

To: CT Siting Council
From: Donald L. Bergmann, 32 Sherwood Dr. Westport CT 06880 Tel: 203 226 8712 E Mail:
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Re: Submission by Intervenor in the Matter of New Cingular Wireless PCs, 92 Greens Farms Rd.
Westport CT Docket # 510

August 1, 2022

This is probably only my initial submission to the Siting Council on this matter. While Siting Council Staff has provided some guidance as to procedure, I remain unfamiliar with aspects of the format. My guess is that I may want to provide additional commentary after having read all the responses to the interrogatories. I also raise below several questions, the answers to which could have relevance to my thinking. My questions are highlighted by the use of CAPITAL LETTERS. I hope that is acceptable.

GENERAL

I am a retired, New York attorney. I have never practiced land use law. I have lived in Westport CT since 1979. Since retirement, I have become active in various Town issues. I also served as a member of the legislative body of Westport, the Representative Town Meeting.

The proposed Cell Tower for this site, 92 Greens Farms Rd., is dramatically troubling to me. The site is a private residential site, with a home, a home not occupied by the property owner but, rather rented. The site is in a well-known historic area of Westport. Westport's Historic District Commission has submitted a lengthy and thoughtful letter setting forth the historic qualities of the area. That letter, dated, June 24, 2021, was sent as required to All Points Technology Corp., Waterford CT. The site is also sort of a gateway to two Westport town beaches, Old Mill Beach and Compo Beach. That gateway status also pertains to a salt water pond, known as Sherwood Mill Pond. The Pond and the Old Mill Beach area abut Sherwood Island State Park, a popular State Park. Water runoff from the Cell Tower site, 92 Greens Farms Rd., goes rather directly into Sherwood Mill Pond. The flow goes under I-95 and the railway corridor. Pedestrians, joggers, cyclists and of course those in automobiles will pass by this proposed Cell Tower. Its 124 feet height will loom well above the trees that are prevalent throughout this area. One other aspect of the site is notable to me. A next-door neighbor to 92 Greens Farms Rd., Vanessa Simon and Scott Mikuszewski have only recently had their first child. She was born on March 3, 2022. Her name is Zoe Atlas. If this Cell Tower is constructed at 92 Greens Farms Rd. there will be at least one very vulnerable person who will be confronted with the physical impacts of a Cell Tower. I add that I am aware of two other youngsters, age 2/12 and 5 who also reside with their parents nearby.

HISTORY PAST AND PRESENT

It should be noted there was a similar, basically an identical Cell Tower proposed for 92 Greens Farms Rd. in early 2014, over eight years ago. That undertaking was never pursued with the Siting Council. Rather, the applicant and the relevant carrier or carriers apparently decided not to proceed. No one, including our then and present Town leadership and Town counsel, has been able to determine why this interest of eight years ago was not pursued. I think that would be worth knowing.

I ASK THE COUNCIL OR STAFF TO FIND OUT WHY THIS PRIOR CELL TOWER EFFORT WAS NOT PURSUED.

It has to be believed that many years ago, someone determined that a Cell Tower at 92 Greens Farms Rd. was needed. However, that need was apparently very minimal or even possible greatly misunderstood since no action was taken. I believe it is significant that the area of Westport which the

present Applicant asserts will be benefitted by the proposed Cell Tower has managed to function for the past eight years without a Cell Tower at 92 Greens Farms Rd.

I ASK THE SITING COUNCIL OR STAFF TO OBTAIN THE BACKGROUND INFORMATION THAT THE APPLICANT HAS OR TO WHICH IT HAS ACCESS THAT SETS WORTH WHY A CELL TOWER WAS SOUGHT EIGHT YEARS AGO. MORE IMPORTANTLY, I ASK THE SITING COUNCIL OR STAFF TO REVIEW THE TECHNICAL NEED ANALYSIS PREPARED EIGHT YEARS AGO. I THINK IT USEFUL TO AN UNDERSTANDING OF CONDITIONS TODAY TO COMPARE THE CONDITIONS OF EIGHT YEARS AGO, FOR EXAMPLE, HAVE THE CONDITIONS REMAINED THE SAME OR ARE THEY DIFFERENT, WHATEVER WAY ALL DIFFERENCES MAY POINT.

The Town of Westport, led by its First Selectwoman, Jennifer Tooker, and its Town Attorney, Ira Bloom, has been working and continues to work on a site along the railroad tracks right of way with the CT DOT. This is a promising undertaking, is a much more acceptable location and, based upon interactions to date stands a reasonable chance of providing the Applicant with an alternative and better site. The Siting Council needs to address this alternative and give serious consideration to delaying any decision as to 92 Greens Farms Rd. until the CT DOT railway right of way site is determined not to be available.

SITING COUNCIL PHILOSOPHY, RESPONSIBILITIES AND RIGHTS

I have reviewed certain background materials pertinent to the Siting Council and have also discussed the process with attorneys, including of course Town Attorney Ira Bloom. It is my sense that the Siting Council considers its mandate, its power to be limited. One result appears to be that nearly all applications for new Cell Towers are approved.

I ASK THE COUNCIL OR STAFF TO PROVIDE INFORMATION AS TO THE NUMBER OF NEW AND EXPANDED CELL TOWER APPLICATIONS THAT HAVE BEEN ACTED UPON BY THE COUNCIL DURING THE PAST TEN YEARS AND SETTING FORTH THE NUMBER OF APPLICATIONS THAT HAVE BEEN DENIED.

I ALSO ASK THE COUNCIL OR STAFF TO PROVIDE INFORMATION ON THE NUMBER OF NEW AND EXPANDED CELL TOWER APPLICATIONS LOCATED IN SITES SIMILAR TO 92 GREENS FARMS RD, NAMELY A RESIDENTIAL SITE IN A SINGLE FAMILY RESIDENTIAL AREA AND NOT LOCATED IN A RURAL AREA OR ON A LARGE PLOT OF LAND, E.G. MORE THAN TWO ACRES.

CT Siting Council law is very favorable to Cell Tower builders and users. In fact, CT has some of the most commercially supportive Cell Tower laws in the nation. For example, CT law precludes any role for local land use bodies, i.e. the Westport Planning & Zoning Commission has no say in where a Cell Tower may be located. In addition, CT law and judicial decisions make it very difficult, almost impossible for any resident to assert a claim for damages resulting from the location of a Cell Tower. Such residents are, in general, found to have no legal standing since the Courts and the law do not recognize that a 124 foot Cell Tower in the middle of a residential neighborhood does not result in any damage to a property owner.

It is also my understanding that Siting Council Staff do not generally challenge information provided by applicants in support of a Cell Tower. Information such as need, alternative technologies and sites may not be challenged to an extent many believe desirable. Even aspects such as modeling of needs versus actual experience is rarely addressed by independent research. Whether or not the source of funds for the operations of the Siting Council and Staff has relevance is unclear to me. It is my understanding that the Cell Tower companies and carriers are the sources of most of the funds for the

operating budget of the Siting Council. It could well be that the cell tower companies and the carriers would look askance at the use of Siting Council funds to challenge assertions submitted and to be used for independent analysis.

I hope the Siting Council will address another technical aspect of this Cell Tower application, namely, the need, if any, for residents versus the need, if any, for cars speeding along I-95. It is quite evident in this application that the main interest and generator of profits pertinent to this proposed Cell Tower is I-95. That should be addressed, highlighted and, hopefully, dealt with. One answer would be a different location for the Cell Tower. Another answer would be to allow cars speeding along I-95 simply to be without cell service for about two miles at the most. The children in the back seats of such cars wanting to watch a streaming video should not be the basis for this tall and ugly Cell Tower at 92 Greens Farms Rd.

In general, all aspects of the need for and proof of that need should be reviewed independently of the submissions of the Applicant. I know that the Siting Council is supposed to ignore the fact that cell service may be available in the relevant area right now from different carriers, that the present cell service is only very sporadically insufficient and that all in Westport can have cell service in their homes if they select the proper carrier or connect by Cable Vison. In truth, the main shortcoming in cell service for Westport residents pertains to those residents who like to be on their cellphone while walking or driving. To the extent that problem exists, it has existed for a long time and few are seriously affected.

Finally, most believe that Cell Towers are becoming dinosaurs. The technologies change and alternatives become available. At some point, the Siting Council should address the reality of what the future holds. To do otherwise is to use the existing law as an excuse to bury one's head in the sand.

REASONS TO DENY APPLICATION

While the above references many reasons to deny this application, I will now list my analysis.

1. Need – The need is highly questionable. If existent, it is driven by asserted needs for I-95. The Siting Council has ample basis to conclude that the proposed Cell Tower is not needed, given the minimal nature of the asserted inadequacies, the likelihood of changing technologies rendering Cell Towers dinosaurs with their main future issue being how do they get dismantled in a cost effective and environmentally safe manner. Further, a site for a private residence in an historic area should place a greater burden on the Applicant to support need than might often be the approach of the Siting Council. A balancing of need and other considerations should be considered by the Siting Council.
2. Site – CT should simply not allow Town land use bodies to have no say as to the location of a cell tower. Westport has many cell towers, most if not all are well located. I suspect the Siting Council is well within its powers to assess an application on a basis that factors in the totally wrong nature of this site. Those powers should afford the Siting Council confidence that a denial of this application will not be reversed by a wrongheaded appeal by the Applicant. An alternative would be to await the outcome of the discussions between the Town and the CT DOT as to the railway right of way site.
3. Harm

It is obvious that the property owners in this area will experience a decline in property values. Is the Siting Council simply to say,

“we know that, but we cannot even consider the issue even though the site is so wrong for a cell tower”.

The environmental harms, other than the blatant visual aesthetic harm that all will experience as they go past this Cell Tower, may not be clearly within the constraints of the applicable law. Yet, it should never be ignored. More significantly, there are water run off impacts and those impacts pertain to the waters of Westport, including the Long Island Sound

and the Sherwood Mill Pond. Those are incredibly crucial bodies of water and provide recreation and beauty to so many. I hope the Siting Council does not again dismiss these issues as outside of their jurisdiction.

We all know that the radio frequency issues from cell towers have been affirmatively declared by Federal law not to have relevance to the location of a cell tower. That decision was made by the Federal legislative bodies a long time ago. It has withstood the challenge of new facts and learning by reason of the power of the cell phone businesses. None of us will keep our cell phones close to our ears for an extended period of time and all of us know of the increases in brain cancer over the past twenty or more years. We also know that even the Federal and Connecticut cell tower law prohibits locating a cell tower within a certain distance of a youth center, usually a school. In Westport, the school nearest to 92 Greens Farms Rd. is somewhat beyond the restricted area so, while probably relevant, the location of that school may be outside the analysis of the Siting Council. However, as already mentioned 92 Greens Farms Road has a family, living next door with a baby girl born on March 3, 2022. This is the first child of Vanessa and Scott. They moved to Westport to start their family and live here before the Applicant announced its desire to build a Cell Tower next door. While I fault the Applicant for many things pertaining to the site selected, I do not fault the Applicant for being unaware of the pending birth of Zoe Atlas. However, I do fault the Applicant for failing to withdraw its application and seeking a different site once the Applicant became aware of Vanessa's pregnancy. Crazy you say, how can an important decision like the construction of a Cell Tower be impacted by the presence of a new born next door. All I would say is, I hope that is precisely the reaction of the Applicant and its supportive carriers. More than that, I hope the Siting Council gives serious consideration to the reality of and the real possibility that this little girl could be adversely affected by the known dangers of all Cell Towers.

CONCLUSION

It is my hope, my urging that the Siting Council deny this Cell Tower application. Such a denial may not conform to all past practices and may reflect a somewhat expansive approach of the Siting Council. My view is that it is time for the Siting Council to think and act a bit beyond how it may have thought and acted in the past. The facts of this application are notably egregious. However, this would not be an instance of "bad facts making bad law". In truth, it would be an instance of "bad facts making good law". This is a terrible site for a Cell Tower, a tower that may not even be needed and one, at best, that may be desirable for cars speeding along I-95. I ask the Siting Council to think ahead, to realize that technology will change, that profit motives sanctioned by CT law should not be allowed always to prevail. It is time for the Siting Council to act a bit boldly, to say

"Enough is enough. This is a wrong site for a cell tower and we, the Siting Council are not going to stand aside and allow this to happen.

Thank you all,

Donald L. Bergmann

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