

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF HOMELAND
TOWERS, LLC FOR A CERTIFICATE
OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED
FOR THE CONSTRUCTION,
MAINTENANCE AND OPERATION OF
A TELECOMMUNICATIONS FACILITY
AT 1837 PONUS RIDGE ROAD, NEW
CANAAN, CONNECTICUT

DOCKET NO. 509

OCTOBER 27, 2022

Filed concurrently with New Canaan Neighbors (“NCN”) Post-Hearing
Brief, pursuant to Connecticut General Statutes § 4-176, § 16-50n,
Siting Council Rules of Practice 16-50j-31, and Connecticut Agencies
Regulations § 25-32.

NCN PROPOSED FINDINGS OF FACT

New Canaan Neighbors (“NCN”)
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Introduction

1. The proposed facility at 1837 Ponus Ridge Road will lie closer to Class I or II watershed lands than any telecommunications facility previously. (Application, Attachment 3, p. 2, 8; Applicants' Supplemental Submission, 08/31/22, Sheet EX-1; NCN Request for Administrative Notice, 06/20/22 ["NCN Admin. Notice"], Item 45, NCN Public Record 9, Freedom of Information Act response by the Connecticut Siting Council ["Council"] for the telecommunications applications nearest Class I and II watersheds; *Compare with*, NCN Admin. Notice 06/20/22, Items 2-28.)
2. "Due to the close proximity of this parcel to the drinking water reservoir and the existing slope on this and adjacent land, runoff is a significant concern to drinking water source quality."
(Department of Public Health ["DPH"] Comment 06/01/22, para. 1.)
3. The Department of Public Health recommended that a review of the project be conducted by Aquarion Water Company. (DPH Comment 06/01/22, para. 11.)
4. Aquarion Water Company Source Protection Staff "reviewed the plans for this tower" and determined that "the site will degrade stormwater quality which will impact reservoir water quality" despite the "multiple stormwater management controls shown in the plans." (NCN Admin. Notice 06/20/22, Item 45, Public Record 3, Aquarion Public Comment 05/18/22.)

Applicability of § 25-32

5. The Laurel Reservoir, an active drinking water supply source, is located downgradient 70 feet from the "property line of the proposed activity." (DPH Comment 06/01/22; Applicants' Supplemental Submission, 08/31/22, Sheet N1)
6. The proposed access road will lie 107 feet from a Laurel Reservoir tributary stream. (Applicants Supp. Submission, 08/31/22.)
7. The Class 1 stream feeds directly to the Laurel Reservoir. (Applicants' Supplemental Submission, 08/31/22, Sheet EX-1;

Buschmann Admin. Notice, Item 9; Hearing Transcript 08/16/22, at 70:25-71:10; Hearing Transcript 09/06/22, at 39:16-40:1.)

8. If the property is owned by a water company as defined by Connecticut General Statutes section 25-32 (“§ 25-32”), the parcel is classed as Class I and II watershed lands. (Hearing Transcript, 7/14/22, at 38:15-39:21; Hearing Transcript 08/16/22, at 116:10-25; NCN Admin. Notice 06/20/22, Item 45, Public Record 3.)
9. A “water company” is defined as an “individual, partnership, association,” or “corporation” that provides water service to two or more “consumers.” (§ 25-32.)
10. Under § 25-32, “No water company shall sell, lease, assign or otherwise dispose of or change the use of any watershed lands, except as provided in section 25-43c, without a written permit from the Commission of Public Health.” (§ 25-32; *Town of Wallingford v. Dept. of Public Health*, 262 Conn. 758 [2003]; *See also*, NCN Admin. Notice 06/20/22, Item 45, Public Records 10-11.)
11. “It is an elementary rule that whenever the existence of any fact is necessary in order that a party may make out his case or establish his defense, the burden is on such party to show the existence of such fact.” (*Samperi v. Inland Wetlands Agency*, 226 Conn. 579, at 593.)
12. Nothing in the record indicates that the owner of the proposed parcel is not a water company. (Docket.)
13. No permits were acquired by Applicant allowing construction of a telecommunications facility on the proposed parcel. (Docket.)
14. There are no restrictions under § 25-32 on placing a telecommunications facility on existing infrastructure. (§ 25-32(f).)
15. Existing infrastructure on the property includes a driveway and a residential structure. (Applicants' Supplemental Submission, 08/31/22, Sheet EX-1.)
16. The proposed telecommunications facility at 1837 Ponus Ridge Road is not sited on existing infrastructure. (Applicants' Supplemental Submission, 08/31/22, Sheet EX-1.)

Watershed Impacts

17. “Undeveloped land offers the greatest level of protection to drinking water reservoir quality.” (NCN Admin. Notice 06/20/22, Item 3, Aquarion Water Company Public Comment; *See also*, Council Admin Notice, Item 35, 2004 CT Stormwater Quality Manual, 8-2.)
18. “Each year more than one million acres of land in the United States are converted to urban use. These land use changes are the source of much of the sediment that pollutes our streams, rivers, lakes, ponds and reservoirs.” (Council Admin. Notice, Item 35, CT Guidelines for Erosion and Sediment Control, 1-2.)
19. “Waters that supply drinking water are especially susceptible to contamination by bacteria and other pathogens.” (Council Admin. Notice, Item 36, 2004 Stormwater Quality Manual, 8-6.)
20. The proposed site at 1837 Ponus Ridge Road lies on tough terrain. (Hearing Transcript 06/28/22, at 44:3-9.)
21. Applicant is “challenged with the steep slopes and existing ledge on the parcel.” (NCN Admin. Notice 06/20/22, Item 45, Public Record 26; Hearing Transcript 06/28/22, at 120:19-20.)
22. Soils on the parcel are highly erodible with low moisture-holding capacity. (Buschmann Supp. Admin Notice 08/08/22, p. 25; NCN Fourth Supp. Admin Notice, Item 1; Hearing Transcript 09/08/22, at 128:18-129:14.)
23. No geotechnical studies were conducted by the Applicant. (Docket.)
24. A geotechnical study would specify the depth to bedrock and the location of soils shallow to bedrock on the site, allowing the Applicant to know whether infiltration is feasible. (Hearing Transcript 7/14/22, at 90:24-91:9, 103:6-105:11; Hearing Transcript 9/8/22, at 127:12-129:16.)
25. Applicant attempted to perform 12 shovel tests to a depth of 19.3 inches, but 9 of the 12 planned shovel tests could not be conducted because of large immovable rocks. (Applicants’ Responses to Council’s Interrogatories, Set One, 06/02/22, Attachment 4.)

26. A telecommunications facility that Applicant identifies as “very similar” to the proposed site resulted in erosion control failures and damage to wetlands. (Hearing Transcript 06/28/22, at 42:9-43:11; Hearing Transcript 07/14/22, at 113:18-114:12.)
27. The Applicant will remove at least 103 trees six inches or more in diameter, along with all trees less than 6 inches in diameter. (Applicants’ Supplemental Submission, 08/31/22, Sheet SP-2.)
28. “Trees reduce flooding, stormwater runoff, and erosion problems. Trees increase soil permeability (the ability of the soil to hold water), help recharge drinking water aquifers, and tree roots serve as anchors that reduce erosion and sediment flowing into our streams.” “100 mature trees will catch about 139,000 gallons of rainwater per year.” (Council Admin Notice, Item 51, p. 14.)
29. Nearly an acre of land will be cleared during construction. (Applicants' Supplemental Submission, 08/31/22, Sheet SP-2.)
30. The erosion rate for a cleared acre of land is 250 times greater than a wooded parcel. (2002 CT Guidelines for Soil Erosion and Sediment Control, 1-2.)
31. During construction, the rate of erosion will increase on the parcel. (Hearing Transcript 08/16/22, at 82:9-18.)
32. Construction of the proposed facility will take several months. (Hearing Transcript 09/06/22, at 66:2-14.)
33. Applicant proposes a piecemeal approach to capturing runoff on the steeply sloped terrain, integrating swales and infiltration basins into the site design. (NCN Request for Admin. Notice 06/20/22, Item 45, Public Record 26; Hearing Transcript 06/28/22, 47:22-24, 51:12-52:3; Hearing Transcript 07/14/22, at 89:1-90:1; 08/16/22, at 72:6-12.)
34. “Swales and infiltration basins cannot be used on steep terrain.” (Council Admin. Notice, Item 36, 2004 CT Stormwater Quality Manual, 8-6.)
35. Applicant will not maintain a cross culvert on the parcel that flows to the Laurel Reservoir. (Hearing Transcript 08/16/22, at 87:21-88:13.)

36. It is unknown whether the cross-culvert can withstand increased runoff or sedimentation. (Hearing Transcript 08/16/22, at 87:21-88:13.)
37. The point of discharge of the cross-culvert is a place where watershed damage may occur. (Council Admin. Notice, Item 35, 2002 CT Guidelines for Erosion and Sediment Control, 5-8-2.)
38. Treatment practices during construction will lie at the toe of slope, 107 feet from the tributary stream. (Hearing Transcript 06/28/22, at 39:17-19; Applicant Site Plan.)
39. Applicant's Site Plan does not integrate the recommended 5-to-10-foot distance of separation between the treatment practice at the toe of slope. (Applicant Supp. Submission 08/31/22; Hearing Transcript 08/16/22, at 68:4-8; Council Admin. Notice, Item 35, 2002 CT Guidelines for Soil Erosion and Sediment Control, at 5-11-35.)
40. The treatment practice distance of separation from the tributary has not been increased to account for parcel slopes into the watershed. (Applicant Supp. Submission 08/31/22; State of Connecticut, Department of Energy and Environmental Protection, Council Admin. Notice, Item 44, p. 10-11.)
41. "Waste snow accumulated from plowing activities can be a source of contaminants and sediment to surface waters if not properly located." (Council Admin. Notice, Item 36, 2004 Stormwater Quality Manual, at 5-6.)
42. Snow from plowing "should not be located in the following locations: storm drainage catch basins, storm drainage swales, stream or river banks that slope toward the water, within 100 feet of private drinking water supply wells, or in public drinking water supply watershed areas." (Council Admin. Notice, Item 36, 2004 Stormwater Quality Manual, at 5-6.)
43. Applicant does not identify any locations where waste snow can be safely placed on the proposed parcel. (Hearing Transcript 08/16/22, at 92:4-94:3.)
44. Applicant cannot testify that the proposed compound will not harm the Laurel Reservoir. (Hearing Transcript, 7/14/22, at 104:11-105:8.)

45. “[L]ittle to no analysis of the potential impacts this installation could have upon the active Laurel Reservoir” was performed by Applicant. (DPH Public Comments, 06/01/22.)
46. When a water supply is harmed, “[p]lanning and implementation of remedial strategies are very complex and often take several years to achieve.” (Buschmann Supp. Admin Notice 06/27/22, Item 1, DEEP 2020 Integrated Water Quality Report, p. 50.)
47. Applicant does not provide any recommended alternative water supplies that Aquarion Water Company could immediately use if the Laurel Reservoir is negatively impacted. (Docket.)

Wildlife Impacts

48. The proposed site lies entirely within a DEEP-listed protected habitat. (NCN Request for Admin. Notice 06/20/22, Item 45, Public Record 12.)
49. DEEP identified the Little Brown Bat, the Red Bat, and the Eastern Box Turtle as fauna on or near the site. (Application, Attachment 9, p. 40.)
50. There is indication that Pied-billed Grebes could be harmed by the proposed facility. (NCN Admin Notice 06/20/22, Items 42-44.)
51. The federally-listed Northern Long-eared Bat occurs in the vicinity of the proposed parcel, as well as the Bog Turtle. (Application, Attachment 5, ps. 5 and 42, and Attachment 9, ps. 5-7.)

Local Zoning Regulations

52. The proposed facility does not adhere to the Town of New Canaan’s Zoning regulations. (Bulk Filing, Technical Report, ps. 306-307; *See also*, NCN Third Admin. Notice, item 6.)
53. The Town of New Canaan’s facility preferences are as follow: “1. Small cell or other similar telecommunication facilities on existing utility distribution poles. 2. Totally enclosed within an existing structure (such as a steeple, chimney, or similar), 3. Externally mounted on the wall of an existing structure (such as a new steeple, chimney or similar architecturally compatible structure. 4.

- Mounted on or within a new purpose-built structure designed to fit New Canaan's overall character (such as a structure designed to look like a water tank, bell tower, clock tower, silo, barn, or similar), or 5. Externally mounted on the roof of an existing structure, such as a new steeple, chimney, or similar architecturally compatible structure." (Bulk Filing, Technical Report, ps. 302-313, Town of New Canaan Planning Regulations, Section 7.8.)
54. Monopine structures, such as the one proposed, is considered "not preferred" under the Town of New Canaan's zoning regulations. (Bulk Filing, Technical Report, at 306-307.)
55. The Town of New Canaan's Wireless Infrastructure Policy reiterates the Town of New Canaan's zoning preferences, stating that "ugly, obtrusive" towers are not in alignment with the character of the town. (NCN Third Supp. Admin. Notice, Item 2.)
56. The extent of the visual impact of the proposed tower upon the New Canaan community is unknown because Applicant's visual impact analysis lacks credibility. (*See*, NCN Supp. Response to Council Interrogatory No. 7, 06/23/22, NCN Exhibit 7, Photos 1 through 11; Hearing Transcript, 09/08/22, at 158:25-161:12.)
57. Siting a wireless communication facility in a location shown on the "Connecticut DEEP Natural Diversity Database" is also contrary to the Town of New Canaan's stated location preferences. (Bulk Filing, Technical Report, Zoning Regulations § 7.8, p. 305; NCN Admin. Notice 06/20/22, Item 45, Public Record 12.)

Alternative Facility Locations

58. Placing a macrocell on the existing driveway is a feasible option. (Hearing Transcript 08/16/22, 74:20-75:12.)
59. Utility poles offer a solution to the coverage needs identified by Applicant. (*See*, Buschmann Witness List 06/21/22, Pre-Filed Testimony of 360°RF, p. 68; *See also*, Hearing Transcript 09/06/22, 134:2-141:4.)
60. Buschmann witness 360°RF identified alternative sites on Oenoke Lane in New Canaan as providing good coverage in the identified area of need. (Buschmann Witness List 06/17/22, 360°RF Pre-filed Testimony, p. 1-3, and 8; Hearing Transcript 09/06/22, at 137:24-138:5.)

61. When compared to the proposed site, none of the alternative locations presented by 360°RF will result in a reduction in public safety benefits to the Town of New Canaan. (*Ibid.*; NCN Admin. Notice 06/20/22, Item 45, Public Record 27, 29; NCN Second Supp. Admin Notice, Item 4-5, Public Records 32-33; NCN Third Supp. Admin. Notice, Item 10, Public Record 35; Hearing Transcript 6/28/22, at 90:3-93:23.)
62. The proposed facility will lie adjacent to the Centennial Watershed State Forest. (Buschmann Admin. Notice 06/21/22, Items 26, 38.)
63. “The Centennial Watershed State Forest, in addition to being the state’s largest open space acquisition, also bears the distinction of being the first new state forest designated in more than 30 years.” “The Centennial Watershed State Forest pays tribute to Connecticut’s commitment to the protection of the beauty and character of our state and to the contributions made by hundreds of men and women over the last hundred years who have helped shape our rich landscapes.” (Buschmann Admin. Notice 06/21/22, Item 5.)
64. The Centennial Watershed State Forest will have year-round visibility of the proposed tower. (Applicants' Responses to Council Interrogatories, Set One, 06/02/22, A29 and Attachment 5; Hearing Transcript, 7/14/2022, at 126:1-13; Buschmann Admin. Notice Items 26, 38.)
65. None of the alternative locations identified by 360°RF are adjacent to the Centennial Watershed State Forest or the Laurel Reservoir. (Buschmann Admin. Notice 06/21/22, Items 26, 38.)