

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

July 17, 2020

**OBJECTION TO APPLICANT'S MOTION FOR PROTECTIVE ORDER AND
BALD HILL ROAD NEIGHBORS' MOTION TO COMPEL**

The Bald Hill Road Neighbors (the "Neighbors") hereby object to the Applicants' July 16, 2020 Motion for Protective Order regarding the 2019 Phase 1 environmental evaluation of the Site A property and hereby move the Siting Council compel release of the complete Phase 1 report to all parties and intervenors.

With only three minutes to spare before the close of business on July 16, the Applicants filed a renewed Motion for Protective Order asking the Council to prevent disclosure of their Phase 1 environmental evaluation of the Site A property.

In support thereof, the Applicants contend that the Siting Council's evaluation of the Applicant's Proposed Facility at Site A, "should not be based on the evaluation of portions of the property not impacted by the Proposed Facility that do not relate to the criteria set forth in C.G.S. § 16-50p", and assert that, "the information contained in the Phase 1 that is relevant to the area that would be impacted by construction of the Proposed Facility is included in Attachment 7 of the Application, and therefore, the complete Phase 1 should be excluded from any public disclosure."

The Applicants have allegedly provided to the Siting Council a sealed envelope marked "Confidential" that allegedly contains the full Phase 1 Environment Site Assessment. The Parties/Intervenors have not been apprised by the Siting Council if the Applicant has indeed filed the complete Phase I Environmental Site Assessment, nor have the Parties/Intervenors been informed by the Siting Council if said Phase 1 will be produced prior to the July 23, 2020 hearing. The May 26, 2020 order of the Siting Council remains ambiguous. First, it directs that the 2019 Phase 1 be submitted in-camera to the Council and that the Applicant have a witness available for

the public hearing (presumably the evidentiary hearing at 2:00 and not the public comment portion at 6:30). The order leaves open the possibility that the Applicants could file a Motion for Protective Order, which the Applicants did. However, the Council's order of May 26 does not specify what would be an adequate time prior to the hearing to submit the Phase 1 for in-camera review, and does not specify, if the Phase 1 is to be released to the parties and intervenors or when that release would take place.

The result is that the Applicants are left to file the Phase 1 to the in-camera review only a week before the hearing, thereby delaying the potential release of that report to other parties and effectively denying those other parties the opportunity to examine vital evidence and meaningfully cross-examine the Applicants' witness.

Turning to the July 16 Motion for Protective Order, the Applicant shortchanges its obligation to provide full disclosure to all parties concerned. The Applicant contends that its Application, Tab B and Attachment 7, sufficiently disclose the environmental status of the Site A property as to the project before the Council. However, neither Tab B nor Attachment 7 address the Neighbors' evidence of long-standing areas of environmental concern on the Site A property. In support of this, the Bald Hill Neighbors have submitted numerous photographs of industrial-type barrels, burial mounds, and surface debris. Based on aerial photographs from UCONN archives, these areas have been plainly visible for years. The evidence shows that neither Tab B nor Attachment 7, nor any other part of the Application, disclose any of this evidence.

If the Phase 1 Environmental Site Inspection produced in camera failed to reveal the conditions shown by the Bald Hill Neighbors, including possible contamination, than that 2019 Phase 1 review is flawed and raises serious questions of site contamination that the Applicants have failed to find and reveal to the Siting Council.

If said Phase 1 review were to show areas of environmental concern or potential contamination, then it is incumbent for the Siting Council to immediately disclose this information to all parties, especially given that the hearing is now only six days away. Furthermore, it is impossible for the Parties to adequately cross-examine any witness produced by the Applicant related to the environmental status of the Site A property if the Parties do not have access to the very document that would be the foundation of the witness's relevance to the July 23 hearing and to cross-examination.

Another justification for not releasing the Phase 1 report, according to the Applicants, is that portions of the report could apply to areas of the property not to be implicated in the proposed construction of the tower and accompanying outbuildings and driveway.

That justification is unpersuasive. The Applicant proposes a significant disturbance of soil on the Site A property: almost 18% of the surface, a property that is only 1.99 acres large and which abuts several residential lots. The Applicant's taking extraordinary care to shield the Phase 1 from release combined with the skewed positioning of the project — less than 75 feet from abutting residential lots to the south and west — raises serious questions about whether potential contamination is on the Site A property. Indeed, if the Phase 1 report were truly a clean bill of health for the property, the Applicant would not have such motivation to resist releasing it. By all appearances, the Applicant is avoiding areas of potential contamination via the bizarre positioning of the project on the property.

The Applicants' argument that the Siting Council should take a "see no evil, hear no evil approach" based on CGS § 16-50p ignores the small size of the property, ownership by partner company Insite Towers, and the debris on the property. The Applicants submitted the Site A parcel to the Siting Council's jurisdiction, but now seeks to artificially limit the Siting Council to just the square footage under construction. Nevertheless, the debris and apparent contamination run throughout the Site A property without respect to the artificial distinction asserted by the Applicants.

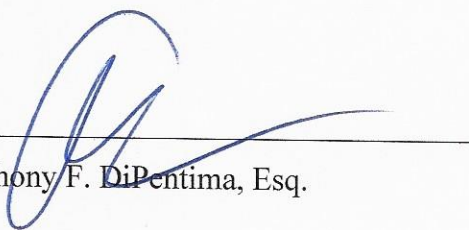
The Applicant tries to distract the Council by hanging its hat on Attachment 7 and Tab B of the Application, which it turns out are unrelated to the specific conditions demonstrated by the Bald Hill Neighbors' photographs of the Site A property. Release of the Phase 1 report is even more pressing, given that residences in the neighborhood draw their drinking water from wells and have a right to know what effect the proposed soil disturbance would have on their water.

Core parties and intervenors to a Siting Council matter are protected by common law fundamental fairness, common law due process, and constitutional due process. *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn. 669 (2014); *Grimes v. Conservation Commission*, 243 Conn. 266 (1997). A refusal to release the entire Phase 1 would violate those principles by preventing parties from accessing vital evidence and denying adequate cross-examination of the Applicants' witness.

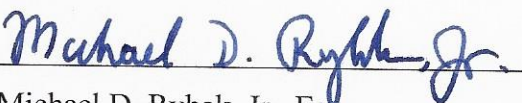
The Applicant's long delay from the date of the original ground lease, refusal to release the Phase 1 report, obfuscation about potential contamination, and last-minute delay tactic via Motion for Protective Order clearly show the the Site A property is unsuitable. Indeed, the Council should draw a negative inference from the Applicant's motivation for refusing to disclose the complete Phase 1 report.

Wherefore, the Bald Hill Road Neighbors move that the Council deny the Applicants' Motion for Protective Order, sustain the Neighbors' objections, and order release of the full Site A property Phase 1 report to all parties and intervenors prior to the July 23 remote hearing.

Respectfully Submitted,

By 
Anthony F. DiPentima, Esq.

7/17/20
Date

By 
Michael D. Rybak, Jr., Esq.

Guion, Stevens & Rybak, LLP
93 West Street
PO Box 338
Litchfield, CT 06759
(860) 567-0821

CERTIFICATE OF SERVICE

I hereby certify that a true, original copy, of the foregoing were placed in the U.S. Mail on this 17th day of July 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
14th 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
keithrainsworth@live.com

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

Daniel S. Rosemark, Esq.
Rosemark Law, LLC
100 Mill Plain Rd., Third Floor
Danbury, CT 06811
daniel@rosemark.law


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