

**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 8, 2020**

**RESPONSE OF BALD HILL ROAD NEIGHBORS TO APPLICANTS' MAY 6, 2020  
OBJECTION AND MOTION FOR PROTECTIVE ORDER AS TO THEIR MAY 9, 2019  
PHASE I ENVIRONMENTAL SITE ASSESSMENT.**

On May 6, 2020, the Applicants filed a three-part response to the Bald Hill Road Neighbors' Motion for Site Preservation and to Preclude Spoliation of Evidence on Site A. The Bald Hill Road Neighbors hereby respond to Applicants and Object to Applicants' Motion for Protective Order.

**I.**

The Applicants open their Objection by asserting that the owner of the Site A property did not grant permission to enter the property. However, this ground for objection is merely an attempt to distract the Council from extensive areas of environmental concern on Site A. To seek permission to enter the property before photographing vital evidence in this matter would be to risk the spoliation of that evidence that was undisclosed in the Application.

Had the Bald Hill Road neighbors sought prior permission from the Site A property owner, it would have been possible for the owner to quietly remove debris and thereby substantially alter the site in an undocumented manner. At that point, with no disclosure — or indeed any sort of real documentation — of environmental concern in the Application, vital evidence would have been irretrievably lost.

Counsel Anthony F. DiPentima for the Bald Hill Road Neighbors made a limited and brief entry of the Site A property on April 16, 2020, merely to document evidentiary details that could have been easily lost had he sought prior permission from the owner. Counsel DiPentima did not harm or alter the property — his entry was limited solely to taking photographs that will be vital to the completeness of the record in this proceeding.

Thus, the Bald Hill Road Neighbors made their Motion to preserve the site in its current condition — the condition documented by the photos on April 16, 2020 (Attachment 1) — so that when the Council visits the site, it will be seeing the true condition of the property.

The Applicants also argue that the Bald Hill Neighbors allegations of Site contamination are not supported by “An environmental, professional or any other credible evidence”. That argument is merely an attempt to mislead the Council. Although an environmental professional may be needed to conduct a complete Phase 1 and Phase 2 environmental evaluation and professional testing of a property, a layperson could reasonably ascertain that with commercial/industrial type barrels on the property, apparent burial mounds, building debris, and similar issues, that areas of environmental concern are present. Indeed, often the first person to discover environmental concern on any type of property is a layperson who simply sees something amiss.

The Applicants also attempt to distract the Council by asserting that there is, “no context” for photos of the Site A property and that those photos, “arguably could have been taken anywhere”. The Bald Hill Road Neighbors’ responses to the Applicants Interrogatories, filed simultaneously with this Response and Objection, provide all the necessary “context” of the photos required. The photographs in question were taken by Attorney Anthony DiPentima on April 16, 2020 at the Site A property. Additional photographs of the Site A property, taken from abutting neighbors’ properties on April 27, 2020, also show debris, barrels, and areas of environmental concern on the property (Attachment 2). These additional photographs are consistent with the photographs taken on Site A.

The Applicants then further obfuscate with the far-fetched insinuation that one of the Bald Hill Road Neighbors may have “deposited” the barrels and other features of environmental concern on Site A. Publicly available photographs reveal the absurdity of such argument.

Aerial photographs, publicly available from the University of Connecticut and dating to early 2016 (Attachment 3) and early 2019 (Attachment 4) show extensive debris and areas of

environmental concern on the Site A property. The 2016 photograph shows a discarded boat, areas of white debris, and other debris. The 2019 photograph reveals what appears to be a yellow barrel and other areas of environmental concern on Site A.

Those aerial photos (available on the Internet by accessing the University of Connecticut map index at [http://magic.lib.uconn.edu/mash\\_up/aerial\\_index.html](http://magic.lib.uconn.edu/mash_up/aerial_index.html)) belie the Applicants' claim of vagueness, lack of context and lack of substantiation, and reveal that the Applicants are not as familiar with their own property, or as forthcoming about its condition, as they would have the Council believe. The Council should therefore order that the Site A property be preserved as-is, consistent with the Bald Hill Neighbors' Motion for Site Preservation and to Prevent Spoliation of Evidence.

## II.

In Section II of the Applicants' Objection and Motion, the Applicants assert that they have performed a Phase 1 Environmental Site Inspection dated May 9, 2019 and that said Report indicated that there was "no recognized environmental concerns". However, this conclusion is contrary to the evidence of debris and environmental concern on the site, as shown in the early 2016 and early 2019 aerial photographs. That the Applicants claim to have a Phase 1 evaluation, but then promptly move for a Protective Order to hide its contents, thereby robbing other parties and intervenors from due process inspection and cross-examination, indicates that the methodology of the Purported Phase 1 is suspect.

The rationale proffered by the Applicants that, "the evaluation of portions of the property not impacted by the Proposed Facility do not relate to criteria set forth in C.G.S. § 16-50p" does not outweigh the apparently widespread areas of environmental concern on the property in light of the numerous photos — the 2016 aerial photograph; the 2019 aerial photograph; the photographs from the Site A property; and the photographs from neighboring properties. The Council should invoke its authority under § 16-50p to consider, "the nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect..." in light of widespread areas of environmental concern, the omission of these areas from the Application, and the numerous photographs of debris. The Site A property is only 1.99 acres in size, with a proposed disturbance of 15,500 sq. ft. (around 18% of the lot area) and so, given those areas of environmental concern, the entire May 2019 Phase 1

report, as well as the name of the expert who produced it, should be made available to the Council and all parties and intervenors in this matter.

The Standards for a Phase 1 Environmental Study include, at a minimum, a physical site inspection of the subject property (See, e.g., ASTM Phase 1 Standard 4.6). Nevertheless, the plain evidence of debris and the areas of environmental concern that have existed on Site A since at least 2016, as evidenced by the 2016 aerial photograph (Attachment 3) cast doubt on any “clean” result in the alleged May 2019 Phase 1. This is made all the more clear by the fact that a second aerial photograph, taken in early 2019 (Attachment 4) — close in time to the supposed Phase 1 review by the Applicant — showed the presence of at least one barrel and areas of environmental concern on the Site A property.

After all, what sort of Phase 1 physical inspection could possibly have been conducted by the Applicants in May 2019 that would fail to reference the plainly visible barrels and other burial sites of debris and areas of environmental concern throughout Site A? If indeed a physical inspection was performed, how then could the Applicants have failed to disclose to the Siting Council all indicia of possible contamination as they are obligated to do? Given that the purported May 2019 Phase 1 raises more questions than it answers, due process requires complete disclosure of the results to the Council, and all parties and intervenors in this matter.

The inconsistencies between the Applicants’ arguments to the Council and the facts surrounding environmental issues at Site A are striking and warrant a preservation of site evidence pending the Council’s visit to the site, and the full disclosure of the purported Phase 1 from May 2019.

### **III.**

As to Section III, the Applicants assert that any environmental concerns on Site A would be addressed “prior to construction of the facility”. However, this argument rings hollow when considered alongside the Applicants’ apparently unfamiliarity with the Site A property, and with their repeated attempts to mislead the Council on environmental questions in this case.

First, while the Applicants allege that any contamination would be remedied prior to construction, the Applicants have yet to supply clear evidence as to what sort of potential contamination may be present. Indeed, their explanation, thus far, has been the far-fetched insinuation that the Bald Hill Road Neighbors placed debris or substances on the property.

Secondly, when asked to produce any Phase 1 and Phase 2 environmental reports about the site, the Applicants assert that a May 2019 report shows a clean result, but then promptly move for a Protective Order to prevent full disclosure of the supposedly clear report. Indeed, when confronted with photographs of their own site, the Applicant would have the Council focus on the fact that someone walked on Site A — a site the Applicants themselves brought to public scrutiny — rather than actually tell the Council what environmental issues are on the site.

Third, rather than address the substance of the environmental concerns raised by the Bald Hill Road Neighbors, the Applicant attempts to mislead the Council by citing irrelevant documents as proof of a clean site. This takes form of the Applicants' assertions that the Department of Energy and Environmental Protection (DEEP) has been consulted and that the Council on Environmental Quality (CEQ) provided written comments which did not raise concerns about the "presence of environmental hazards on Site A".

Yet this is at best an obfuscation and an attempt at deflection. The CEQ merely opined on the visual aspects of the towers from sites A and B. But the Applicant omits the fact that its own Application fails to raise any concern that would come to CEQ's attention about the debris and areas of environmental concern on the site. Since the CEQ was not alerted to the possibility of potential hazardous materials on Site A via the Application, it did not opine about any possible concerns about environmental hazards on Site A. Rather than simply note that the CEQ was silent on the question of site debris, the Applicants actually attempt to infer from that silence a clean bill of environmental health for Site A. The Applicants thereby attempt to mislead the Council into reading far more into the CEQ comments than is warranted by the plain text of that document.

The Applicants attempt a similar sleight-of-hand with their citation of environmental review by All-Points Technology Corporation. The Application in this matter includes a letter from All-Points Technology indicating that it had reviewed the National Diversity Database and did not anticipate negative impacts on State-listed Species (Application Attachment 11). However, what the Applicants fail to mention is that the All-Points letter also notes that, "This information is not necessarily the result of comprehensive or site-specific field investigations." While the Applicant would have the Council believe that both All-Points and the CEQ have given Site A a clean bill of environmental health, the reality is that neither source appears to have conducted a complete site visit, which would have revealed the presence of debris and areas of environmental concern.

After consistently obfuscating and trying to mislead the Council on these issues, the Applicants then summarily assert they will remediate the site, without knowing and disclosing what is on their own site. How could the Applicants credibly volunteer to clean the site, when they do not even seem to know what is on the site, including the debris and environmental concerns that were visible at least as far back as 2016?

Given that the Applicant propose to disturb about 18% of the total square footage of Site A, the Applicant should be required to preserve the Site in its present condition pending a Council visit, the Applicant should be required to disclose the full contents of their Phase 1 review as well as the expert used to produce that report.

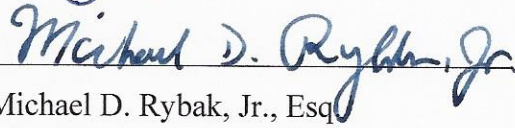
**Conclusion**

For the foregoing reasons, the Bald Hill Neighbors respectfully request that the Siting Council issue an order to preserve Site A and to prevent spoliation of evidence pending a Siting Council inspection of the site property, and that the Council deny the Applicants' Motion for Protective Order as to disclosure of the 2019 Phase 1 environmental evaluation. The Bald Hill Road Neighbors additionally urge the Siting Council to promptly perform a site inspection of the Site A property.

Respectfully Submitted on Behalf of the Bald Hill Neighbors,

By   
Anthony F. DiPentima, Esq.

5/8/20  
Date

By   
Michael D. Rybak, Jr., Esq.

Guion, Stevens & Rybak, LLP  
93 West Street  
PO Box 338  
Litchfield, CT 06759  
(860) 567-0821  
Juris No. 025673  
Their Attorneys

**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 8<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:

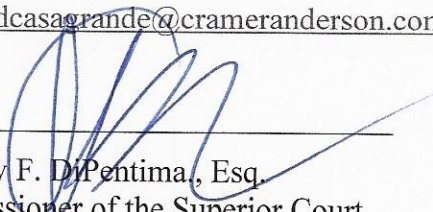
siting.council@ct.gov

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

Lucia Chiochio, Esq.  
Cuddy & Feder, LLP  
445 Hamilton Ave  
14<sup>th</sup> Floor  
White Plains, NY 10601  
LChiochio@cuddyfeder.com

Keith R. Ainsworth, Esq.  
Law Offices of Keith R. Ainsworth, Esq.  
51 Elm Street, Suite 201  
New Haven, CT 06510-2049  
keithainsworth@live.com

Town of Kent  
Daniel E. Casagrande, Esq.  
Cramer & Anderson, LLP  
30 Main Street  
Danbury, CT 06810  
dcasagrande@crameranderson.com

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





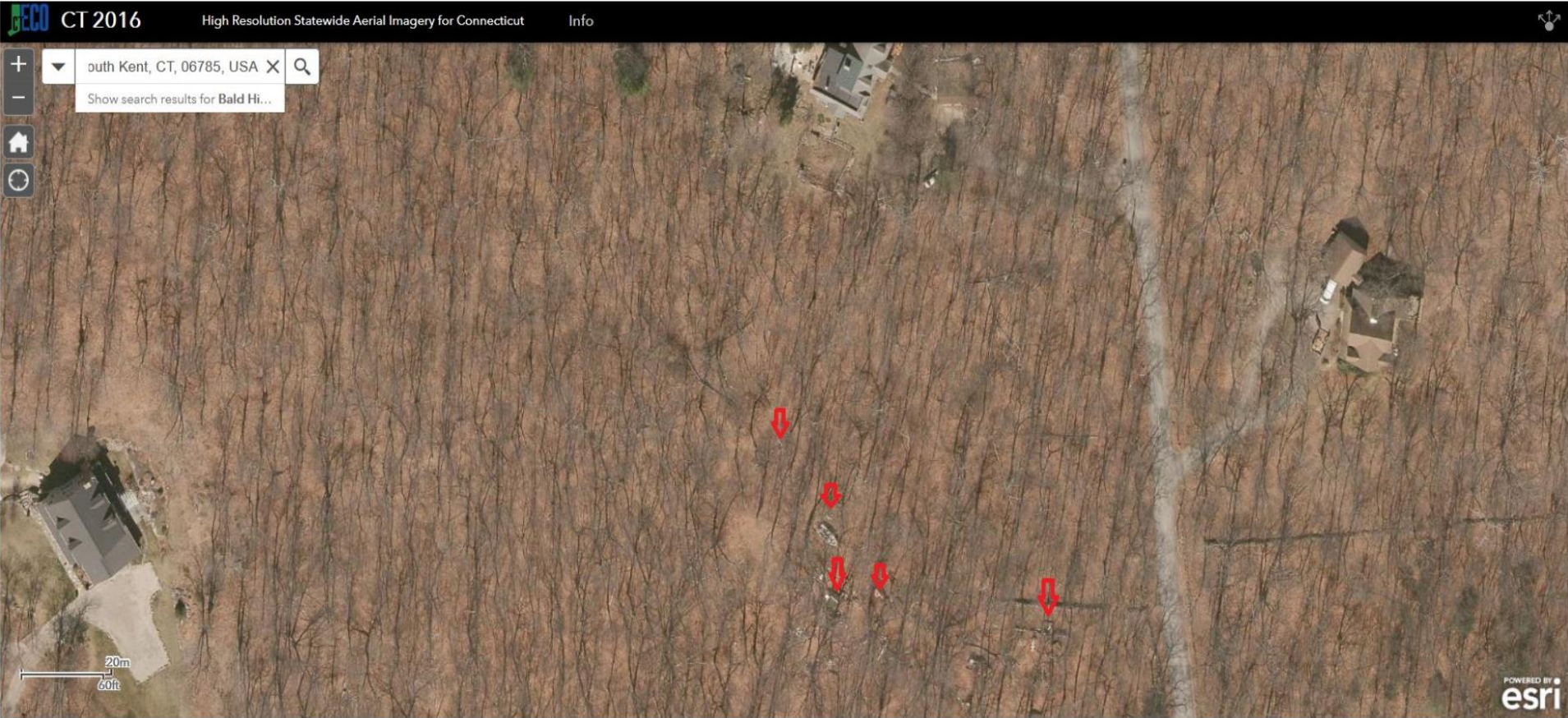








**Attachment 2 –Aerial Photographs from  
the University of Connecticut 2016 Orthophotography and Lidar**



(Aerial photograph of Site A Property – 2016)

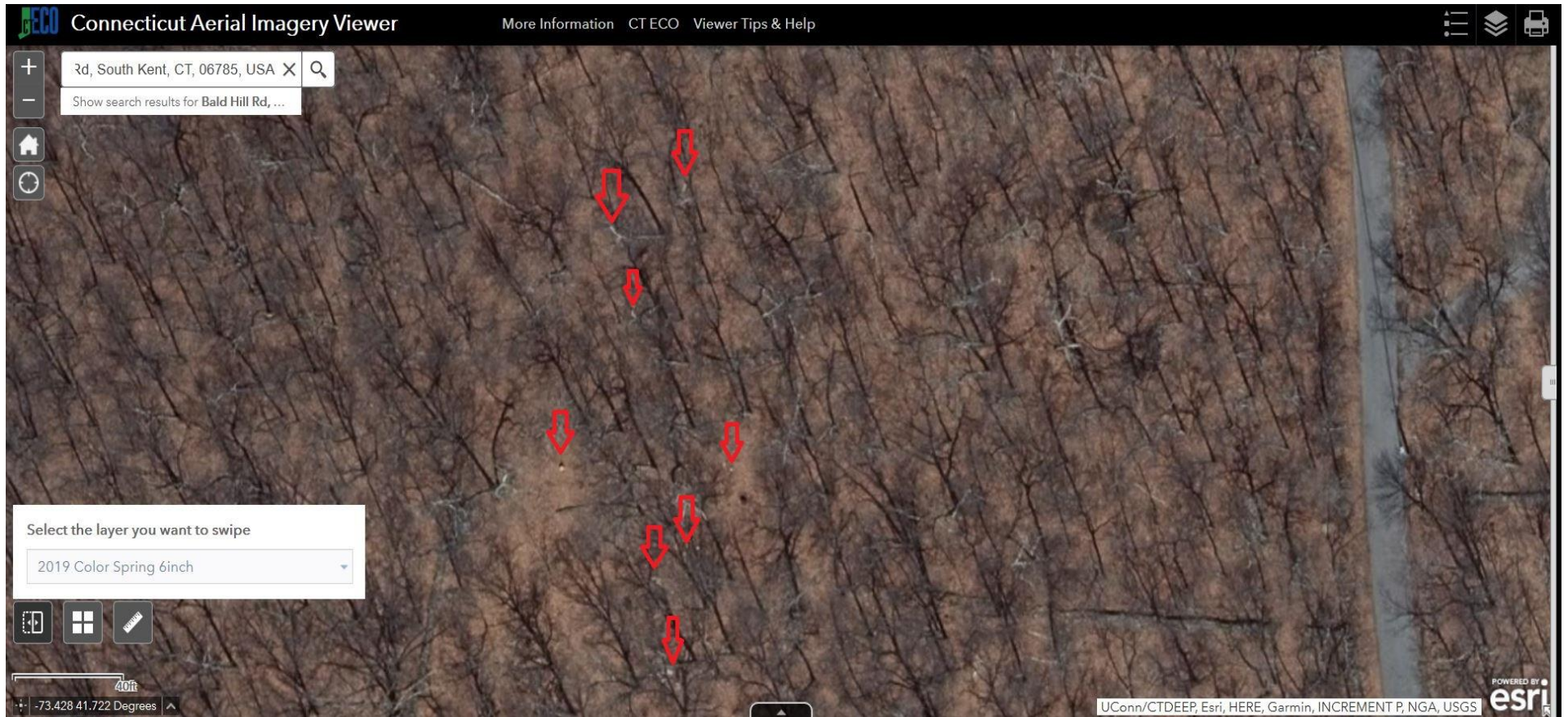


(Aerial photograph of Site A Property and Adjoining Properties – 2016)



(2016 Aerial Close-Up of Debris Shown Above)

**Attachment 3 — Aerial photograph from the University of Connecticut, Spring 2019**



(2019 Aerial Photograph of Site A Property)