

State of Connecticut Siting Council

IN RE:

**APPLICATION OF HOMELAND TOWERS, LLC AND
NEW CINGULAR WIRELESS PSC, LLC d/b/a AT&T FOR A
CERTIFICATE OF ENVIORNMENTAL COMPATIBILITY
AND PUBLIC NEED FOR THE CONSTRUCTION
MAINTENANCE, AND OPERATION OF A
TELECOMMUNICATIONS FACILITY AT ONE OF TWO
SITES IN THE TOWN OF KENT, CONNECTICUT**

DOCKET NO.488

April 27, 2020

**MOTION FOR SITE PRESERVATION AND
TO PRECLUDE SPOILIATION OF EVIDENCE ON SITE A**

The Party/Intervenor Bald Hill Road Neighbors, through counsel, hereby request that the Connecticut Siting Council order that the above named Applicants preserve Site A in its current condition and be precluded from performing any remediation or debris removal from Site A prior to site inspection by the Siting Council. The reasons for this Motion are set forth as follows. The intentional destruction or spoliation of evidence permits the trier of fact to draw an inference that the destroyed evidence would have been unfavorable to the party that destroyed it. (See Colin C. Tait and Hon. Eliot D. Prescott, Tait's Handbook of Connecticut Evidence (4th Ed.) at 506-07, *citing* *Beers v. Bayliner Marine Corp.* 236 Conn. 769, 675 (1996); see also *Rizzuto v. Davidson Ladders, Inc., et al.*, 280 Conn. 225 (2006)).

In its application to the Siting Council the Applicants have been less than forthcoming with the Council regarding the condition of Site A. The Applicants would have the Council believe that Site A is simply a wooded lot on Bald Hill Road. In its October 16, 2019 proposed application for a wireless telecommunication tower facility in the Town of Kent, the Applicants describes Site A simply as, "an approximately 2-acre unimproved parcel located on the western side of Bald Hill Road" (Applicants' Attachment 12, Letter of October 16, 2019 to First Selectman of Town of Kent, at 2).

Furthermore, the Applicants describe Site A as, "an unimproved vacant parcel", but do not cite areas of environmental concern, related testing, or similar due diligence as to potential contaminants on that site (see Applicants' Attachment 3). In fact, the Applicants represent that, "neither Site A nor Site B will have a significant adverse environmental impact." (Applicants'

Narrative at 18). Additionally, the Applicants' Site Evaluation Report (Applicants' Attachment 4), makes no mention of the presence of any areas of environmental concern (e.g., apparent burial pits, empty barrels or other potential contamination) scattered throughout Site A.

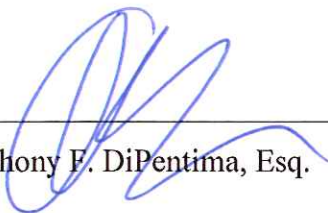
The lack of such information, especially in the absence of a Phase 1 environmental review and Phase 2 environmental testing, is a material omission in light of the Applicants' proposal to disturb 15,500 sq. ft. of Site A (roughly 18% of the 1.99 acre lot comprising Site A) (see Applicants' Attachments 4 and 7). Applicants' Attachment 7 specifically discusses the 15,500 sq. ft. of disturbance at Site A and states that the "remaining land will remain undisturbed". Despite a lease with the now-deceased former owner of Site A executed in 2012 (See Town of Kent Land Records, Vol. 186, P. 683) and a subsequent purchase of Site A in September 2019 (See Town of Kent Land Records, Vol. 186, P. 683), the Applicants, either through negligence or lack of due diligence prior to its purchase of Site A, fails to mention to the Siting Council of evidence of areas of environmental concern on Site A, including apparent burial pits, oil barrels, and other environmental hazards.

The omissions described above form part of a course of conduct by the Applicants leaving out, confusing, or misstating information important to the Council's review of this Application. In addition to the omission of areas of environmental concern on Site A, the Applicants in their Responses to Siting Council Interrogatories (Set One, Question A21) admit to having "discovered that the information relative to photographs 12 and 13 were inadvertently transposed resulting in the orientation and distance descriptions to be incorrect as originally presented". Correct and complete information regarding such orientation is vital as it relates to the impact of a potential Tower on Site A and its proximity to the abutting property owner, Peter Fitzpatrick's, house and boundary lines. In sum, a complete, correct, and candid application is vital to the due process of all parties and intervenors in this Siting Council matter. To date, the Applicants have not provided that.

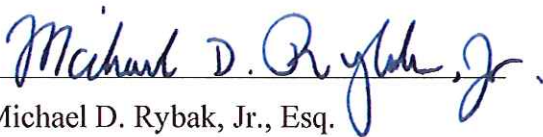
Lastly, the Applicants, in their April 24, 2020 Interrogatories to the Bald Hill Road Neighbors, Question 3, ask that the Neighbors, "Provide information or details regarding any materials or other items that were deposited or left on the Site A property when it was accessed for the photographs in Exhibit 1 of the Bald Hill Road Neighbors April 17, 2020 Interrogatories...", which baselessly intimates and infers that said materials might have been placed on Site A by any of the Bald Hill Neighbors.

For the aforementioned reasons, the Bald Hill Road Neighbors request that the Siting Council enjoin the Applicants from performing any debris removal or site remediation prior to an inspection of Site A by the Siting Council and any relevant parties or intervenors.

Respectfully Submitted on Behalf of the Bald Hill Neighbors,

By  _____
Anthony F. DiPentima, Esq.

4/27/20
_____ Date

By  _____
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CERTIFICATE OF SERVICE

I hereby certify that a true, original copy, and fifteen (15) photocopies of the foregoing were placed in the U.S. Mail on this 21st day of April 2020 and addressed to:

Ms. Melanie Bachman
Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

I further certify that an electronic copy of the foregoing was sent to:

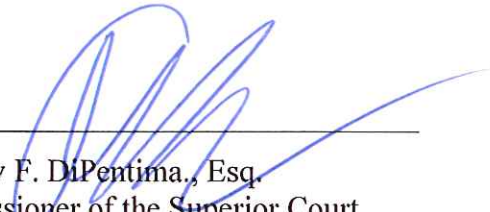
siting.council@ct.gov

And I certify that electronic copies of the foregoing were sent to:

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