

**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

OCTOBER 8, 2021

MOTION TO DISMISS – FAILURE OF MANDATORY NOTICE

WNNET, Intervenor in these proceedings, hereby moves the Council to dismiss these proceedings on the grounds that the Applicant failed to provide adequate notice of the public hearing conducted on July 13, 2021 as required under RCSA §16-50j-21(a)(3) which provides:

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. (emphasis added)

Applicant submitted an affidavit demonstrating on its face that it had not complied with this provision, having posted the sign on July 7th for the July 13th hearing. (Affidavit of Brian Gaudet July 9, 2021, ¶7) This was not an immaterial omission in that the instructions for participation in the public hearing required any person who desired to file as an intervenor do so on or before July 6th. See, “*Pre-Remote Hearing Conference: Procedure for Remote Hearing of July 13, 2021*”.

Under Connecticut law, inadequate public notice implicates subject matter jurisdiction of the board; it cannot be waived; it cannot be granted by consent. *Slagle v. Zoning Board of Appeals*, 144 Conn. 693. A defective and inadequate notice renders a board's

or commission's actions null and void. *Cocivi v. Plan & Zoning Commission*, 20 Conn.App. 705, 707, 570 A.2d 226, *cert. denied*, 214 Conn. 808, 573 A.2d 319 (1990) (defect not cured by a second, correct notice).

Specifically, the failure to follow the requirements of sign posting deprives the agency of jurisdiction. *Wright v. Zoning Bd. of Appeals of Town of New Fairfield*, 391 A.2d 146, 174 Conn. 488 (Conn. 1978)(failure to follow requirements of sign posting required by ordinance jurisdictional defect).

Wherefore, WNNET requests the Council dismiss this proceeding.

Respectfully Submitted,

WNNET,

By *Keith R. Ainsworth*

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 8th day of October 2021 and addressed to:

Ms. Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (15 orig, plus 1 electronic) (US Mail/electronic) siting.council@ct.gov .

And electronic copies to the service list as attached:

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