



STATE OF CONNECTICUT  
*CONNECTICUT SITING COUNCIL*

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**VIA ELECTRONIC MAIL**

July 30, 2020

Anthony F. DiPentima, Esq.  
Guion, Stevens and Rybak, LLP  
93 West Street, P.O. Box 338  
Litchfield, CT 06759  
[afd@litchlaw.com](mailto:afd@litchlaw.com)

**RE: Freedom of Information Act Request, dated July 29, 2020**  
**DOCKET NO. 488** – Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at one of two sites: Kent Tax Assessor ID #M10, Block 22, Lot 38 Bald Hill Road or 93 Richards Road, Kent, Connecticut.

Dear Attorney DiPentima:

The Connecticut Siting Council (Council) is in receipt of your correspondence dated July 30, 2020 pursuant to the Freedom of Information Act (FOIA) requesting one complete copy of the Phase I Environmental Site Assessment for Site A at Bald Hill Road in Kent (Phase I) related to the above-referenced pending proceeding in which you represent the party, Bald Hill Road Neighbors (BHRN).

In compliance with the Council's Procedures for Filing a Protective Order and the Council's May 26, 2020 order to "submit the full Phase I, with or without a motion for a protective order, and have a witness available for cross examination on the full Phase I," on July 16, 2020, the applicants' submitted into the record of this pending proceeding a Motion for Protective Order (Motion) related to the Phase I, a hard copy of the unredacted Phase I in a sealed envelope and a password-protected unredacted electronic copy of the Phase I. As a party representative in this matter, you were provided a copy of the applicants' Motion and notice of the submission of the unredacted Phase I to the Council. On July 17, 2020, BHRN filed an Objection to the Applicants' Motion for Protective Order and a Motion to Compel (Objection).

During the evidentiary hearing session held on July 23, 2020, over the Objection of BHRN, the Council voted to grant the applicants' Motion for Protective Order related to the full Phase I. The Council also voted to hold a closed evidentiary hearing session specifically limited to the full Phase I on September 3, 2020. All parties and intervenors to the above-referenced pending proceeding, including their members, representatives and witnesses, who have executed the Non-Disclosure Agreement (NDA) associated with the Protective Order shall have access to the protected Phase I prior to the September 3, 2020 closed evidentiary hearing session and an opportunity for cross examination of the applicants' witness on the protected Phase I during the September 3, 2020 closed evidentiary hearing session.

To date, no member, representative or witness of BHRN has submitted an executed NDA to the Council. However, on July 28, 2020, BHRN filed an Objection to Protective Order and Non-Disclosure Agreement and a Motion to Implead a Necessary and Indispensable Party (2<sup>nd</sup> Objection). This 2<sup>nd</sup> Objection reiterates BHRN's opposition to the Protective Order, requests the record owner of the Site A property be brought into the proceeding and suggests party representatives are precluded from disclosing the contents of the Phase I to their clients.<sup>1</sup>

The 2<sup>nd</sup> Objection will be taken up by the Council during the continued evidentiary hearing session scheduled for August 11, 2020.

Please be advised that the Phase I is subject to a Protective Order and is exempt from disclosure under § 1-210(b)(5)(B) of the FOIA as "commercial or financial information given in confidence, not required by statute."

The Protective Order is currently in effect. In the event that the Council's disposition of BHRN's 2<sup>nd</sup> Objection on August 11, 2020 modifies the Protective Order in any manner, the parties and intervenors to the proceeding will be notified and fully informed of any modifications at that time.

Thank you.

Sincerely,

*s/Melanie A. Bachman*

Melanie A. Bachman  
Executive Director

MAB/laf

cc: Council Members  
Service List dated July 24, 2020

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<sup>1</sup> *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn. 669, 732 (2014) ("The plaintiffs cannot make a tactical decision not to review the documents on the assumption that doing so would be fruitless, and then, when it becomes apparent that doing so would not have been fruitless, claim that they were harmed by the Council's orders rather than their tactical choice.")

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Connecticut Siting Council  
Custodian of Records  
Ten Franklin Square  
New Britain, CT 06051

July 30, 2020

Pursuant to the Connecticut Freedom of Information Act ("FOIA") (General Statutes § 1-200 *et seq.*), I request one complete copy of the following public record:

-Phase 1 Environmental Site Assessment as to proposed Site A (Bald Hill Road, Kent, Connecticut).

Upon information and belief, the Connecticut Siting Council received said record from Applicants AT&T and Homeland Towers in Docket No. 488 on or about July 16, 2020.

Under FOIA, "public records or files" means, "any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method." (General Statutes § 1-200(5)). This includes any applicable electronic as well as tangible material as to the recorded requested.

As a general rule, FOIA provides, "except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void." (General Statutes § 1-210(a)).

If your agency finds that an otherwise public record, in its entirety or any portion thereof, is exempt from disclosure, you should identify the specific FOIA exemption that you assert applies to the material withheld and cite the subsection of FOIA in support thereof.

I address this request to you in belief that you are custodian of this public record. If you are not, please forward this request to the proper custodian of documents and inform me who the proper custodian is at your agency.

If there are any fees for searching or copying these records, we will pay those costs up to \$50. If the cost of production is to exceed \$50, please notify me before incurring such costs and provide me with an estimate of what such cost above \$50 will be.

Our firm represents parties and intervenors the "Bald Hill Road Neighbors" on Docket 488. If you have questions about this request, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized initial 'A' followed by a long, sweeping horizontal line that extends to the right.

Anthony F. DiPentima, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that a true, original copy, of the foregoing were placed in the U.S. Mail on this 30th day of July 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](mailto:siting.council@ct.gov)

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

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Anthony F. DiPentima., Esq.  
Commissioner of the Superior Court