrity and scenic impact of a residential neighborhood. Very viable alternate sites have been offered, specifically 15 Meetinghouse Lane, which at the very least needs to be further investigated by the Applicant. The Applicant clearly has failed to act in good faith and has not recognized nor acknowledged the concerns of the community.

Intervenors Mark Greengarden and Michele Greengarden respectfully request the Council deny this Application on the grounds that the Applicant has failed to "...balance the need for adequate...public utility services...with the need to protect the environment and ...to minimize damage to scenic... and recreational values" (<https://portal.ct.gov/CSC>).

Ochsner Place, LLC,

By: _____

Mark Greengarden

By: _____

Michele Greengarden

CERTIFICATION

This is to certify that, on the 18th day of November, 2021, a copy of the foregoing was sent, electronically, and via first class United States mail, postage prepaid, to the following counsel and pro se parties of record:

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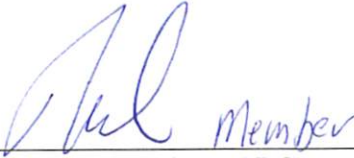
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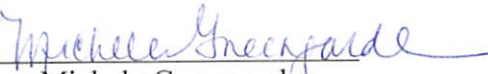
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