

**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

JUNE 28, 2021

**MOTION FOR HEARING IN WOODBRIDGE OR NEW HAVEN COUNTY
AND SITE VISIT**

WNNET, Intervenor in these proceedings, hereby moves the Council to hold “[a]t least one session of such hearing ... at a location selected by the council in the county in which the facility or any part thereof is to be located after six-thirty p.m.” as required by Conn.Gen. Stat. §16-50m(a) and that the session should occur before any sessions held in another location. WNNET further requests a return to the Council’s former practice of conducting a site visit of each proposed telecommunications facility.

As currently noticed, the first special meeting of the Council is scheduled to occur remotely by Zoom on July 13, 2021 at 2pm. This does not satisfy the mandatory and unambiguous language of §16-50m(a) which reads in relevant part:

(a) The council shall promptly fix a commencement date and location for a public hearing on an application for a certificate complying with [§ 16-50l](#) not less than thirty days after receipt of an application or more than one hundred fifty days after such receipt. **At least one session of such hearing shall be held at a location selected by the council in the county in which the facility or any part thereof is to be located** after six-thirty p.m. for the convenience of the general public. **After holding at least one hearing session in the county in which the facility or**

any part thereof is to be located, the council may, in its discretion, hold additional hearing sessions at other locations.

(emphasis added).

WNNET asserts also that while remote hearings were scheduled as a practical strategy during the pandemic, the pandemic restrictions have been lifted and Governor Lamont's Executive Order 7B no longer has the force and effect of law after June 30th, 2021. Thus, not only does a remote hearing not qualify as hearing held within the county of the proposed telecommunications facility or even a location at all, it is not a permissible format for a contested hearing under PUESA, UAPA or FOIA.

Such sessions are subject to the Connecticut Uniform Administrative Procedure Act ("UAPA") and Freedom of Information Act ("FOIA"). (C.G.S. §§ 4-166 et seq; CGS §§ 1-200 et seq). Although hearings "shall be held at times and locations specified by the Council" (Conn. Agencies Regs. 16-50j-20), that authority is limited by the overall scope and limitations pursuant to §16-50m of the Connecticut General Statutes.

Although an administrative proceeding may not have as many formal rules of evidence and procedure as a trial court has, the proceedings of an administrative body may not "violate the fundamental rules of natural justice", and the hearing conducted by the administrative body "must be fundamentally fair." The common law rights of fundamental fairness and constitutional due process are not coextensive, but there exists an "inherent overlap" between the two concepts. (*Megin v. Zoning Board of Appeals*, 106 Conn. App. 602 (2008); *Passalugo v. Guida-Seibert Dairy Co.*, 149 Conn. App. 478, 480 n. 6 (2014)). Both due process and fundamental fairness apply to administrative hearing proceedings, such as those before the Siting Council and land use boards. (See *Barry v. Historic District Commission of the Borough of Litchfield*, 289 Conn. 942 (2008); see also *Grimes v. Conservation Commission*, 243 Conn. 266, 273

(1997)).

In normal times, compliance with due process, fundamental fairness, the UAPA and the Public Utility Environmental Standards Act ("Chapter 277a") would be met through an in-person hearing. These are normal times, unlike the timing of Docket #488 during which the Council was permitted to hold its meetings remotely. Nothing currently provides for the suspension of the open meeting requirements of Public Utility Environmental Standards Act (Chapter 277a), including § 16-50m.

Specifically, it does not remove the Siting Council's statutory obligation to hold at least one session of its hearing in the Town of Woodbridge. Likewise, it does not suspend the requirement of the Council to provide for effective examination, cross-examination, and presentation of evidence at the evidentiary session.

These remain statutory obligations of the Siting Council under the UAPA, as well as requirements for constitutional due process and common law fundamental fairness. (See *Barry*, 289 Conn. 942; see also *Passalugo*, 149 Conn. App. at 480; *Grimes*, 243 Conn. at 273.) It is important to note that with regard to the Regulations of Connecticut State Agencies, the Siting Council has not conducted a formal process for amending its regulations to authorize fully remote hearings and now that EO 7B and all of the pandemic EO's have no further effect, nothing authorizes, much less requires, the use of a fully remote hearing to replace an in-person hearing in the county where the facility is proposed.

The undersigned also reiterates the need for the Council and its staff to personally visit the proposed site. The Siting Council, in many ways, stands in the shoes of local zoning and land use boards. Thus, constitutional due process, common law fundamental fairness, and completeness of the record in this case require a first-hand familiarity with the Sites in question. In this case, a visit is even more important because an option, that of "small cells" technology, as proposed by WNNET, is viable. In the past, the Council has visited proposed sites in matters with even fewer options than are

posed in this case. (See e.g., *Town of Westport v. Siting Council*, 47 Conn. Sup. 382, 384-85 (2002)). A field visit is needed in this case, given that the Siting Council performs certain functions of local land use boards, that it is confronted with several options in this case, and that it has precedent of making visits to sites in-person.

Respectfully Submitted,

WNNET,

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 28th day of June 2021 and addressed to:

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