

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: : DOCKET NO. 500
ARX WIRELESS INFRASTRUCTURE, LLC :
APPLICATION FOR A CERTIFICATE OF :
ENVIRONMENTAL COMPATIBILITY AND :
PUBLIC NEED FOR THE CONSTRUCTION, :
MAINTENANCE AND OPERATION OF A :
WIRELESS TELECOMMUNICATIONS :
FACILITY LOCATED AT 1061-1063 :
BOSTON POST ROAD, MILFORD, : September 16, 2021
CONNECTICUT

CITY OF MILFORD EXCEPTIONS TO DRAFT FINDINGS OF FACT

The City of Milford respectfully submits these exceptions and clarifications to the “Draft Findings of Fact” dated September 3, 2021 and issued by the Council on September 9, 2021. The numbering below corresponds to the numbering in that document, and the language in question is underlined.

Draft FOF 5:

5. *The purpose of the proposed facility is to replace Cellco’s, and AT&T’s existing facilities located on the roof of the Howard Johnson Hotel which is to be demolished as part of a redevelopment project. (Applicant 1, pp. 2, 8, 16; Tr. 1, p. 35, 69, 155; Council Administrative Notice Item Nos. 36, 40, 42).*
 - a. The timing of demolition and/or redevelopment is speculative, and the existing facilities will operate for the foreseeable future. (See City Proposed Findings of Fact (“PFOF”) 5-7 with record citations.)

Draft FOF 34:

34. *On March 26, 2021, Arx responded to the City's request for more information and explained that the City's suggested alternative locations were not viable options for the proposed facility. (Applicant 1, Attachment M; Applicant 3)*

- a. The statement that Arx “*responded*” and “*explained*” is incorrect insofar as Arx’s letter was non-responsive in material respects. (*See* City PFOF 43, 46-48.)
- b. “*Viable*” is ambiguous as written. It is unclear whether the FOF means (i) able to meet coverage objectives (viable), (ii) owner interest in building at site (available), or (iii) public need outweighs public impacts (suitable).
- c. Arx’s letter inaccurately stated that 1201 Boston Post Road (Mall) was not viable from a coverage perspective. The site is viable. (*See* City PFOF 35.)
- d. Arx’s letter incorrectly alleged that the owner of 1052 Boston Post Road (former hotel) was not interested – however, Arx refused to utilize the phone and email contact information supplied by the City until after the Application was already filed. (*See* City PFOF 46.)
- e. Arx’s letter incorrectly alleged that the owner of 1201 Boston Post Road (Mall) was not interested – however, Arx refused to utilize the phone and email contact information supplied by the City. (*See* City PFOF 47.)
- f. Arx’s letter incorrectly alleged that the owner of 10 Leighton Road (Schick) was not interested – however, Arx evidently manipulated its investigation of the site in order to reach Arx’s predetermined conclusion. (*See* City PFOF 48.)

Draft FOF 35:

35. *On April 28, 2021, in response to the Council’s April 1, 2021 request under CGS § 16-50gg, the City submitted a Memorandum Regarding Location Preferences and Siting Criteria (City Memorandum) to the Council. (Record)*

- a. The FOF does not identify the City's locations preferences or the grounds therefor.
- b. The City objected to siting a tower in a residential zone so near to single-family homes.
- c. The City noted that the proposal was in conflict with tower height limitations in the Milford Zoning Regulations.
- d. The City objected that Arx did not conduct a good-faith consultation with the City, which was the City's statutory right.
- e. The City objected that Arx's did not conduct a good-faith investigation into other potential siting options.
- f. The City clarified that it did not object to a replacement solution to the existing facilities and remained interested in cooperatively finding a more suitable location.

Draft FOF 36:

36. On May 4, 2021, Arx submitted a response to the City Memorandum. It provided more information related to the proposed site and the consideration of alternative sites suggested by the City. (Record, Applicant 3)

- a. The FOF does not identify what “*more information*” was provided.
- b. The FOF does not clarify whether or how the “*more information*” was material.
- c. The FOF omits mention of Arx’s admission that its proposal was in conflict with tower height limitations in the Milford Zoning Regulations. (See ARX Supp. to Section VII(C) of App. Narrative [ARX II-B-4].)
- d. Arx’s “consideration of alternative sites” was manipulated to reach its predetermined conclusion, including by not utilizing contact information for the 1052 Boston Post Road (former hotel) and 1201 Boston Post Road (Mall) sites, and failing to correct assumptions of

the real estate agent at the 10 Leighton Road (Schick) site that Arx knew to be unfounded.

(See City PFOF 46-48.)

Draft FOF 37:

37. *On May 4, 2021, the Council received comments from the Milford Legislative Delegation in opposition to the proposed site requesting consideration of alternative sites. (Record)*

- a. The FOF does not identify the Milford Legislative Delegation's grounds for opposing the Application.

Draft FOF 57:

57. *The Hotel has been out of business for over a year and the building is to be demolished as part of a redevelopment project. The demolition of the Hotel would require Cellco to decommission its existing facility on the roof. Cellco has not been able to come to an agreement with the property owner regarding a replacement facility. (Applicant 1, pp. 2, 8, 16, 17; Attachment F; Cellco 2, response 7)*

- a. The timing of demolition and/or redevelopment is speculative, and the existing facilities will operate for the foreseeable future. (See City PFOF 5-7.)
- b. Cellco abandoned talks with the property owner because Arx came along, not because the site is unavailable. (See City PFOF 5.)

Draft FOF 59:

59. *The temporary tower was not installed. Cellco indicates the temporary tower approved by the Council for use by the three carriers to provide continuity of existing wireless coverage is not currently needed and the proposed tower would replace Cellco's existing facility at 1052 Boston Post Road. (Cellco 2, response 7)*

- a. The FOF omits the reason that the temporary tower was not installed, namely, because the building on which the existing facilities are located was not demolished, and the carriers

were in discussion with the property owner regarding a permanent placement at the site.

(Hrg. Tr. 32:23-34:19; 105:3-106:1.)

Draft FOF 60:

60. Under Cellco's lease with the current property owner of 1052 Boston Post Road, the term would automatically renew on December 31, 2024 unless Cellco or the property owner issue a notice of cancellation. (Cellco 6, response 15c)

- a. The FOF does not clarify that the current lease term will last for more than three years, until December 31, 2024, at a minimum. (See City PEOF 6.)
- b. The FOF does not clarify that Cellco has a right to cooperative relocation at the current property under the lease. (See City PEOF 6.)

Draft FOF 61:

61. Commuters and residents within the Interstate-95 (I-95) corridor, Route 1/ Boston Post Road, New Haven Road, Cherry Street and the residential neighborhoods in the vicinity of these roads would be impacted by the loss of coverage and wireless service as a result of the decommissioning of Cellco's existing facility at 1052 Boston Post Road. (Applicant 1, p. 8; Applicant 11, p. 7)

- a. The decommissioning remains speculative and will not occur for the foreseeable future. (See PEOF 7.) It would be accurate to state "in the event of the decommissioning" or "as a result of the potential decommissioning."

Draft FOF 75:

75. The proposed facility would replace the resulting coverage loss and restore connectivity to the adjacent sites within AT&T's existing network. (Applicant 1, Attachment E, p. 7: Tr. 1, p. 197; AT&T 3, response 3; AT&T 5, response 9, 10. and 13)

- a. The FOF does not clarify that coverage loss is speculative and will not occur for the foreseeable future. (See PFOF 3-7.)
- b. For the foreseeable future, there is not any coverage loss to “restore.” (See PFOF 3-4.)

Draft FOF 84:

84. After determining there were no suitable structures within the search area, AT&T and Arx searched for properties suitable for tower development. Arx investigated 9 sites, one of which was selected for site development. AT&T and Verizon agreed to support an application by Arx to construct a new facility in this location to provide the required coverage. The 9 sites investigated are as follows: [. . .]

- a. “*Suitable*” is ambiguous as written. It is unclear whether the FOF means (i) able to meet coverage objectives (viable), (ii) owner interest in building at site (available), or (iii) public need outweighs public impacts (suitable).
- b. AT&T’s search was separate from Arx’s. At the time that Arx presented its proposal, AT&T was focused on remaining at 1052 Boston Post Road. (Hrg. Tr. 197:23-199:11.)
- c. “*Required*” incorrectly implies that there is an existing coverage gap. There is no existing coverage gap. (See PFOF 3-7.)

Draft FOF 84(b):

84(b) 1052 Boston Post Road, Milford CT (former Howard Johnson Hotel): 8.3 acre parcel within Milford’s Interchange Commercial District. Arx sent correspondence to the property owner indicating interest to develop a new tower within the property. Arx has received no response as of the close of the evidentiary record of this proceeding; [. . .]

- a. The statement “*Arx has received no response . . .*” is incorrect. Per the record:
 - The property owner has indicated interest in hosting a tower, including in conversations with Verizon and AT&T. (See City PFOF 46(f) through (i).)

- Arx did not utilize contact information provided by the City (on October 27, 2020) until after Arx had filed the Application and the City identified this failure. (See City PFOF 46(a) through (e).)
- Arx has received responses indicating the owner's interest, and the conversation is not complete due at least in part to the fact that Arx did not begin to investigate the owner's interest (via contact information provided by the City) until after Arx had already filed the Application and the City alerted the Council to Arx's failure. (See City PFOF 46.)

Draft FOF 84(e):

84(e) 1201 Boston Post Road, Milford, CT (Connecticut Post Mall): 75 acre commercially zoned parcel. The property owner was not interested in a potential lease. The roof of the building would not satisfy Celco's coverage needs however a 120 foot tower site located on the property closer to Verizon's target might satisfy the coverage needs of both carriers; [. . .]

- a. The statement "*The property owner was not interested in a potential lease*" is incorrect.

(See City PFOF 47.) Per the record:

- The Mall indicated its interest in an email from the Mall's designee for telecommunications infrastructure matters (Christopher Leverone). (See City PFOF 47.)
- The City provided that email and Mr. Leverone's phone number and email address to Arx on October 27, 2020. (See City PFOF 47.)
- Arx deliberately refused to utilize that contact information from October 27, 2020 to the present. (See City PFOF 47.)

- Cellco's Anthony Befera utilized that contact information between the first and second hearings in this matter. In that conversation, the designee confirmed the property owner's interest in discussing a tower at the site. (See City PFOF 47.)

b. The statement "*might satisfy the coverage needs of both carriers*" is only partially accurate.

Per the record:

- A 120-foot tower on the site would satisfy Cellco's coverage needs. (See City PFOF 35.)
- AT&T failed to forthrightly respond to the questions of the Council and the City regarding coverage capabilities of a tower at the southerly end of the property. (See City PFOF 35(g) through (j).)

Draft FOF 84(h):

84(h) 10 Leighton Road, Milford, CT: a 2 1.5 acre parcel zoned as light Industrial. The property owner was not interested in a potential lease; [. . .]

a. The statement "*The property owner was not interested in a potential lease*" is incorrect. (See City PFOF 36(e) and 48.) Per the record:

- The property owner's agent indicated owner interest. (See City PFOF 48.)
- During two email conversations in 2020 and 2021, the property owner indicated that it was afraid that leasing space for a tower would create "noise created in the community." (See City PFOF 48.)
- Arx evidently failed to notify the agent that this fear was unfounded. Meanwhile, Arx knew that the community's objections were to Arx's proposed site, specifically, and that the Schick site would be supported by the City as preferable for the local community. (See City PFOF 48.)

Draft FOF 88 (which is a Table of alternative sites):

- a. The row titled “*1052 Boston Post Road (Existing or Future Howard Johnson Hotel building)*” incorrectly states that the carriers rejected the site. Per the record:
 - Cellco did not “reject” the site. Cellco rejected certain potential designs at the site, but was in conversation with the property owner that were abandoned when Arx appeared with its proposal. (*See* City PFOF 34.)
 - AT&T did not “reject” the site. AT&T rejected certain potential designs at the site, but was in conversation with the property owner that were abandoned when Arx appeared with its proposal. (*See* City PFOF 34.)
- b. The row titled “*1201 Boston Post Road (Connecticut Post Mall)*” incorrectly states that the carriers rejected the site. Per the record:
 - Cellco did not “reject” the site. Cellco rejected a rooftop facility but confirmed that a tower would work. (*See* City PFOF 35.)
 - AT&T did not “reject” the site. AT&T rejected a rooftop facility, and failed to forthrightly respond to the questions of the Council and the City regarding coverage capabilities of a tower at the southwest end of the property. (*See* City PFOF 35.)
- c. The row titled “*1201 Boston Post Road (Connecticut Post Mall)*” incorrectly states “*insufficient coverage to the SW if located in the Southerly parking lot*” under AT&T’s column. Per the record:
 - A&T failed to forthrightly respond to the questions of the Council and the City regarding coverage capabilities of a tower at the southwest end of the property. (*See* City PFOF 35.)

- The coverage objective could be met by optimizing the height of the tower and the orientation (azimuth) of the antennas, as confirmed by Cellco’s engineer. (Hrg. Tr. 211:4-216:17, and 181:7-187:1.)

d. The row titled “*1201 Boston Post Road (Connecticut Post Mall)*” incorrectly states “*property owner not interested*” under each carrier’s column. Per the record:

- The Mall indicated its interest in an email from the Mall’s designee for telecommunications infrastructure matters (Christopher Leverone). (See City PFOF 47.)
- The City provided that email and Mr. Leverone’s phone number and email address to Arx on October 27, 2020. (See City PFOF 47.)
- Arx deliberately refused to utilize that contact information from October 27, 2020 to the present. (See City PFOF 47.)
- Cellco’s Anthony Befera utilized that contact information between the first and second hearings in this matter. In that conversation, the designee confirmed the property owner’s interest in discussing a tower at the site. (See City PFOF 47.)

e. The row titled “*10 Leighton Road (Schick Manufacturing)*” incorrectly states “*property owner not interested*” under each carrier’s column. Per the record:

- The property owner’s agent indicated owner interest. (See City PFOF 48.)
- During two email conversations in 2020 and 2021, the property owner indicated that it was afraid that leasing space for a tower would create “noise created in the community.” (See City PFOF 48.)
- Arx evidently failed to notify the agent that this fear was unfounded. Meanwhile, Arx knew that the community’s objections were to Arx’s proposed site, specifically, and

that the Schick site would be supported by the City as preferable for the local community. (See City PFOF 48.)

f. The row titled “*10 Leighton Road (Schick Manufacturing)*” incorrectly states “*insufficient coverage to the SW*” under AT&T’s column. Per the record:

- A&T failed to forthrightly respond to the questions of the Council and the City regarding coverage capabilities of a tower at the south end of the property. (See City PFOF 36.)
- The coverage objective could be met by utilizing the same tower height analyzed by Verizon and adjusting the orientation (azimuth) of the antennas. (See City PFOF 47; *see also* Hrg. Tr. 217:4-218:12.)

Draft FOF 91:

91. *The originally proposed facility would be located within a residentially zoned portion of the host parcel. During the proceedings Arx provided site plans and a description of an alternate location for the proposed facility within the ICD zoned portion of the host parcel. (See figure 5). (Applicant 12, Exhibit #4 l; Applicant 14, pp. 1-2)*

- a. The originally proposed facility is in conflict with tower height limitations in the Milford Zoning Regulations. (See City PFOF 18.)
- b. Arx has admitted this conflict. (See ARX Supp. to Section VII(C) of App. Narrative [ARX II-B-4J].)

Additional Omissions:

The City also respectfully submits that all the facts stated in its Proposed Findings of Fact are material to the Council's decision in this case. Some have been identified above. Other notable omissions from the Council's Draft Findings of Fact include, but are not limited to, the following facts from the record:

1. There is no existing wireless coverage gap. (*See* City PFOF 1.)
2. The Proposed Site is only 170 feet from a single-family home in the Home Acres Avenue neighborhood. There are six houses within 300 feet, and ten houses within 452 feet. (*See* City PFOF 11.)
3. Arx's proposal to shift the site occurred mid-hearing, and Arx did not consult with the City prior to proposing this change, and the public was deprived of the opportunity to comment. (*See* City PFOF 22-23, 31.)
4. The base of the shifted tower would be only 12 feet 6 inches across the zoning district line into the ICD portion of the 1063 Boston Post Road property. (*See* City PFOF 25.)
5. The Shifted Site proposal does not redress the City's objections or materially resolve the adverse impacts on the neighborhood that the Proposed Tower would cause. (*See* City PFOF 28.)
6. In the Shifted Site proposal, the tower would still be only 275 feet from the nearest single-family home, less than 400 feet from six houses, less than 500 feet from ten houses (including house number 55), and less than one-tenth of a mile from twelve houses. (*See* City PFOF 28(b).)
7. Arx has given contradictory testimony regarding its site search and investigation of alternative sites. (*See* City PFOF 38-40.)

8. Arx has not consulted with the City in good faith or adequately investigated alternatives due to its overriding business motive to build at the site that it controls. (See City PFOF 42-48.)
9. Arx's assertions regarding its investigation of alternative sites are not credible. (See City PFOF 37-48.)

Respectfully submitted,

CITY OF MILFORD

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically mailed to the following service list on September 16, 2021:

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