

State of Connecticut Siting Council

DOCKET NO. 488 —

Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for Certificate of Environmental Compatibility and Public Need for construction, maintenance, and operation of a telecommunications facility located at one of two sites: Kent Assessor ID #M10, Block 22, Lot 28 “Bald Hill Road” or 93 Richards Road, Kent, Connecticut.

: July 21, 2020

OBJECTION TO APPLICANTS’ MOTION TO STRIKE TESTIMONY

The Bald Hill Road Neighbors hereby object to the Applicants’ Motion to Strike the testimony of R. Bruce Hunter.

As grounds their Motion to Strike, the Applicants cite General Statutes § 16-50p and *Town of Westport v. Conn. Siting Council*. (47Conn. Supp. 382 (2002)). Their argument goes that the Council is empowered to consider only environmental — no economic — factors and testimony. In support thereof, the Applicants quote *Town of Westport* as stating, “[u]nder section 16-50p . . . the council is not obliged to take into account the status of property values directly.”

On the contrary, *Town of Westport* actually weighs *against* the Applicants’ motion. The Applicants quote *Town of Westport* out-of-context and thereby twist the meaning of *Town of Westport* by omitting vital portions of that decision. The court’s decision in that case, more fully, states:

“The town also appeals on the ground that the council did not take into account the effect of the location of the tower on real estate values at or around the approved site. Under § 16–50p, as quoted previously, the council is not obliged to take into account the status of property values *directly*. The council *must make use of property values in connection with its analysis of the environmental, scenic, historical and recreational values.*” [emphasis added] (*Town of Westport v. Connecticut Siting Council*, 47 Conn. Supp. 382, 407, 797 A.2d 655, 670 (Super. Ct. 2001), *aff’d*, 260 Conn. 266, 796 A.2d 510 (2002)).

The Connecticut Supreme Court ultimately affirmed the trial court's interpretation that property values need not be taken into account by the council *directly* but that it "must make use of property values in connection" with the environmental, scenic, historic, and recreational values. (260 Conn. 266 (2002)).

The Bald Hill Neighbors have filed the testimony of R. Bruce Hunter with the Council. Mr. Hunter's testimony includes precisely the kind of hybrid testimony the court in *Town of Westport* found that the Council must consider. This testimony and the related Impact Study show that the property values analyzed act as a measure of the scale of visual, recreational, and environmental impact of the proposed tower facility on Site A.

Mr. Hunter specifically states in his testimony and his Neighborhood Impact Study that property value, particularly rural residential neighborhood, reflect, "a wide variety of factors" and include, "environmental factors" such as "ridgeline views, scenery, forest, outdoor recreational and other such amenities". (Hunter Testimony at 2; Hunter Study at 1). Mr. Hunter elaborates that, "[t]he studied properties derive a substantial portion of their desirability from the rural character and environmental amenities of the neighborhood." (Hunter Testimony at 4). Mr. Hunter's study goes into even more detail and proves that the property values cited are fully entwined with environmental, scenic, and recreational factors in the rural, residential area on Bald Hill Road.

In addition to *Town of Westport*, due process and fundamental fairness require that Mr. Hunter's testimony be considered on another point. Mr. Hunter opines the proposed tower is so close to the property of neighbor Peter Fitzpatrick (15 Bald Hill Road), a "fall zone easement" would be imposed on the Fitzpatrick property adjoining Site A. Though the tower may be designed to break rather than topple, there remains the chance that the tower and/or debris would fall on the Fitzpatrick property, leaving no use to Mr. Fitzpatrick in those areas. The construction of the tower facility on Site A would preclude Mr. Fitzpatrick's use of areas of his property and so impairs the "bundle of rights" of property ownership within the fall zone and that a certificate permitting construction of the

proposed Site A facility amounts to a governmental taking. (See e.g., *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)).

Thus, in addition to *Town of Westport*, to properly consider the extent, nature, and potential value of that easement that would amount to a taking, the Council should admit Mr. Hunter's testimony and the documents attached thereto.

If the Council were to exclude Mr. Hunter's testimony, it would violate due process and fundamental fairness by potentially imposing a taking in the value of the fall zone easement without consideration of the extent, nature, and value of that easement prior to such taking.

Mr. Hunter will be available during the remote hearing on July 23 for proffer to the Council to show the admissibility of his testimony and will be available for cross-examination at that hearing.

Wherefore, the Bald Hill Neighbors object to the Applicants' Motion to Strike the testimony of R. Bruce Hunter.

Respectfully Submitted,

The Bald Hill Neighbors.

By _____

Anthony F. DiPentima, Esq.

July 21, 2020

Date

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CERTIFICATE OF SERVICE

I hereby certify that a true, original copy, of the foregoing were placed in the U.S. Mail on this 21st day of July 2020 and addressed to:

Ms. Melanie Bachman
Executive Director
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New Britain, CT 06051

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

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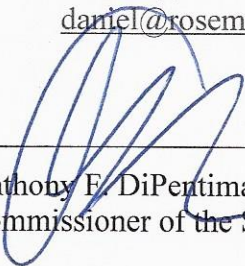
And I certify that electronic copies of the foregoing were sent to:

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