

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

**APPLICATION OF HOMELAND TOWERS, LLC
AND NEW CINGULAR WIRELESS PCS, LLC d/b/a
AT&T FOR A CERTIFICATE OF ENVIRONMENTAL
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

August 31, 2020

**HOMELAND TOWERS LLC AND NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T
MOTION TO STRIKE THE TESTIMONY OF
ROBERT TODD POWELL AND PAUL ELCONIN
SUBMITTED BY INTERVENOR PLANNED DEVELOPMENT ALLIANCE
And
THE TESTIMONY OF MARLEEN DONNENFELD
SUBMITTED BY INTERVENOR SOUTH SPECTACLE LAKESIDE RESIDENTS**

Applicants, Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T move to strike the testimony of Robert Todd Powell and Paul Elconin submitted by the intervenor Planned Development Alliance (“PDA”) as well as the testimony of Marleen Donnenfeld submitted by the intervenor South Spectacle Lakeside Residents for the reasons fully set forth herein.

1. The visual materials and information submitted by Robert Todd Powell are misleading and irrelevant

As the Council pointed out at the August 11, 2020 continued evidentiary hearing in this proceeding, the visual materials included with Mr. Powell’s pre-filed testimony was not accompanied by any information to establish the relevancy or trustworthiness of the testimony. PDA Pre-filed Testimony of Robert (Todd) Powell with attachments, dated July 16, 2020. Indeed, Mr. Powell could not provide any details or information when asked about the coordinates or locations of the PDA balloon floats; the elevations at each balloon float location, the duration of the PDA balloon float, the locations and distances of the photos submitted from the balloon float locations; and the specific lens used for each photo. Tr. 8/11/20, 1pm, pp. 282-287. When asked about the location and photo lens for the photo in Exhibit G, Mr. Powell could not provide a specific location and admitted that the photo was taken with a zoom lens. Tr. 8/11/20, 1pm, pp. 285-287. Accordingly, the Council requested details of the PDA balloon float to be submitted in a late-filed exhibit. Council Memorandum Regarding September 3, 2020 Hearing, 08/18/20.

The Applicants respectfully submit that the additional information regarding the PDA balloon float submitted by PDA on August 27, 2020 (“PDA Late-Filed Exhibit”) is wholly inadequate to establish relevancy and demonstrates that the PDA balloon float photos are misleading and accurate and as such, must be disregarded in this proceeding.

First, the PDA Late-Filed Exhibit was non-responsive to the information requested. No information is provided regarding the distance from each of the balloon locations to the specified coordinates of the proposed Site A and Site B locations; or the distance from each of the balloon locations. No information is provided to determine the accurate scale of the maps provided. The testimony contains no data or narrative describing the impacts on visibility from floating the balloons at locations other than the coordinate-specified proposed locations of Site A and Site B.

Second, Mr. Powell admits that Photo G, the view from Lake Waramaug is misleading as it was taken with a 300mm lens, which magnifies the view by a factor of six.

Third, Mr. Powell acknowledges that for their balloon float and photos, they relied on the advice of their consultant, David Maxson, who has no experience or expertise in conducting visual analyses. PDA Affidavit of David P. Maxson, Attachment B, 7/15/20.

Simply stated, Mr. Powell’s testimony does not in any way accurately depict the visibility of either Site proposed in this proceeding. Thus, his testimony is untrustworthy and irrelevant and must be disregarded.

2. Paul Elconin’s and Marleen Donnenfeld’s testimonies are based on the irrelevant testimony of Robert Todd Powell

The testimony of Paul Elconin regarding the visual impacts of the facilities proposed in this proceeding is based on the PDA balloon float and photos, which as demonstrated above, do not accurately depict the visibility of either proposed facility. Mr. Elconin expressed concern about visibility from viewpoints that will not have views of either proposed Site as demonstrated in the Applicants’ expert visual analysis. Application Attachment 10.

Ms. Donnenfeld confirmed at the August 11, 2020 continued evidentiary hearing that the photographs she refers to in her testimony as the basis for her testimony are Mr. Powell’s photographs. Tr. 8/11/20, 1 pm, p.299.

Given that Mr. Elconin’s testimony and Ms. Donnenfeld’s testimony both rely on the PDA balloon float and photos, which not accurate and in fact misleading, their respective testimonies are not relevant and should not be considered.

CONCLUSION

For the reasons set forth above, the Applicants respectfully submit that the testimony of PDA intervenors Robert Todd Powell and Paul Elconin as well as the testimony of South Spectacle Lakeside Residents intervenor Marleen Donnenfeld should be excluded as irrelevant in this proceeding pursuant to Section 4-178(1) of the Uniform Administrative Procedure Act.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lucia Chiochio". The signature is written in a cursive, flowing style.

Lucia Chiochio, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
(914) 761-1300
Attorneys for the Applicants

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing was sent electronically to the Connecticut Siting Council and to the service list below with one hard copy sent to the Connecticut Siting Council via first class mail in accordance with Connecticut Siting Council directives:

Keith R. Ainsworth, Esq.
Law Offices of Keith R. Ainsworth, Esq.
51 Elm Street, Suite 201
New Haven, CT 06510-2049

Anthony F. DiPentima, Esq.
Michael D. Rybak, Jr., Esq.
Guion, Stevens & Rybak, LLP
93 West Street
P.O. Box 338
Litchfield, CT 06759

Daniel E. Casagrande, Esq.
Cramer & Anderson, LLP
30 Main Street, Suite 204
Danbury, CT 06810
(203) 744-1234
dcasagrande@crameranderson.com

Daniel S. Rosemark, Esq.
Rosemark Law, LLC
100 Mill Plain Rd., Third Floor
Danbury, CT 06811
(203) 297-8574
daniel@rosemark.law

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Lucia Chiochio
Cuddy & Feder LLP
445 Hamilton Ave, 14th Floor
White Plains, NY 10601
(914)-761-1300
Attorneys for the Applicants

cc: Homeland Towers; AT&T; APT; C Squared