

**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

NOVEMBER 18, 2021

POST-HEARING BRIEF OF WNNET

WNNET respectfully requests the Council exercise its discretion to deny this Application without prejudice and to require the Applicant to more adequately review available alternatives – including an existing police radio tower - on Meetinghouse Road to the proposed siting of a wireless communications tower in the center of residential neighborhood.

While WNNET recognizes the salutary benefits of wireless coverage and capacity in Woodbridge, there are viable alternatives to the proposed facility which pose less visual impact than the option proposed in this docket. What appears to have been lost in these proceedings is the sense of balance. While the Applicant has demonstrated that it can cover a portion of Woodbridge from the Newton Road site, it is also readily apparent that whatever solution is chosen, it will not be the last facility in Woodbridge. But PUESA does not simply require an applicant to make a showing that a facility can work, but it is incumbent upon the Applicant to also demonstrate and the Council to determine (1) whether balance has been achieved between the proposed facility and the public trust in views and (2) whether there is a feasible alternative that can provide coverage with less impact to scenic views and private property values.¹

¹ Property value impacts are an indicator of the relative impact on scenic resources. *Westport v. CT Siting Council, Town of Westport v. Connecticut Siting Council*, 47 Conn. Supp. 382, 407,797 A.2d 655, 670 (Super. Ct. 2001), *affd*, 260 Conn. 266, 796 A.2d 510 (2002).

A. The Council is Bound to Consider and Balance Viewshed Impacts As Indicated by Property Owner Testimony of Property Value Impact

While the Council continues to admonish the public in its opening statements to public hearings “*Please be advised that the Council's project evaluation criteria under the statute does not include the consideration of property values*”², the Connecticut Supreme Court has ruled that this is not so.

Pursuant to §16-50j-1 of The Public Utility Environmental Standards Act (PUESA), Title 16, Chapter 277a, the Council is charged with:

(1) ***balancing*** the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and ***to minimize damage to scenic***, historic, and recreational ***values***;
(emphasis added)

In *Westport v. Connecticut Siting Council*, the Connecticut Supreme Court held that the Council must consider that real property value impacts are an indicator of viewshed impact:

"The town also appeals on the ground that the council did not take into account the effect of the location of the tower on real estate values at or around the approved site. Under § 16--50p, as quoted previously, the council is not obliged to take into account the status of property values directly. ***The council must make use of property values in connection with its analysis of the environmental, scenic, historical and recreational values.***"
[emphasis added]

(*Town of Westport v. Connecticut Siting Council*, 47 Conn. Supp. 382, 407,797 A.2d 655, 670 (Super. Ct. 2001), *affd*, 260 Conn. 266, 796 A.2d 510 (2002)).

² See, e.g. Transcript July 13, 2021 at p.7 lines 22-24.

It is significant then that at the single public hearing held on July 13, 2021, that, despite a failure to post the hearing notice sign in a timely fashion as mandated by Council regulation RCSA §16-50j-21(a)(3)³, that ***about a hundred people attempted to join the hearing and every single speaker spoke against the tower and not one spoke in favor***⁴.

Such one-sided testimony surely must impress the Council that the proposed facility location does not meet with public approval and that careful consideration of alternatives is required.

B. There Exists A Viable Alternative

In this docket there is ample and sufficient evidence that there exists at least one available, feasible alternative facility location of lesser impact – the town of Woodbridge public works site at 15 Meetinghouse Lane and its sister site at 4 Meetinghouse Lane where there already exists a 120ft radio tower.

The Applicant and the Council appear to focus solely on whether the Newton Road site will work, and struggled mightily⁵ to avoid acceptance that there could be an alternative despite extensive efforts by WNNET to provide photographic evidence, coverage modeling and actual field testing showing, that due to the particular terrain in this part of Woodbridge, the public works site on Meetinghouse Lane provides very

³ §16-50j-21(a)(3)- 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)

⁴ Even the Soufrines who own the host property and who stand to benefit from the lease payments from the Applicant declined to make any comment whatsoever. (Transcript 07/13/21 p.123 lines 18-25).

⁵ The Council Chairman went so far as to say “So I just want to make sure that we beat up 4 Meetinghouse Lane pretty well here, because that seems to be a very good alternative.” (Transcript 8/31/21 p.68-69)

nearly the same coverage north of Newton Road and better PCS capacity near the high school and town center with far less impact despite being 1 mile south of Newton Road.⁶

If all the Applicant had to do was to show that a proposed facility provides coverage within their objective area, there would be no need for hearings. Short of burying the transmitter underground, almost any tower will provide coverage and capacity near its location. Yet, for all the Applicant's efforts, somehow, they missed the Meetinghouse Road locations at the public works facility and an existing 120ft tower at the police station at 4 Meetinghouse Lane which they did not explore during their pre-application investigations.

WNNET, an *ad hoc* voluntary association of citizens, heroically marshaled substantial evidence that the Applicant tried mightily to undermine:

1. That there is existing 120ft radio tower at the police station which could be upgraded or replaced to host the Applicant's equipment. (See Isotrope Report 8/31/21 hearing at p.4 "*the fact that this tower already exists makes it a sensible location for upgrading the tower structure to provide commercial services as well as public safety communications.*")

2. That the coverage modeling for Meetinghouse Lane showed comparable coverage to the proposed facility with material additional coverage on roads. Comparing the coverage projections of Newton Road and Meetinghouse shows barely perceptible differences:

⁶ Isotrope Late File Exhibit 9/13/21 – Fig 14 and Fig 15 a real-world drive test showing nearly identical coverage to Newton Road from Meetinghouse Lane.

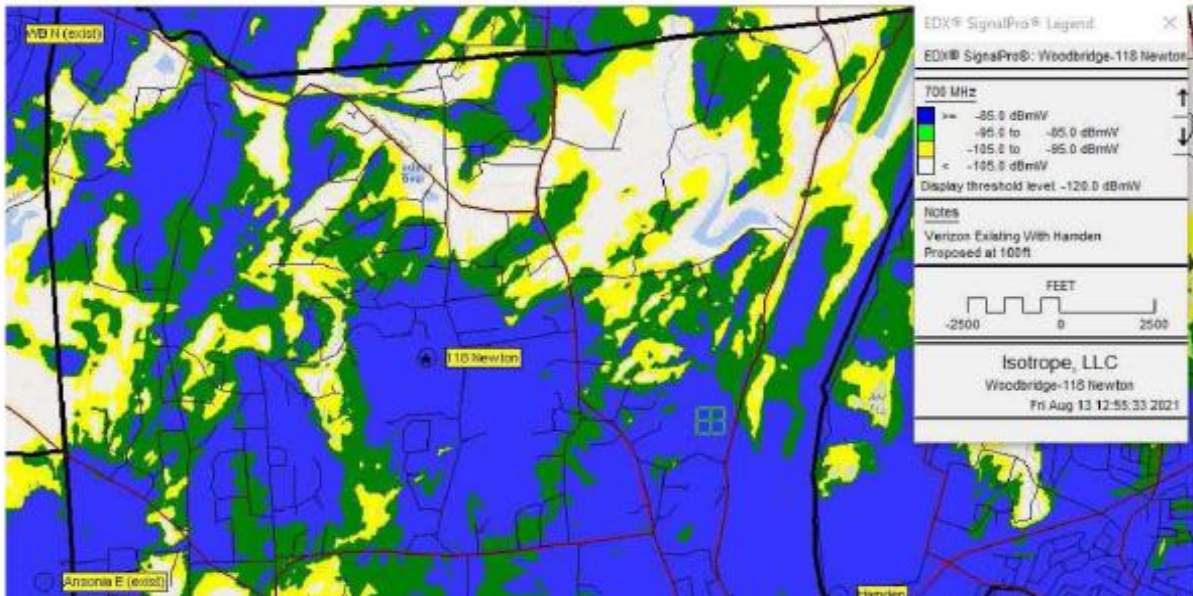
Proposed (Newton Road) Coverage versus Meetinghouse Lane Alternative

SITE/HEIGHT	Increase in coverage relative to existing >-95 dBm	
	Area (square miles)	Streets (miles)
Proposed 100 ft	2.05	11
4 Meetinghouse 120 ft	1.83	11
4 Meetinghouse 150 ft	2.23	11

Table 1 - Table of Comparative Metrics

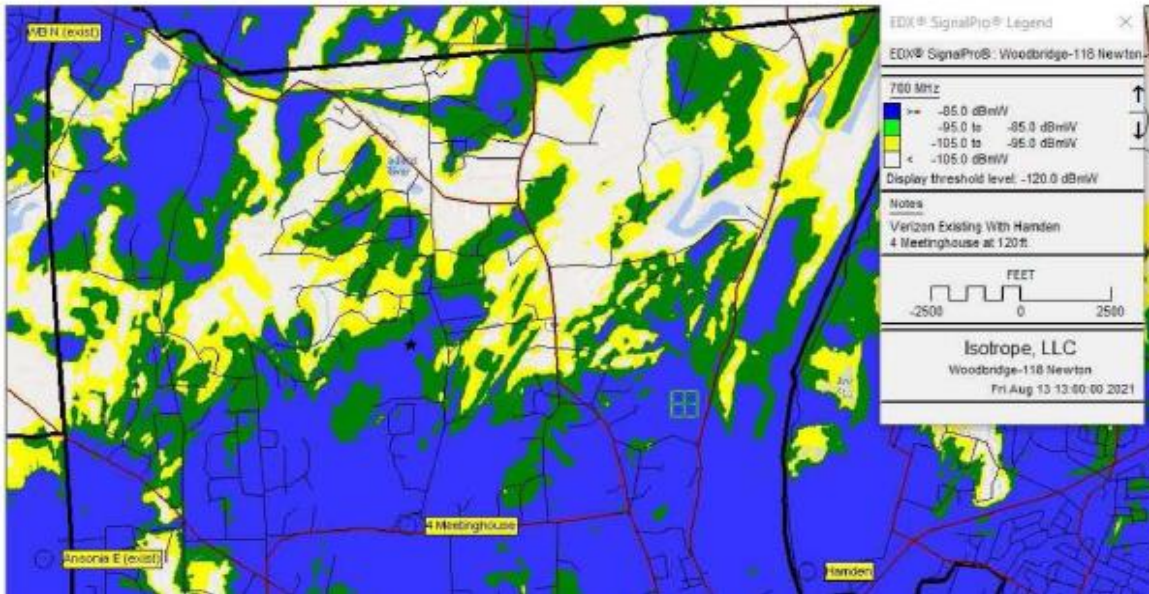
Verizon's Proposed Newton Road Coverage Map

Figure 2 - Existing plus Proposed



Meetinghouse Lane Alternative Coverage Map

Figure 3 - Existing plus 4 Meetinghouse at 120 feet



3. While much was made of the Town Green Historic District, 500 feet of wooded buffer around the 15 Meetinghouse Lane site screened the site from potential visual impact. In addition, **there already exists a 120ft radio tower within the historic district.**

The Applicant made no effort whatsoever to assess Meetinghouse Lane before it applied to the Council and never determined what impact a Meetinghouse Lane tower upgrade or installation would have on the historic district.

MR. AINSWORTH: And you haven't asked SHPO to determine whether or not the Meetinghouse Lane alternatives would have any impact whatsoever?

THE WITNESS (Libertine): Why would we? We have no application in front of them. They would not comment on it one way or the other unless an applicant came forward.

(Transcript 10/29/21 p.49)

And at p.50 Mr. Libertine continued:

6 I can't -- I can't say whether or

7 not they [SHPO] would approve or disapprove of the tower...

In contrast, the only evidence before the Council is Isotrope's late filed report showing photographs indicating no impact from a crane test conducted by WNNET and a balloon test conducted by a private citizen Rebecca Dalrymple showing no visible impact.

At the very least, the Council has before it a strong body of evidence indicating that (1) there exists an alternative location at Meetinghouse Lane which the first selectman indicated Woodbridge would be in favor of making available⁷; (2) the alternative provides substantially similar coverage⁸ and (3) that the alternative at Meetinghouse is likely to have lesser impact.

In contrast, the Council has unanimous public testimony against Newton Road and every public official who testified, from the Selectmen, the State Representative to the State Senators representing Woodbridge, is vehemently opposed to Newton Road. Even the federal representative and federal senator for this district wrote to the Council about considering the alternative site that Woodbridge proposed.

At some point, the Council needs to consider the public interest as opposed to the Applicant's ruthless quest for business objectives and maximization of coverage objectives. The enabling legislation which governs the Council – PUESA §16-50j-1 -

⁷ See Responses to Interrogatories and pre-filed testimony of Town of Woodbridge - Beth Heller, First Selectwoman stating that the Town would consider hosting a facility at 15 or 4 Meetinghouse Lane and the Board voted unanimously to oppose the Applicant's Newton Road tower. (Transcript 9/21/21 p.15)

⁸ Testimony of David Maxson of Isotrope, LLC, Exhibit III B 4 and 7. Isotrope Late File Exhibit 9/13/21 – Fig 14 and Fig 15 a real-world drive test showing nearly identical coverage to Newton Road from Meetinghouse Lane.

mandates that balance be made. Balance is not the maximization of coverage at all cost. Balance is compromise to achieve reasonable goals while protecting the public.

In this light, it is clear the Applicant did not sufficiently investigate a promising alternative but rather worked very hard to cover this omission with speculation and shifting testimony. Verizon constantly moved the cheese through the bureaucratic hearing maze and then declared the mice never finished the maze.

One prime example of the shifting standards was Verizon testifying that a CW drive test was Verizon's standard⁹ and thus because WNNET had 'mere' coverage modeling that Verizon's data trumped WNNET's. Then, when WNNET rented a crane and radio transmitter and conducted a CW drive test at Meetinghouse Lane to provide more accurate coverage data – the only drive test conducted at Meetinghouse Lane - Verizon then testified that its coverage modeling demonstrated better coverage from Newton Road than WNNET's CW drive test.

When asked by a Council member why Verizon had not provided the same CW drive test for Meetinghouse Lane, the multi-billion-dollar corporation effectively said it was too difficult and expensive even though an *ad hoc* group of neighbors accomplished this very task during the course of the hearings:

Transcript 10/19/21, pages 71 – 72:

[M. Silvestri] The related question I had on that is that if Verizon did provide those propagation plots, why not the drive test?

THE WITNESS (Cheiban): So there's a couple of reasons. One was, you know, practical. In -- in order to do the drive test **we need to get permission from the Town**. And we had, you know, **we did not have that much time**. The **other thing is the cost**. So basically we would **need to get a crane out there, rent a crane** and -- and the -- **get a crew to do the testing** for us. And so it was a

⁹ See Cheiban testimony 8/31/21 p.43, and p.59 lines 18-20.

combination of these two factors that, you know, that were the reasons that we did not do the CW test there.

Another example of Verizon skulking around the truth was when Verizon testified in July that coverage shown as yellow on its modeling was outdoor coverage and inadequate for vehicles (known as “green” coverage) and then later testifying in October that yellow now was actually the same as green.¹⁰

(10/21/21 Transcript at p.19-20)

MR. AINSWORTH: All right. And so on July 13th, in the 5 transcript at page 25, line 6, you confirm that 6 yellow was outdoor coverage and green was in 7 vehicle. Did you not?

8 THE WITNESS (Cheiban): I don't have the transcript in 9 front of me, but that is likely that I did that, 10 yes.

(8/31/21 Transcript at p. 42)

16 And as far as the color scheme, **this is kind**
17 **of the standard that we use at Verizon.** So blue
18 is, you know, a very good coverage. Green is
19 good. You know, it would cover inside the house
20 coverage. **And then the -- the yellow would**
21 **provide coverage to a vehicle, inside a vehicle.**

Quite literally, Verizon was not above testifying to the proverbial ‘black is white’ or, in this case, that yellow is green in order to conjure up adequate coverage on Routes 63 and 67 from Newton Road so it could claim that Meetinghouse was inadequate by comparison.

¹⁰ *Id.* and See Cheiban testimony 10/21/21 Transcript p.16 – 17 and footnote 9 above.

Even so, WNNET's CW drive test for Meetinghouse Lane showed equivalent coverage in target area to that of Newton Road site:

Verizon CW Drive Test at Newton Road Almost Identical Coverage to CW Drive Test at Meetinghouse Lane

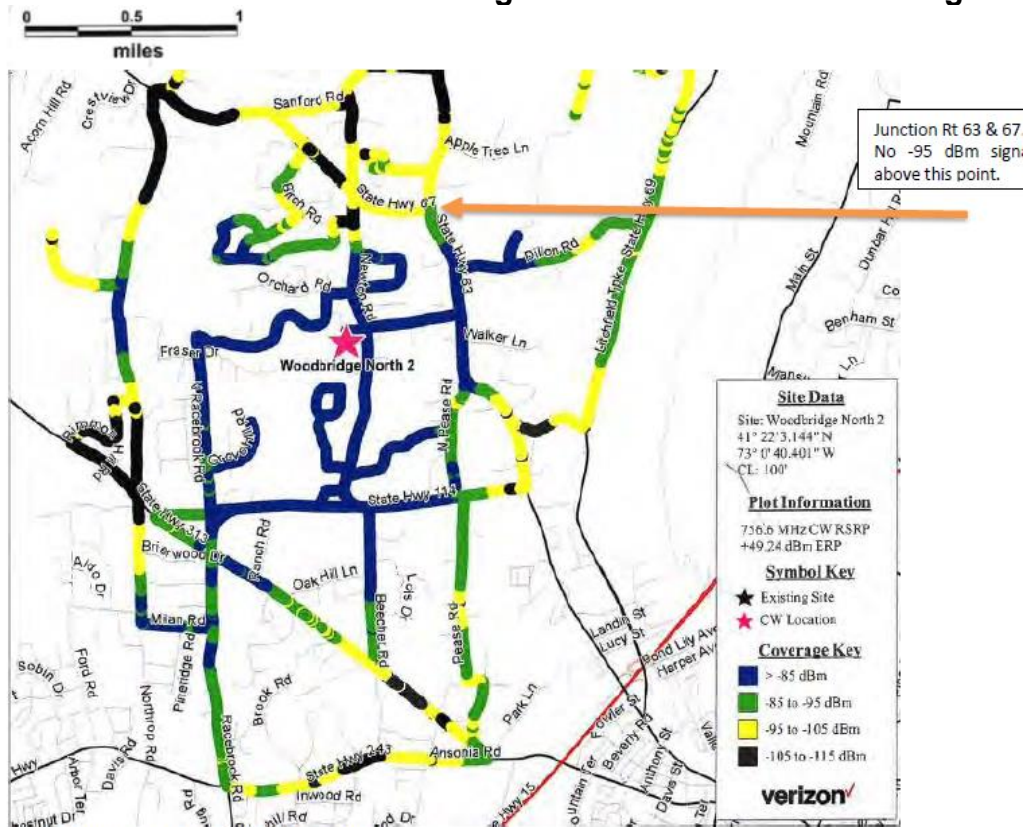
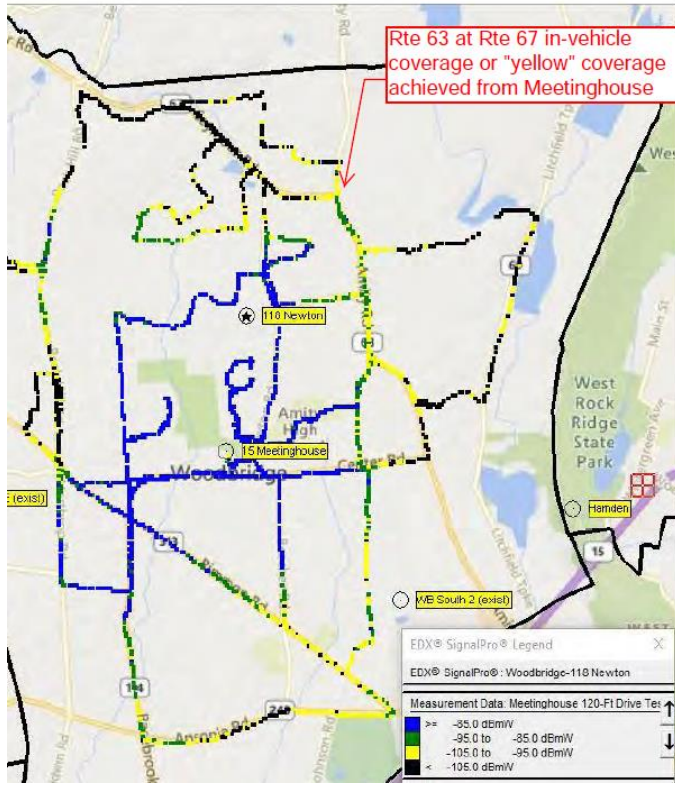


Figure 4 – Verizon CW Test from 118 Newton Rd

WNNET CW Drive Test at Meetinghouse Lane Showing Coverage at Newton Road and Up to the Intersection of 63 and 67 and Beyond



It was curious that Verizon explained – without evidence in the record and only after being confronted with the conflicting presentation – that the reason for differing coverage maps for their existing coverage was due to system upgrades during the course of the Council proceedings¹¹ and that Verizon’s upgrades had degraded coverage. Conveniently, these changes degraded existing coverage in a way that also happened to make Meetinghouse Lane look less competitive.

If you keep moving the cheese further away from the mice, maybe they will get tired and go away. But sometimes the mice are hungrier than one expects.

WNNET carried Verizon’s burden of proof to show that there is a reasonable balanced alternative at Meetinghouse where there is only public support, not unanimous opposition.

¹¹ Cheiban testimony, September 21, 2021 Transcript at pp. 90 – 91.

CONCLUSION

It is Applicants' burden to show that their proposal balances the public need for coverage with environmental compatibility – that the public interest in scenic resources and neighborhoods is reasonably protected. This is accomplished by showing that Applicant's site is better in two respects, not just for coverage.

In this record, the neighbors, at great expense and effort, demonstrated that there exists a viable alternative that the Town of Woodbridge could host at the police station's existing 120ft radio tower or at the town public works facility, neither of which is surrounded by residential homes for at least 500 ft in any direction. Any minor differential in coverage is outweighed by the significantly greater harmony with the surrounding neighborhood.

WNNET respectfully requests the Council deny this Application on the grounds that the Applicant has failed to demonstrate that it has balanced the public need with the proposed facility's environmental impact.

WOODBIDGE NEWTON NEIGHBORHOOD ENVIRONMENTAL TRUST,

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CERTIFICATION

This is to certify that, on the 18th day of November, 2021, a copy of the foregoing was sent, electronically, and via first class United States mail, postage prepaid, to the following counsel and pro se parties of record:

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