

## State of Connecticut Siting Council

IN RE:

APPLICATION OF HOMELAND TOWERS, LLC AND  
NEW CINGULAR WIRELESS PSC, LLC d/b/a AT&T FOR A  
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY  
AND PUBLIC NEED FOR THE CONSTRUCTION  
MAINTENANCE, AND OPERATION OF A  
TELECOMMUNICATIONS FACILITY AT ONE OF TWO  
SITES IN THE TOWN OF KENT, CONNECTICUT

DOCKET NO.488

May <sup>1</sup> \_\_, 2020

**Q1. Referring to the Bald Hill Road Neighbor's Application for Party status to the Council, dated March 20, 2020, page 4, please provide the following:**

- a) Did any members of the Bald Hill Road Neighbors take photographs of the publicly noticed balloon/crane test conducted by the Applicant that took place on January 18, 2020? If so, please submit.**

Yes, please see Attachment 1: Photographs of Site A Balloon Test. These photographs were primarily taken from areas around neighboring properties on Bald Hill Road. One photograph was taken from Richards Road (similar to photographs submitted by the Applicant showing the Site A proposed Tower from Richards Road — see Attachment 2: Applicant's Photograph of Site A from Richards Road).

- b) What concerns do the Bald Hill Road Neighbors have regarding forest alteration on the Site A parcel given that the parcel is zoned residential and could be developed with residence?**

The parcel could indeed be developed as a residence, but residential development would have to comply with the Kent, Connecticut Zoning Regulations ("Zoning"). The Zoning Regulations were developed over the years to accommodate property ownership, neighborhood, and environmental concerns. This includes preservation of forest, lot size, building setback, square footage limitations, and building height limitations. Given that the property at Site A is a lot of 1.99 acres in size, variance(s) from the Kent Zoning Board of Appeals might be required for a residence, but this again is a process regulated by Zoning. In fact, when purchasing property or a home in a residential zone, many property owners rely on Zoning to assure themselves that only certain types of development are permitted on neighboring properties in conformity with Zoning. In addition, a 156-foot tall tower does not conform with the Town of Kent's comprehensive plan for residential properties of less than three acres.

The Bald Hill Neighbors are comfortable with other residences nearby, but the telecommunications facility posed in this Application is strikingly different from a residence. In contrast to residential development, the proposed telecommunications facility violates Zoning in

many ways. For example, residential development would not typically permit a 156-foot tall building, one which would stand an estimated 50-75 feet above the tree line. Twenty-two trees, many of significant size would need to be removed in order to allow for the proposed equipment facility and tower. The proposed facility also violates lot size and building setback requirements.

These are only some of the various ways that the proposed facility violates Zoning, but a residence would not (see Attachment 3: Excerpts of Kent, Connecticut Zoning Regulations). Given that the General Statutes remove this Application from the normal Zoning approval and variance process in Kent, nonetheless, the statutes require the Siting Council to give weight to the Zoning Regulations and any violations of those Regulations that result from the proposed facility on Site A.

**c) What are the construction effects that are referred to?**

The Application filed in this matter reveals that a significant disturbance is planned at Site A — about 15,500 sq. ft. (roughly 18% of the 1.99-acre lot comprising Site A). However, there are several areas of environmental concern and concerns about the effects of removing trees; leveling/grading ground; and the introduction of impervious surfaces.

The neighbors are concerned about the potential disturbance of ground pollution; water run off onto their properties; sufficiency of Bald Hill Road to handle construction and maintenance traffic.

For example, neighbor Peter Fitzpatrick owns 15 Bald Hill Road. The property line he shares with Site A is only about 25 feet from the edge of utility compound proposed in this Application. Mr. Fitzpatrick's property is also downhill from the site. Given the significant disturbance and introduction of impervious surfaces so close to the property line, Mr. Fitzpatrick is concerned about water runoff and soil erosion to his property. The Applicant has responded to the Siting Council that the position of the proposed facility on Site A was chosen because the former owner of Mr. Fitzpatrick's property, John Atwood, would not have been opposed to the facility. However, the burden of the Applicant's site plan now falls heavily on Mr. Fitzpatrick, who is opposed to the proposed facility.

Construction on the site may also disturb potential pollutants on Site A. By all appearances, Site A served as a junkyard for Mr. Atwood, and this situation went back years prior to this Application. There are at least two large metal barrels on Site A, one which upon information and belief previously held oil or other industrial lubricants. Other areas of environmental concern include what appear to be burial pits and mounds; vehicle tires; hoses; electronics; and various construction materials. Aerial photographs of the property taken by the University of Connecticut in early 2016 and early 2019 show what appear to be areas of debris, at least one barrel, and a boat. The Applicant has not disclosed this contamination in its Application to the Council and has not presented evidence of Phase 1 environmental review or Phase 2 environmental testing.

The Bald Hill Road neighbors draw their water from wells and are concerned that construction of the proposed facility on Site A will worsen the environmental situation on the property. The

present circumstances on Site A are concerning and significant disturbance of the site from the proposed construction could substantially worsen things.

**d) What are the safety concerns that are referred to?**

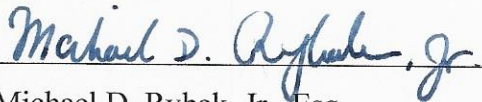
The proposed monopole tower on Site A is only about 65 feet from Mr. Fitzpatrick's Property line. The monopole tower is listed as being over 150 feet tall and containing multiple decks of antennae near the top of the monopole structure. Although engineered for adverse weather conditions, it remains possible that conditions could lead to a collapse of the tower and the attached antennae decks (see e.g., November 14, 2003 news report of a tower collapsing in Oswego, New York, *available at* <https://www.firehouse.com/home/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle>). The Bald Hill Neighbors, and particularly Mr. Fitzpatrick, are also concerned about potential blowing or falling debris, such as ice shards, on neighboring properties, as well as potential for fire at the tower to spread to nearby trees/properties.

Finally, the Neighbors are concerned about the potential release of pollutants due to the significant disturbance on the property posed by the site (e.g., ground contamination, pit burials, etc.). To that effect, the Bald Hill Road Neighbors also hereby incorporate the above discussion regarding construction on the site and the potential release of pollutants on the property resulting from its previous use as what appears to be an illegal junkyard.

Respectfully Submitted on Behalf of the Bald Hill Neighbors,

By  \_\_\_\_\_  
Anthony F. DiPentima, Esq.

5/7/20  
Date

By  \_\_\_\_\_  
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## CERTIFICATE OF SERVICE

I hereby certify that a true, original copy of the foregoing was placed in the U.S. Mail, in compliance with the April 29, 2020 email from the Connecticut Siting Council, on this 7<sup>th</sup> day of May 2020 and addressed to:

Ms. Melanie Bachman  
Executive Director  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051

I further certify that an electronic copy of the foregoing was sent to:

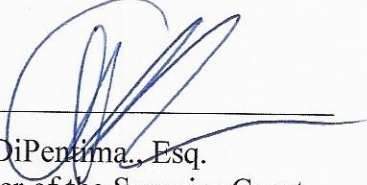
siting.council@ct.gov

And I certify that electronic copies of the foregoing were sent to:

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Anthony F. DiPentima, Esq.  
Commissioner of the Superior Court

## **Attachment 1: Photographs of Site A Balloon Test**



Above photo taken from driveway of 15 Bald Hill Road (property of Peter Fitzpatrick).

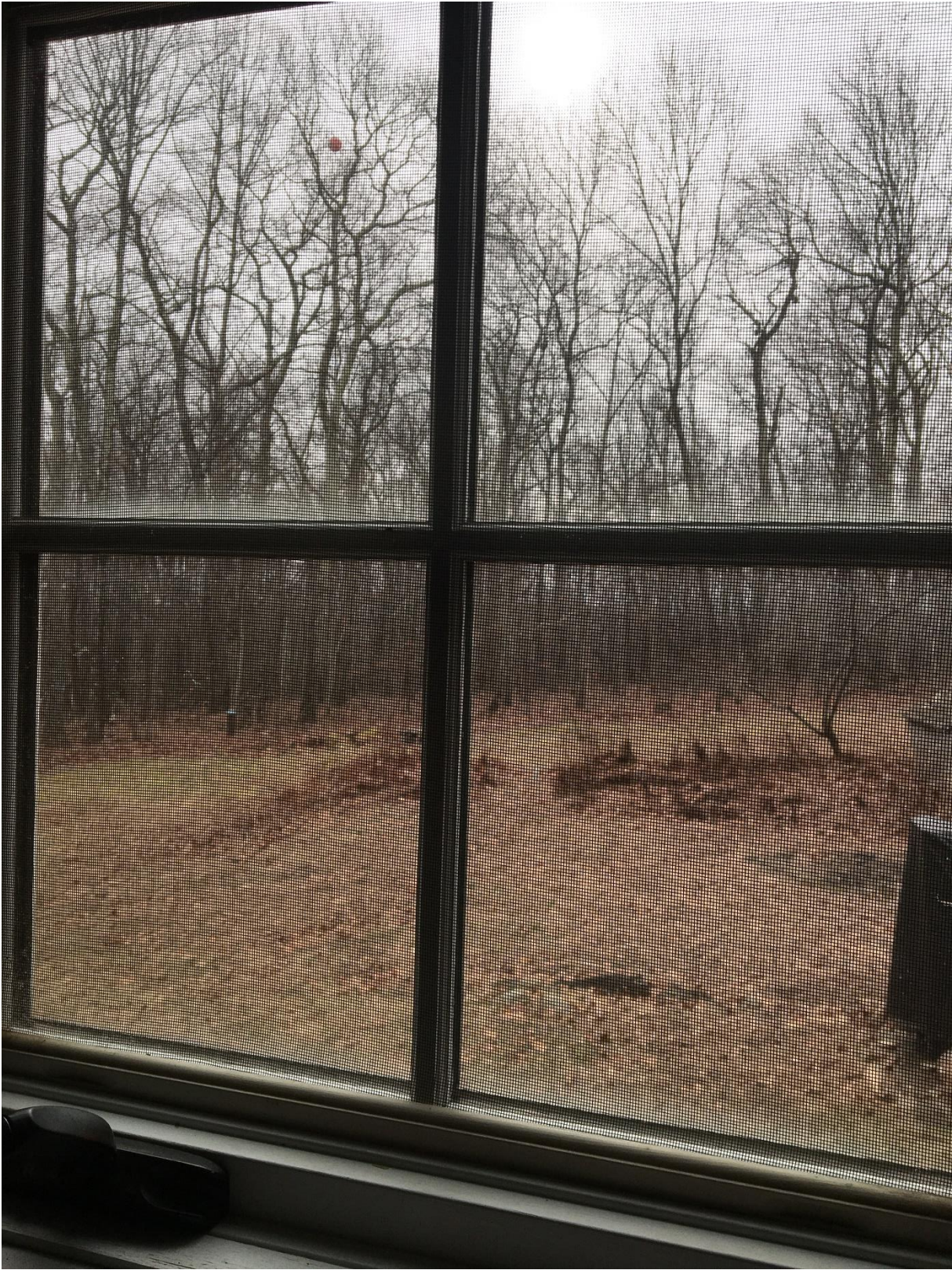


Above photo taken from 25 Bald Hill Road (property of Melanie Ough).



Above photo taken from 25 Bald Hill Road (property of Melanie Ough).





Above photo taken from 25 Bald Hill Road (property of Melanie Ough).



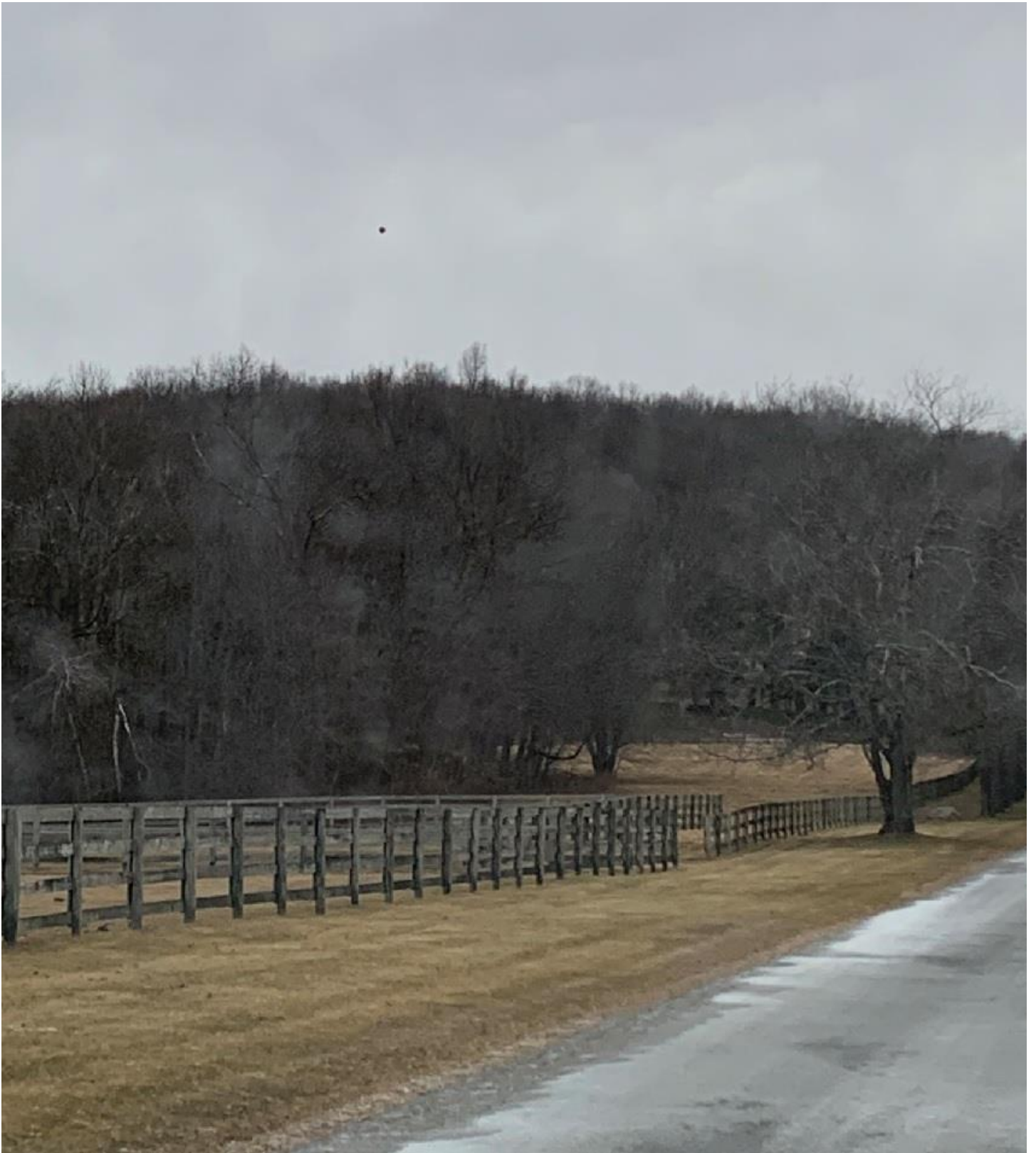
Above photo taken from corner of Rt. 341 and Richards Road  
(House in Foreground is 2 Bald Hill Road (property of Matthew and Bonnie Harris).



Above photo taken from 22 Bald Hill Road (property of Alexandra DiPentima).



Above photo taken from 22 Bald Hill Road (property of Alexandra DiPentima).



Above photo taken of Site A Balloon Test from Richards Road.

**Attachment 2: Applicant's Photographs of Site A from Richards Road**



**DOCUMENTATION**

PHOTO	LOCATION	ORIENTATION	DISTANCE TO SITE	VISIBILITY
28	RICHARDS ROAD	NORTHWEST	+/- 0.43 MILE	YEAR ROUND



**SIMULATION**

PHOTO	LOCATION	ORIENTATION	DISTANCE TO SITE	VISIBILITY
28	RICHARDS ROAD	NORTHWEST	+/- 0.43 MILE	YEAR ROUND

**Attachment 3: Excerpts of Kent, Connecticut Zoning Regulations**



**1400 APPLICATION OF REGULATIONS****1410 USES PROHIBITED IF NOT PERMITTED**

1. Any use not specified in these Regulations as permitted in a zoning district without permit, by Zoning Permit, by Site Plan, or by Special Permit shall be deemed to be prohibited within such district.
2. Where the permissibility of a proposed use is uncertain in a zoning district by these Regulations, the Commission or the Zoning Enforcement Officer shall make the determination as to whether the proposed use is permitted or prohibited in that district and, if permitted, what form of approval is required.

**1420 MINIMUM REQUIREMENT**

1. In their interpretation and application, the provisions of these Regulations shall be held to be the minimum requirements adopted for the promotion of the public health, safety, and welfare unless the context clearly indicates that the provision is intended to be a maximum limitation.
2. In cases of uncertainty as to the proper application of any of the requirements of these Regulations to a particular lot because of its peculiar or irregular shape, the Commission or the Zoning Enforcement Officer shall determine how such Regulations shall be applied.

**1430 RELATIONSHIP TO OTHER REGULATIONS**

1. These Regulations are not intended to repeal, abrogate, annul or in any way impair or interfere with any existing provisions of law or ordinance, or any rules, regulations, or permits previously adopted or issued or which shall be adopted or issued pursuant to law, relating to the use of lots, buildings or structures; nor are these Regulations intended to interfere with, abrogate or annul any easements, covenants or other agreement between parties.
2. Where these Regulations impose a greater restriction upon the use or dimensions of buildings or structures, or require larger yards, courts, or other open areas than are imposed or required by existing provisions of law or ordinance, or by such rules, regulations or permits, or by such easements, covenants or agreements, the provisions of these Regulations shall control.

# 3200

## RURAL RESIDENTIAL DISTRICT (RU-1)

### 3240 AREA AND DIMENSIONAL STANDARDS

The following standards shall apply to uses permitted in the Rural District except as may be provided elsewhere in these Regulations.

#### RU-1

<b>Minimum Lot Area</b> <i>(See Section 5250 for minimum lot area requirements for a Conservation Development)</i>	Using the Soil Categorization Table on the following page, each lot created after July 1, 2018 shall have an area of not less than 2.0 acres for Class A soils, 3.0 acres for Class B soils, and 5.0 acres for Class C soils.  On-site investigation by a Commission approved soil scientist is required for determining minimum lot size and suitability of limitation for any intended use.  In the event that a lot shall have more than one class of soil, the location of the septic system shall determine which class of soil shall be applicable. For any proposed subdivision, each lot thereon shall be treated as an individual lot.
<b>Minimum Square</b>	Each lot created after July 1, 2018 shall be of such shape that a square with 200 feet on each side will fit on the lot with one side of the square along the required front yard setback.
<b>Minimum Front Yard Setback</b>	40 Feet
<b>Minimum Side Yard Setback</b>	30 Feet
<b>Minimum Rear Yard Setback</b>	30 Feet
<b>Maximum Coverage</b>	
• Principal Building	10 %
• Principal Building and Accessory Buildings	15%
<b>Maximum Building Height</b>	
• Principal Building	30 Feet
• Accessory Buildings (if guest house or detached accessory dwelling)	30 Feet
• Other Accessory Buildings	20 Feet

#### PLEASE NOTE –

1. Section 9100 may provide for possible exceptions to lot area requirements, setback requirements, yard limitations, building height limitations, building coverage limitations and other dimensional standards.
2. The provisions of Section 5200 (Conservation Development Overlay District) may apply to a subdivision of land in the RU-1 District.
3. For rear lots, please see Section 3224.15.

## 9600 TELECOMMUNICATIONS

### 9610 PURPOSE AND INTENT

The purpose and intent of this Section of the Regulations is to:

- Preserve the scenic, historic, environmental, and natural character and appearance of the Town of Kent while allowing adequate telecommunications services to be developed.
- Establish locations least disruptive to the public health, safety and welfare in Kent and consistent with the Plan of Conservation and Development.
- Minimize adverse visual effects through proper design, siting and vegetative screening.
- Avoid potential damage to adjacent properties.
- Minimize the height of towers and the number of towers, especially free-standing towers.
- Provide for the orderly removal of abandoned antennas and towers.
- Provide guidance for towers and other wireless communication facilities which are subject to the jurisdiction of the Connecticut Siting Council.
- Require the submission of information necessary to evaluate the proposed facility.

### 9620 FACILITIES PERMITTED

1. The following antenna and wireless facilities are permitted accessory to a use permitted in a zoning district:
  - a. amateur (HAM) radio antenna;
  - b. citizens band radio antenna; and
  - c. satellite television dishes, less than 2.0 meters in diameter, provided they are located as unobtrusively as possible.
2. The following antenna and wireless facilities may be permitted by the Commission, subject to approval of a Site Plan in accordance with the requirements of Section 10300:
  - a. An antenna associated with a radio dispatch service provided it is mounted to a building or other structure and is screened from view from a public street.
  - b. An omni-directional or whip antenna, 20 feet or less in height and seven inches or less in diameter, when mounted to a building or other structure and provided that its color matches the exterior of the structure.
  - c. A directional or panel antenna mounted to a building, six feet or less in height and two feet or less in width, provided that its color matches the exterior of the structure.
3. Any other antenna and/or wireless facilities subject to local jurisdiction may be permitted by the Commission, subject to approval of a Special Permit in accordance with the requirements of Section 10400.

**9600**  
**TELECOMMUNICATIONS**

**9630 LOCALATIONAL PREFERENCES**

The preferred location of antennas or towers and wireless facilities shall be:

1. Antennas - on existing communication towers or existing buildings, water towers or other suitable structures where such antenna can be camouflaged and have the least long-range visual effect.
2. Towers –
  - a. In locations outside:
    - i. the Kent Village Overlay District,
    - ii. the Horizon-line Conservation Overlay District,
    - iii. the Housatonic River Overlay District, and
    - iv. the Lake Waramaug Overlay District.
  - b. In locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening and have the least long-range visual effect.
3. On Town-owned land or buildings where the Town of Kent has endorsed location of a wireless facility.

**9640 SPECIAL PERMIT APPLICATION REQUIREMENTS**

In addition to any other application requirements of these Regulations, a Special Permit application for antennas, towers or wireless facilities shall also include the following:

1. If applicable, documentation that the applicant qualifies as a wireless service provider.
2. Documentation that the entity proposing to construct and maintain the tower has the financial capability to do so.
3. A list of all federal, state, regional, district and municipal agencies which have conducted or will conduct a review of the proposed tower, together with a copy of any position / decision / recommendation of such agency or board with respect to the proposed facility.
4. A Site Plan meeting the requirements of these Regulations and showing the following:
  - a. The antenna and/or tower location and guy wires.
  - b. Areas of construction or improvement, including the access road to the site.
  - c. The boundaries of the tower fall zone.
  - d. The location of any approved or proposed buildings or construction on or adjacent to the site.
  - e. The following areas on or adjacent to the site shall be shown either on the Site Plan or a separate existing conditions map:
    - i. Inland wetlands and watercourses.
    - ii. Areas identified on the Natural Diversity Database maintained by the Connecticut Department of Energy and Environmental Protection.
    - iii. Historic structures or sites, unique features, buildings, monuments or areas.
    - iv. Permanently protected lands, such as state park and forest lands, land protected by a land trust.
5. A construction plan, prepared by a professional engineer licensed to practice in Connecticut, showing construction and drainage details, including the access road and construction or drainage improvements, aboveground wires, cables, ducts, utility and signal cables, guying and guy anchor details.
6. A rendering drawn to scale depicting the tower, showing all antenna and wireless facilities, with details and dimensions, including any lighting, colors and accessory elements.

7. A topographic location map, at a scale of one inch equals 2,000 feet, showing:
  - a. The antenna or tower location.
  - b. Existing and proposed towers in and outside Kent that would connect or be interconnected with or hand off to the proposed facility.
  - c. The boundaries of the tower viewshed, i.e., the area within which the tower can be seen based upon an assessment of the topography surrounding the site.
  
8. An evaluation of the visual effect of the proposed tower:
  - a. within the viewshed, including land in adjacent towns, and
  - b. with regard to areas of special concern including, but not limited to:
    - i. Areas identified as existing or proposed open space or preservation areas in the Plan of Conservation and Development.
    - ii. Land lying within 300 feet of a sub-regional watershed line as shown on maps prepared by the Connecticut Department of Energy and Environmental Protection Natural Resources Center and on file in the Town Hall.
    - iii. Areas within the Kent Village Overlay District.
  
9. A written report, prepared by qualified expert(s), providing:
  - a. A description of the service area for each communication system on the tower.
  - b. The rationale and justification for the proposed antenna and/or tower in the proposed location.
  - c. Documentation that the antenna height is the minimum required to provide adequate coverage as defined herein.
  - d. An analysis comparing the site to alternative sites within the proposed service area.
  - e. Identification of the location of tall structures within 1/4 mile of the site and documentation that the owners of such structures have been contacted and asked for permission to install an antenna and such permission has been denied for other than economic reasons.
  
10. A statement from the applicant indicating that the applicant will, weather permitting:
  - a. Raise a balloon of at least three feet in diameter at the proposed tower site.
  - b. Raise such balloon to the height of the proposed tower.
  - c. Raise such balloon at least three days prior to the scheduled date of the public hearing.
  - d. Provide the Commission with at least 72 hour notice of the date and time the balloon will be raised.
  - e. Keep the balloon in place for a period acceptable to the Commission.
  
11. Written permission from the property owner allowing inspections of the site.

**9650 SUPPLEMENTAL APPLICATION REQUIREMENTS**

As part of a Special Permit application for an antenna, tower, or wireless facilities, the Commission may require submission of the following:

2. A report assessing the environmental impact of the proposed construction and operation on:
  - a. areas designated for conservation in the Plan of Conservation and Development,
  - b. areas designated as conservation or preservation areas in the State Plan of Conservation and Development, and
  - c. the areas indicated below.
    - i. Inland wetlands and watercourses.
    - ii. Areas identified on the Natural Diversity Database maintained by the Connecticut Department of Energy and Environmental Protection.
    - iii. Historic structures or sites, unique features, buildings, monuments or areas.
    - iv. Permanently protected lands, such as state park and forest lands, or land protected by a land trust.

## 9600

### TELECOMMUNICATIONS

3. A report regarding electronic emissions from the proposed tower operation which shall, at a minimum, include the following:
  - a. Identification of each proposed transmitter and identification of all potential transmitters that could be located on the tower or facility.
  - b. For each proposed or potential transmitter, identification of the frequency limits, signal band width and the upper limit of both peak and average power of each transmitter.
  - c. An analysis of the combined worst case radio frequency (RF) power density computed using Federal Communications Commission Office of Science and Technology Bulletin 65, as amended, in comparison to the applicable Federal Communications Commission power density standards.
4. A report regarding noise emissions from the proposed facility including the characteristics of any emergency or backup power source to be situated at the site.
5. A soil report complying with Appendix I: Geotechnical Investigations, ANSI/EIA-222-E, Manual standards, as amended, verifying the design specifications of the tower foundation and anchors for the guy wires, if used.

### 9660 STANDARDS FOR SPECIAL PERMIT APPLICATIONS

An antenna, tower, or wireless facilities requiring a Special Permit from the Commission shall comply with the following standards:

1. No new tower shall be permitted in the Kent Village Overlay District, the Horizon-line Conservation Overlay District, the Housatonic River Overlay District, or the Lake Waramaug Overlay District.
2. A new tower shall be on a lot of at least three acres of land and shall be of an area and configuration such that the tower in the proposed location shall be set back from all property lines by a distance no less than 120 percent of the height of the tower.
3. New tower applications shall demonstrate that the service proposed cannot be provided with equipment added to an existing or other proposed antenna or tower.
4. A related unmanned equipment and/or storage building(s) shall be permitted, provided that it contains no more than 750 square feet of gross floor area and is not more than 12 feet in height and is screened from view from adjacent properties and public streets.
5. Commercial advertising shall not be allowed on an antenna or the tower.
6. Signal lights or illumination shall not be permitted unless specifically approved by the Commission and required by the Federal Communications Commission or Federal Aviation Administration.

**9700**

**ENERGY PRODUCING WIND FACILITY**

**9700 ENERGY PRODUCING WIND FACILITY**

**9710 PURPOSE AND INTENT**

The purpose of this regulation is to allow the safe, effective, and efficient use of small wind energy systems at a capacity of 5-50 kW, which are installed to reduce the on-site consumption of utility supplied electricity, subject to reasonable conditions that will protect the public health, safety and welfare. Such systems are not to be utility scale, where the primary use is electrical generation to be sold on the wholesale electricity market.

**9720 APPLICABILITY**

1. This Section applies to all proposals to construct on-site wind facilities within the Town of Kent.

**9730 FACILITIES PERMITTED**

**9731 Permitted By Right (No Additional Zoning Authorization Required)**

1. (reserved)

**9732 Permitted By Zoning Permit (Staff)**

1. Temporary wind monitoring or meteorological tower when associated with planning for a wind facility shall be permitted for a period not to exceed 12 months provided that any such tower:
  - a. shall be subject to issuance of a building permit for a temporary structure,
  - b. shall be subject to all applicable regulations concerning lot area, setbacks, parking, and building coverage requirements, and
  - c. shall not exceed two (2) feet width at the base of tower or one hundred twenty five (125) feet in wind facility height.

**9733 Permitted By Site Plan Approval (Commission)**

1. (reserved)

**9734 Permitted By Special Permit (Commission With Public Hearing)**

1. The erection, construction, or installation of any wind facility other than a temporary wind monitoring or meteorological tower.
2. The modification of any wind facility other than a temporary wind monitoring or meteorological tower so as to:
  - a. materially alter the type of such facility or equipment,
  - b. materially increase the size of such facility or equipment, or
  - c. materially change bulk or wind facility height.

7. Landscape and screening requirements.
  - a. Existing vegetation on and around the site shall be preserved to the greatest extent possible.
  - b. A planting plan shall be provided showing that building(s), fuel tanks, other man-made structures and as much of the tower as possible will be screened by an evergreen screen meeting the following parameters:
    - i. The screen shall be a row of evergreen trees planted ten feet (10') on center maximum.
    - ii. The evergreens shall have a minimum height of six feet (6') at planting and be of a type that grows to a minimum of fifteen feet (15') at maturity.
  - c. The Commission may accept any combination of existing vegetation, topography, walls or other features, provided that it meets or exceeds the above evergreen screen requirement.
  - d. For a new tower, a fence with a minimum height of eight feet (8') shall be provided around the installation for public safety and security.
8. The Commission may require, as a condition of the permit, that the applicant monitor the radio frequency emissions from the facility on a regular basis, providing both a pre-installation and post-installation assessment.
9. The applicant shall provide a copy of such monitoring reports to the Planning and Zoning Commission in a timely manner.
10. As a condition of the approval of the permit, the Commission may require a performance guaranty in accordance with Section 10970 in an amount sufficient to cover the cost of removing the improvements associated with the facility and restoring the site to its previous condition.