

CONNECTICUT SITING COUNCIL
DOCKET NO. 489

IN THE MATTER OF:

APPLICATION OF FIRST TAXING DISTRICT WATER DEPARTMENT OF NORWALK
FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED
FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A WIRELESS
TELECOMMUNICATIONS FACILITY IN NORWALK, CONNECTICUT

APPLICANT'S POST-HEARING BRIEF

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EXECUTIVE SUMMARY

On March 20, 2020, The First Taxing District Water Department of Norwalk (the “FTD” or the “Applicant”) filed an application (“Application”) with the Connecticut Siting Council (“Council”) for a Certificate of Environmental Capability and Public Need (“Certificate”) to construct a wireless telecommunications facility on a 1.89-acre parcel at 173½ West Rocks Road in Norwalk, Connecticut (the “Property”). The new facility would replace an existing wireless facility that has been operating on the Property since 1992. The Property is owned by the First Taxing District Water Department of Norwalk (the “Town” or “Owner”) and is currently used for water department and wireless telecommunications purposes.

Facility Description

The FTD currently maintains a 100,000 gallon out-of-service water tank in the northeast portion of the Property. Although no longer used for water storage purposes, the existing water tank currently supports wireless telecommunications antennas and related equipment owned and operated by New Cingular Wireless PCS, LLC (“AT&T”), Cellco Partnership d/b/a Verizon Wireless (“Verizon”), T-Mobile Northeast, LLC (“T-Mobile”) and Sprint Spectrum (“Sprint”) (collectively, the “Wireless Carriers”). Equipment associated with the Wireless Carriers’ antennas is located on the ground near the base of the existing water tank. AT&T and Verizon also maintain separate backup generators at the existing wireless facility.

As a part of a larger infrastructure enhancement project, the FTD will install a new 500,000-gallon water tank in the central portion of the Property; install new water service lines in the area around the Property; perform certain environmental remediation tasks on the 100,000-

gallon tank and the ground beneath the tank; and remove the existing 100,000-gallon water tank from the Property. The FTD proposes to build a new wireless telecommunications tower on the Property and allow the Wireless Carriers to relocate antennas and equipment to the new facility.

The FTD intends to build a 130-foot tall tower in the central portion of the Property, to the west of the new 500,000-gallon water tank. The Wireless Carriers will install antennas and related equipment on the tower at the 126-foot (AT&T), 116-foot (Verizon), 106-foot (T-Mobile), and 96-foot (Sprint) levels. Radio equipment for each of the Wireless Carriers would be located within a fenced facility compound. Two propane-fueled generators and two propane fuel tanks will also be installed within the compound and used by AT&T and Verizon. Vehicular access and utilities to the FTD tower site would extend from West Rocks Road.

Public Need

The proposed FTD Facility is needed so that the Wireless Carriers can continue to provide wireless service in the area around the Property, particularly along significant portions of the Merritt Parkway, Route 7, Main Street and West Rocks Road, as well as commercial and residential areas in northern Norwalk.

Nature of Probable Impacts

The construction, maintenance and operation of the FTD Facility would not have a significant adverse impact on the environment. FTD has presented evidence in this docket that the location and development of the FTD Facility will have no adverse effect on historic resources in the area; will not adversely impact federal or State listed, threatened or endangered species or State species of special concern; will not have any direct or indirect impact on wetlands, watercourses and/or vernal pools on or near the Property; will not require any FAA marking or lighting; and will

operate well within Maximum Permissible Exposure (MPE) limits established by the FCC for radio frequency emissions.

Visibility

The proposed FTD Facility will also not have a significant visual impact on the community. The most prominent views of the 130-foot tower would occur within one-half mile of the structure, to the south, east and west of the Property. Year-round visibility extends intermittently to areas generally west of the Property. Seasonal visibility would extend to an area to the north and northwest of the Property.

The closest off-site residence is located at 9 Skyview Lane, approximately 180 feet to the south of the FTD Facility and new water tank. The FTD Facility is not within 250 feet of a building containing a school or commercial daycare facility.

Public Input

On October 31, 2019, the FTD commenced the ninety (90) day municipal consultation process by submitting technical information about the proposed telecommunications facility to local officials in Norwalk. FTD representatives met with Steve Kleppin, Jessica Casey and Michael Wrinn with the City of Norwalk and participated in a Public Information Meeting (“PIM”) on January 2, 2020 hosted by the Norwalk Zoning Commission. At the PIM, the FTD discussed the need to replace the existing wireless telecommunications facility and the Council’s application process. Notice of the PIM was published in *The Hour* and was sent to abutting landowners.

Conclusion

The unrefuted evidence in the record clearly demonstrates that there is a need for the proposed FTD Facility and that the environmental impacts from the proposed facility location

would be minimal.

I. INTRODUCTION

On March 20, 2020, First Taxing District Water Department of Norwalk (“FTD” or “Applicant”) filed with the Connecticut Siting Council (“Council”) an application (the “Application”) for a certificate of environmental compatibility and public need (“Certificate”), pursuant to Sections 16-50g *et seq.* of the Connecticut General Statutes (“Conn. Gen. Stat.”), for the construction, maintenance and operation of a wireless telecommunications facility (the “FTD Facility”) on a 1.89-acre parcel at 173½ West Rocks Road in Norwalk, Connecticut (the “Property”). The Property is owned by the FTD and is used for water company and wireless telecommunications purposes. (FTD Exhibit 1 (“FTD 1”); FTD 8 Question (“Q”) 50).

The FTD Facility will consist of a new 130-foot monopole tower within a 3,518 square foot fenced compound. The FTD Facility will replace the existing 100,000-gallon abandoned water tank on the Property that currently supports antennas owned and operated by New Cingular Wireless PCS, LLC (“AT&T”), Cellco Partnership d/b/a Verizon Wireless (“Verizon”), T-Mobile Northeast, LLC (“T-Mobile”) and Sprint Spectrum (“Sprint”) (collectively the “Wireless Carriers”). Equipment associated with the Wireless Carriers’ antennas will be installed within a fenced compound. Two propane-fueled generators and two propane fuel tanks will also be located within the fenced compound and will provide backup power to AT&T and Verizon wireless equipment. The FTD Facility is needed so that the Wireless Carriers can maintain service along portions of the Merritt Parkway, Route 7, Main Street and West Rocks Road as well as commercial and residential areas around the Property after the existing abandoned water tank is removed. (FTD 1, pp. 6-8, Tab 1 and Tab 5).

II. PROCEDURAL BACKGROUND

On September 15, 2020, the Council conducted an evidentiary hearing and an evening

public hearing on the Application. (Hearing Transcript (“Tr.”), pp. 1 and 114).

This Post-Hearing Brief is filed on behalf of the Applicant pursuant to Section 16-50j-31 of the Regulations of Connecticut State Agencies (“R.C.S.A.”). (Tr. 2, p. 15). The brief evaluates the Application in light of the Council’s review criteria, as set forth in Section 16-50p of the Connecticut General Statutes and addresses other issues raised throughout the course of this proceeding.

III. FACTUAL BACKGROUND

A. Pre-Application History

The FTD owns and maintains a 100,000-gallon water tank in the northeast corner of the Property. The existing tank was constructed in 1953 and has been used to support wireless communications antennas and related equipment continuously since 1992. In 2016, the FTD decided to discontinue use of the existing water tank due to the discovery of lead paint and polychlorinated biphenyls on the existing tank and in the soil beneath the existing tank. (FTD 1, p. 6). As part of an infrastructure enhancement project, the FTD plans to perform certain environmental remediation tasks on the existing 100,000-gallon water tank and remove the tank and any contaminated soils beneath the tank from the Property. Other elements of the water system upgrade program include the installation of new water mains in the area and the installation of a new 500,000-gallon water tank on the Property. (FTD 1, pp. 6-7; Tr., pp. 31, 54-56).

To avoid the disruption of wireless service in the area, FTD agreed to develop a new monopole tower on the Property and allow Wireless Carriers to relocate antennas and equipment from the existing water tank to the new tower structure. (FTD 1, pp. 6-8, Tab 1).

B. Local Contacts

Section 16-50l(e) of the Connecticut General Statutes, as amended, requires local input on matters before the Council. On October 31, 2019, the FTD commenced the ninety (90) day municipal consultation process by submitting technical information about the proposed telecommunications facility to officials in the City of Norwalk. FTD representatives met with City of Norwalk officials to discuss the proposal to construct a new tower on the Property and the Council's application review process. The Norwalk Zoning Commission hosted a Public Information Meeting ("PIM") at the beginning of its regular meeting on January 2, 2020. Notice of the PIM was published in *The Hour* and was sent to abutting landowners in accordance with the requirements of Conn. Gen. Stat. 16-50l(e).

At the PIM, the FTD discussed the need to replace the existing wireless telecommunications facility and the Council's application process. One abutting landowner spoke at the PIM to express concerns related to visibility into the Property and impacts of construction activity associated with the development of both the FTD Facility and the new 500,000-gallon water tank. (FTD 1, pp. 15-16, Tab 15; FTD 1b.; Tr., pp. 65-68).

C. Tower Sharing

The FTD Facility tower, foundation and compound will be designed to accommodate the antennas and related equipment of the Wireless Carriers. (FTD 1, pp. ii, 7-9). The City of Norwalk has not expressed any interest in installing any antennas or communications equipment on the FTD Facility. (Tr., p. 33).

D. The FTD Facility Proposal

The FTD Facility would be located within a 3,518 square foot fenced facility compound in the central portion of the Property and west of the proposed 500,000-gallon water tank. (FTD 1, pp. ii, 1-2, 7-8).

FTD would construct a 130-foot self-supporting monopole tower for shared use by AT&T, at the 126-foot level; Verizon at the 116-foot level, T-Mobile, at the 106-foot level and Sprint, at the 96-foot level. Vehicular access to the site compound would extend from West Rocks Road over a new gravel driveway. Underground electric and telephone service will also extend from an existing service on West Rocks Road. (FTD 1, pp. iii, 1-2, 7-8, Tab 1).

Radio equipment for each Wireless Carrier would be installed on separate concrete pads near the base of the tower. In addition, AT&T and Verizon would install individual back-up generators on their respective equipment pads and separate 500-gallon propane tanks within the fenced compound. (FTD 1, pp. 7-9, Tab 1; FTD 3 Q. 14; Tr., pp. 22-24, 102).

IV. THE APPLICATION SATISFIES THE CRITERIA OF CONN. GEN. STAT. § 16-50P FOR ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Section 16-50p of the Public Utility Environmental Standards Act (“PUESA”), Conn. Gen. Stat. § 16-50g *et seq.*, sets forth the criteria for Council decisions in Certificate proceedings and states, in pertinent part:

In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate . . . The council shall file, with its order, an opinion stating in full its reasons for the decision. The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (A) . . . a public need for the facility and the basis of the need; (B) The nature of the probable environmental impact . . . including a specification of

every significant adverse effect . . . whether alone or cumulatively with other effects, impact on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish . . . and wildlife;
(C) Why the adverse effects or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application

Conn. Gen. Stat. § 16-50p(a).

Under Section 16-50p, the Applicant must satisfy two key criteria in order for the Application to be granted and for a Certificate to issue. First, the Applicant must demonstrate that there is a “public need for the facility.” Conn. Gen. Stat. § 16-50p(a)(3)(A). Second, the Applicant must identify “the nature of the probable environmental impact” of the proposed facility through review of the elements specified in Conn. Gen. Stat. § 16-50p(a)(3)(B), and then demonstrate that these impacts “are not sufficient reason to deny the application.” Conn. Gen. Stat. § 16-50p(a)(3)(C). The evidence in the record for this docket establishes that the above criteria have been satisfied and that the Applicant is entitled to a Certificate.

A. A Public Need Exists for FTD Replacement Facility

As noted in the Application, the FCC in its Report and Order released on May 4, 1981 (FCC Docket No. 79-318) recognized a public need on a national basis for technical improvement, wide area coverage, high quality and a degree of competition in mobile telephone service. The Federal Telecommunications Act of 1996 (the “Telecommunications Act”) emphasized and expanded on these aspects of the FCC’s 1981 decision. Among other things, the Telecommunications Act recognized an important nationwide public need for high quality personal wireless telecommunications services of all varieties. The Telecommunications Act also expressly promotes competition and seeks to reduce regulation in all aspects of the telecommunications industry in order to foster lower prices for consumers and to encourage the rapid deployment of

new telecommunications technologies. (FTD 1, pp. 4-7; Council Adm. Notice 4).

In 2009, President Obama issued Presidential Proclamation 8460, in which “cellular phone towers” were identified as critical infrastructure vital to national security. (FTD 1, p. 6; Council Adm. Notice 11). The same year, the United States Congress directed the FCC to develop a national broadband plan to ensure that every American has access to (wireless) broadband capability. The FCC released Connecting America: The National Broadband Plan (the “Broadband Plan”) a year later, which recognized broadband as a “foundation for economic growth, job creation, global competitiveness and a better way of life.” One of the Plan’s goals for 2020 is for the United States to “lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation.” (FTD 1, pp. 3-7; Council Adm. Notice 21).

The new FTD Facility will allow the Wireless Carriers to maintain the same level of service they enjoy today, along portions of the Merritt Parkway (Route 15), Route 7, Main Street and West Rocks Road, as well as the commercial and residential areas surrounding in northern portion of Norwalk. The record contains ample, written evidence and testimony that the antennas heights described in the Application would allow the Wireless Carriers to satisfy their individual wireless service objectives in northern Norwalk and provide service comparable to that provided by the existing water tank facility. (FTD 1, p. 7, Tab 5; FTD 3 R. 18-29; Tr. 19-22).

B. The Nature of Probable Environmental Impacts are not Sufficient Reasons to Deny the Application

The Docket No. 489 record demonstrates that the probable environmental impacts of the FTD Facility are not sufficient reason to deny the Certificate Application.

1. Natural Environment and Ecological Balance

The proposed development of the FTD Facility has eliminated, to the extent possible,

impacts on the natural environment. All facility improvements would be located within a 3,518 square foot fenced compound. Access to the tower site would extend from West Rocks Road over a new gravel access driveway. Trees in the central portion of the Property will need to be removed and minimal grading would be required for construction of the facility compound and gravel portion of the access drive. (FTD 1, pp. 1-2, Tab 1). Overall, development of the FTD Facility would have a negligible impact on the physical environment of the Property. No evidence to refute this conclusion was presented to the Council.

2. Public Health and Safety

FTD has considered several factors in determining that the nature and extent of potential public health and safety impacts resulting from installation of the FTD Facility would be minimal or nonexistent.

First, the potential for the facility tower to fall does not pose an unreasonable risk to health and safety. The approved tower would be designed and built to meet Telecommunications Industry Association (TIA) standards. (FTD 1, Tab 1; FTD 3 Q. 9). The closest off-site residence is located approximately 180 feet to the south of the proposed tower site. The closest property line to the tower site is 49 feet to the north, along the edge of the Eversource transmission line right of way. That said, the Applicant has agreed to design the tower with an “engineered fault” at a height of 81 feet above grade. (FTD 1, p. 10; FTD 3, Q. 7; Tr., pp. 24-25, 41, 70 and 89).

Second, worst-case potential public exposure to Radio Frequency (“RF”) emissions from the proposed facility would be 26.62% of the FCC Safety Standards. (FTD 1, p. 13, Tab 13).

The FTD Facility will be shared by four (4) Wireless Carriers and will be made available to municipal and emergency service providers if a need exists in the future. This type of tower sharing

arrangement would reduce, if not eliminate, the need for other carriers, the Town or other emergency service entities to develop a separate tower in this same area in the future. (FTD 1, p. 9, Tab 1).

Overall, the nature and extent of potential, adverse public health and safety impacts resulting from construction and installation of the FTD Facility would be minimal or nonexistent. The public safety benefits, however, would be substantial. No evidence to refute these conclusions was presented to the Council.

3. Scenic Values

FTD submitted a Visual Assessment and Photo-Simulations prepared by All-Points Technology Corporation (“APT”) as a part of the Application. Prior to preparing its report, APT conducted balloon floats and extensive field reconnaissance to obtain photographs for use in the Visual Assessment. APT presented photo documentation from 35 locations around the proposed cell site and determined that the most prominent views of the tower would occur within one-half mile of the structure, to the south, east and west of the Property. Year-round visibility extends intermittently to areas generally west of the Property. Seasonal visibility would extend to an area to the north and northwest of the Property. Areas where year-round views are anticipated comprise approximately 19 acres. Seasonal views are anticipated to comprise approximately 41 additional acres. (FTD 1, p. 10, Tab 7). Overall, the proposed FTD Facility will, therefore, not have a significant visual effect on the surrounding community. Visual effects of the proposed tower and facility compound will also be minimized due to limitations and restriction imposed by the Connecticut State Historic Preservation Office (“SHPO”), including a restriction on the size of the array and a requirement that the tower’s be located “in the shadow of the new water tank” as

viewed from the southwest and the extensive landscape plan proposed by the FTD between the on-site improvements and the Property's southern boundary. (FTD 1, p. 10, Tab 7; FTD 4; Tr., pp. 46-49, 56-58, 69, 72, 75-76, 87-88, 103 and 109-110). Finally, there are no schools or commercial daycare facilities located within 250 feet of the facility. (FTD 1, Tab 7).

4. Historical Values

According to a January 17, 2020 letter from Catherine Labadia, Deputy State Historic Preservation Officer, the FTD Facility, described above, will have no adverse effect on sites listed on or eligible for listing on the National Register of Historic Places. This determination was provided after the evaluation of five (5) alternative site locations on the Property. (FTD 1, Tabs 6 and 11; Tr., pp. 46-49, 56-58, 69, 72, 75-76, 87-88, 103 and 109-110).

5. Recreational Values

There are no recreational activities or facilities on the Property or in the vicinity of the Property that would be adversely impacted by development of the FTD Facility. (FTD 1, Tab 1 and Tab 7).

6. Forests and Parks

There is no State or local forests or park land that will be adversely impacted by the proposed FTD Facility tower. No evidence to refute this conclusion was presented to the Council. (FTD 1, Tab 7).

7. Agriculture

Farmland soils suitable for agricultural use includes land that is defined as prime or farmland of Statewide or local importance, based on soil type. It identifies the location and extent of the most suitable land for producing food, feed, fiber, forage, and oilseed crops and is available

for these uses.¹ According to the National Cooperative Soil Survey (U.S. Department of Agriculture, Natural Resources Conservation Service), portions of the Property contain “Prime” Farmland soils. The proposed FTD Facility falls within this area. That said, a majority of the area mapped as Prime agricultural land is developed with homes, an electric transmission line corridor, the Merritt Parkway and the partially developed FTD Property. Due to the small development foot print associated with the proposed FTD Facility, FTD does not anticipate having a material effect on farmland soils. (FTD 1, pp. 15-16, Tab 12).

8. Air and Water Quality

a. Air Quality.

Under normal operating conditions, the Wireless Carriers’ equipment at the FTD Facility would generate no air emissions. During power outage events and periodically for maintenance purposes, AT&T and Verizon would utilize propane-fueled generators to provide emergency back-up power. Each back-up generator will be managed to comply with the “permit by rule” criteria established by the Connecticut Department of Energy and Environmental Protection (“DEEP”) Bureau of Air Management pursuant to R.C.S.A. § 22a-174-3b, and therefore is exempt from general air permit requirements. (FTD 1, p. 17, Tab 1, p. 7).

b. Water Quality.

The proposed FTD Facility would not utilize water, nor would it discharge substances into any surface water, groundwater, or public or private waste water disposal system. Dean Gustafson, Professional Soil Scientist with APT, conducted a field investigation and completed a wetlands investigation for the FTD Facility. There are no wetlands or watercourses on the

¹ Connecticut Environmental Conditions Online (CTECO Resource Guide) www.cteco.uconn.edu.

Property and, therefore, no impacts would occur from the development of the proposed facility or access driveway. (FTD 1, Tab 9; FTD 3, Q. 25).

9. Fish and Wildlife

As a part of its National Environmental Policy Act (“NEPA”) Checklist, FTD has reviewed the proposed FTD Facility for compliance with the U.S. Department of Interior, Fish and Wildlife Service (“USFWS”) and the Connecticut Department of Energy and Environmental Protection (“DEEP”) impact requirements related to federal and State listed threatened or endangered species, including migratory birds in order to determine if the proposed facility would have an adverse effect on these species. According to the December 16, 2019 USFWS & NDDDB Compliance Determination prepared by APT, one federally-listed threatened species is known to occur in the vicinity of the Property documented as the *Northern Long-Eared Bat* (“NLEB”). For the reasons discussed in the attached compliance determination, the Applicant submits that the proposed FTD Facility will not adversely affect the NLEB. Likewise, the CTDEEP has confirmed that no documented occurrences of State-Listed Endangered, Threatened and Special Concern Species occur in the vicinity of the Property and, therefore, the development of the proposed wireless telecommunications facility will not have an adverse impact to any State-listed species. (FTD 1, p. 11, Tab 8).

C. The Application Should Be Approved Because The Benefits Of The Proposed Facility Outweigh Any Potential Impacts

Following a determination of the probable environmental impacts of the FTD Facility site, Conn. Gen. Stat. § 16-50p requires that the Applicant demonstrate why these impacts “are not sufficient reason to deny the Application.” Conn. Gen. Stat. § 16-50p(a)(3). The record establishes that the impacts associated with the proposal would be limited and outweighed by the benefits to


the public from the proposed facility and, therefore, requires that the Council approve the Application.

In sum, the potential environmental impacts from the FTD Facility would be minimal when considered against the benefits to the public. These impacts are insufficient to deny the Application. The site, therefore, satisfies the criteria for a Certificate pursuant to Conn. Gen. Stat. § 16-50p, and the Applicant's request for a Certificate should be granted.

V. CONCLUSION

Based on the overwhelming and unrefuted evidence in the record, the Applicant has established that there is a need for a FTD Facility and that the environmental impacts associated with the Application would be limited and outweighed by the benefits to the public from the proposed facility and, therefore, requires that the Council approve the Application. Therefore, the Council should approve the Application as submitted.

Respectfully submitted,
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