

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: APPLICATION OF HOMELAND TOWERS, LLC
AND NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T
FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE,
2021
AND OPERATION OF A TELECOMMUNICATIONS FACILITY
AT 16 COOTE HILL ROAD, TOWN OF SHERMAN, CONNECTICUT

Docket No. 499

August 19, 2021,

INTERVENOR'S COMMENTS ON DRAFT FINDINGS OF FACT

Respectfully Submitted,

Stan Greenbaum

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Intervenor's Response to Connecticut Siting Council's Draft Findings of Fact

Intervenor, Stan Greenbaum, requested Richard Touroonjian, the Intervenor's Radio Frequency Engineer witness, to render more accurate statements with respect to Draft Findings of Fact 71, 72 and 73.

I (Richard Touroonjian) have reviewed the Connecticut Siting Council's Draft Findings of Facts document, dated August 12, 2021, specifically items 71, 72, and 73, and offer the following replies which serve to render a more accurate depiction of the Findings of Facts:

- RE: ITEM 71, which states:
 - "Coverage Modeling by Allegiant, a wireless consultant for Intervenor Greenbaum, indicated a reduction of the tower from 170 feet to 120 feet at the proposed site would cause coverage gaps (-83 dBm) on Route 37 northwest and west of the site on Route 39 southeast of the site. (Greenbaum 4, Attachment 12)"
 - This statement is over-generalized, as it leaves the reader with the impression that a reduction in tower height renders the areas described above along Rt. 37 and Rt. 39 without coverage. It is appropriate to be more specific in the descriptions given, which are depicted below:
 - At -83 dBm a reduction of the tower height from 170' to 120' would reduce coverage by only 0.21 mile, as Rt. 37 intersects with Chapel Hill Rd. This coverage would be recovered at -93 dBm, which is the minimum cellular coverage threshold asserted by AT&T.
 - At -83 dBm a reduction of the tower height from 170' to 120' would reduce coverage by only 0.19 mile, at the very southeast border of Rt. 39. This coverage would also be recovered at -93 dBm, which is the minimum cellular coverage threshold asserted by AT&T.
- RE: ITEM 72, which states:
 - "AT&T's modeling indicates that a reduction in AT&T's antenna height to 120 feet would cause an approximate 0.8 mile coverage gap on Route 39 southeast of the site and two 0.25 mile gaps on Route 37 west of the site (-83 dBm). (Applicant's 8, response 51)"
 - AT&T's modeling shows that the coverage gaps that are created by a 50' reduction in tower height are only when trying to achieve a target signal strength of -83 dBm. When examining all of these areas at a slightly lower signal strength of -93 dBm -- which is a strong enough signal for use by cellular radio user traveling in a vehicle (on both Routes) -- there is only a 0.05 mile portion of Route 39 which still suffers a coverage gap, whereas all of the areas are covered with the -93 dBm signal strength.
 - Considering the small amount of coverage gap -- 0.05 mile -- which would result at a target signal strength of -93 dBm, it would seem to be a very small sacrifice in order to mitigate the adverse tower height of 170' to the residents in Southern Sherman.

- RE: ITEM 73, which states:
 - “Allegiant’s coverage model (-83 dBm) with the Coote Hill Road site at 120 feet in conjunction with collocation at 60 feet on an existing tower located at Tower Hill Road in Patterson, New York (Tower Hill Rad site) indicates coverage would increase in the southwestern corner of Sherman in the area of Parker Road, northwest of the State Route 37 corridor, but would not provide coverage to deficient areas on State Routes 37 and 39. (Greenbaum 4, Attachment 12; Tr. 3, pp 277-280)”
 - This statement is somewhat misleading, in that there is an inference that reducing the tower height of the Coote Hill Road tower from 170’ to 120’ introduces coverage gaps along Route 37 and Route 39, because the statement is concatenated with the fact that the Tower Hill Road site does not offer coverage to Routes 37 and 39.
 - It is correct that Tower Hill Rd. does not contribute cellular coverage to Routes 37 or 39.
 - It is not correct that reducing the Coote Hill Road tower by 50’ creates coverage gaps along Route 37 and 39, other than the .21 mile and .19 mile blips of roadway discussed in response to the findings of facts in Item 71.

Thank you for considering these clarifications to the CSC’s Draft Findings of Facts.

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Therefore, regarding Draft Findings of Fact 71, 72 and 73, reducing the tower height from 170’ to 120’ does not materially affect the Applicant’s target propagation area in southern Sherman. (Greenbaum 4, Attachment 12)

85. During its site search, HT investigated properties owned by Timber Trails Associates, including the summit of Wanzer Mountain. HT conducted a field visit of potential sites with a representative of Timber Trails Associates in 2015. For the field visit, HT determined that construction of a tower on the Wanzer Mountain summit is not feasible due to steep terrain, with grades of over 30 percent. (Tr. 3, pp. 203-205, 243-245)

**This statement is only true if you go straight up Wanzer Mountain from Long Mountain Trail. It is possible to traverse the mountain, crossing the hill at a diagonal, without exceeding a grade of 15%. It would, however, require a longer access road. There is already a network of old roads on the mountain. A site with a 120’ tower on Wanzer Mountain will cover all of the area covered by the Coote Hill site and at least 20% more. (Greenbaum 4, Attachment 12, p. 5)

102. Coote Hill Road is a private road that extends southeast from Route 37. HT has the right to use the road. (Applicants 1, Attachment 4; Tr. 1, pp. 18-20).

**HT has not established its right to use the privately-owned driveway known locally as Coote Hill Road. The Applicant has asserted that “We did not need an agreement. We looked at the deed. There’s no restrictions that would not allow us or any of our tenants to use the road for both ingress and egress.” The owner of the driveway, Pepper Jones, is seeking to have the agreement he signed with the Applicant abrogated. Mr. Jones has written to the Siting Council

saying that he will not allow his driveway to be used by the Applicant. In addition, the deeds of 8 of the 9 property owners on the driveway known as Coote Hill Road, obligate them to share in the expenses of the maintenance of the driveway. At the present time, tri-axle and tandem axle trucks are not permitted on the driveway. (Administrative Notice 2(a-c), Greenbaum 4, Attachment 10)

109. The Wireless Communications and Public Safety Act of 1999 (911 Act) was enacted by Congress to promote and enhance public safety by making 9-1-1 the universal emergency assistance number, by furthering deployment of wireless 9-1-1 capabilities, and by encouraging construction and operation of seamless ubiquitous and reliable networks for wireless services. (Council Administrative Notice Item No. 6 - Wireless Communications and Public Safety Act of 1999)

**The Willoth Standard ought to be applied to this application

SECOND PRONG OF WILLOTH TEST: Absence of Alternatives to Fill Significant Gap A. Second, Third, Sixth, and Ninth Circuits: If proposed tower site is the least intrusive on the values the denial sought to serve, the denial will be reversed on appeal under the TCA. B. First and Seventh Circuits: To reverse a denial of a tower site application, must show "that there are no other potential solutions to the purported problem." (no viable alternatives) 1. Require a tower applicant to provide detailed information on the process used to select the subject property for a tower. (Apply the "Least Intrusive Means" test.) 2. Impose conditions of approval that address specific concerns. For example, require "stealth" installations, greater setbacks, or limit height. (INTERVENOR'S POST HEARING BRIEF AND PROPOSED FINDINGS OF FACT, p. 11-12)

125. Coote Hill Road is a narrow, paved dead-end road extending from Route 37. The road has one or two locations on each side where vehicles can pass. (Greenbaum 4, Attachment 10; Tr. 3, pp. 266-267)

**In Transcript 3, p. 267, Mr. Quaranto states, in response to the question, "How do you get around each other?" that "There is maybe one or two spots on each side on the road where you can pull off to the side." He is referring to the 2300' length of the road. He goes on to say "Otherwise, usually what happens is usually the people that live on the mountain might pull in one of their neighbor's driveways so the oncoming vehicle can get by.

The private driveway known as Coote Hill Road is 11' wide for most of its 2300' length. Approximately 1400' of the road is asphalt pavement in fair to poor condition. The 700' asphalt entrance road has narrow shoulders, less than 2' wide, the north side drops off into Lake Mauweehoo, the south side into a drainage ditch. The second section of the road is gravel, first crossing a very narrow bridge, 13 – 14' wide, in poor condition and then proceeding up hill through two "S" curves for a distance of 1000' with drainage ditches on both sides. The final section, is asphalt in poor condition, for a distance of 600'. (Greenbaum 4, Attachment 10)

131. For emergency power, AT&T proposes a 15-kilowatt propane fueled generator and an associated 500 gallon fuel tank for its own use. It could run 4.7 days before refueling is necessary, assuming AT&T's equipment is operation at 100 percent. (Applicants 4, response 25; Tr. 1, pp. 59-62)

**In the past 6 years, there have been four occasions when there have been weeklong power outages in Sherman. A 500 gallon fuel tank is insufficient if it can only run for 4.7 days before

refueling is necessary. At the very least, each service provider would need a 1000 gallon fuel tank to provide the uninterrupted service that the Applicants claim they wish to provide.

136. The Inland Wetlands and Watercourses Act (IWWA), CGS §22a-36, *et seq.*, contains a specific legislative finding that the inland wetlands and watercourses of the state are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed, and the preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. (CGS §22a-36, *et seq.*)

****The Sherman Land Use Enforcement Officer, Ron Cooper, made the following observation: "Partial Site Plan SP-2 shows the relocated road, tree locations, trees that are proposed to be cut/removed, topography, wetland delineation, proposed tower location/pad, proposed drainage and required road construction grading. There are no storm water calculations, planned erosion controls, no planting planning, limited topography of the entire site and engineering details of the proposed storm water management and water quality plan. He goes on to comment on erosion, topography and hard or impervious surfaces." He concludes that the length of the driveway/road can be reduced by relocating it in a more direct path away from abutting properties and the length of wetlands located to the north." (Municipal 4, p. 2-9; Applicant 1, p. 74)**

137. The IWWA grants regulatory agencies with the authority to regulate upland review areas in its discretion if it finds such regulations necessary to protect wetlands or watercourses from activity that will likely affect those areas. (CGS §22a-42a) 138. The IWWA forbids regulatory agencies from issuing a permit for a regulated activity unless it finds on the basis of the record that a feasible and prudent alternative does not exist. (CGS §22a-41)

****See 136 above**

139. The site property contains a forested hillside seep wetland system that is composed of two larger areas near the north and south property lines that are connected by two narrow seasonal intermittent watercourses that drain to the northwest. A forested upland area surrounded by the wetlands and intermittent watercourses. (Applicants 1, Attachment 6)

****See 136 above**

141. The proposed access drive would cross the two intermittent watercourses at their narrowest point. Given the location of the wetland on the property, there are **no alternative routes to avoid wetland** impact. The proposed route minimizes wetland disturbance to the extent possible. (Applicants 1, Attachment 6)

****There are alternative routes. Mr. Cooper suggested one that was refuted by Mr. Vergatti as not being agreeable to the property owner because he is planning to build an accessory structure to the north of his house. However, the alternative route could as easily pass to the south of the house along the perimeter of the existing driveway and garage area. (Municipal 4, p. 2-9)**

151. The total area of disturbance is approximately 1.53 acres. Pursuant to CGS Section 22a-430b, a DEEP issued Stormwater Permit is required prior to commencement of construction. The permit requires implementation of a Stormwater Pollution Control Plan to prevent the movement of

sediments off construction sites into nearby water bodies and to address the impacts of stormwater discharges from a project after construction is complete. (CGS Section 22a-430b; Applicants 4, response 37; Applicants 6, response 28)

In re: 136, 137, 139, 141, 151

154. The project would require approximately 1,663 cubic yards of fill and approximately 986 cubic yards of excavation. HT would utilize as much of this material as possible for fill to avoid importing fill to the site. Additionally, there will be approximately 712 cubic yards of crushed stone for surfacing of the compound and access drive. (Applicants 1, Attachment 3; Tr. 1, pp .109-110)

**The surface soils on this site are primarily topsoil from decomposed vegetative matter. Seventy-five years ago, this area was open fields. The surface soils are not likely to be suitable fill material for road base or back filling utility trenches that will be located in the access road corridor. This excavated material will have to be removed from the site as there is no open area to dispose of it. This means that 3361 cubic yards of material need to be moved to or from the site. That is equivalent to 200 tri-axle dump truck loads of material. The private driveway to the site known as Coote Hill Road cannot sustain that level of usage.

155. Approximately 90 trees over 6-inches diameter at breast height would be removed to develop the site. For trees adjacent to the construction areas, HT does not anticipate root damage that would affect the integrity of the trees. (Applicants 1, Attachment 6; Tr. 1, pp. 24-25, 30-31)

**Mr. Cooper, Sherman Land Use Enforcement Officer, states that “The number of trees shown on the plan that are proposed to be cut appear to be underestimated. The trees they recognize for removal have an “X” through them, but further examination shows tree trunks located at the edge of the proposed grading. The grading will either expose tree roots or bury them to the point where the tree will be choked and killed. When looking at the plan, the trees are shown with a symbol that would lead you to believe the tree crowns are only 10’ – 12’ in diameter. Many of the trees on the property are over 20’ to 30’ or greater in height. These trees have crowns greater in diameter and reaching far into the areas proposed for disturbance. Root systems usually extend to the drip edge of the crown. Depending on their size, many of the trees at the edge of the grading areas and between the proposed road/driveway and the wetlands will be cut or lost due to soil compaction or root exposure. Reference Chapter 5-1-6, Figure TP-2 “Diagram of Zones Relating to Tree Protection” in the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control. Tree Protection Zone (TPZ) Diameter of TPZ equals 20 times the DBH (Diameter 4.5’ above the ground) (See Exhibit 2). Relocating the road/driveway to the alternate location will ensure a buffer will be maintained along the wetlands where in some locations the proposed road/driveway would be constructed within 10’ to 20’ of the edge of the wetland soils. This can result in a change of the hydrology and hydrogeology of the wetlands. The removal of the tree canopy near the wetlands will allow sunlight into wetland areas that were once shaded. This will change the vegetation and introduce invasive species.” (Municipal 4, pp. 3 – 9)

156. The forest at the site is part of a larger core forest block that extends from Pootatuck State Forest. Most of the forest on the property is considered perforated forest due to adjacent residential

development and associated driveways. Approximately 1.1 acres of core forest would be directly impacted by the Project. (Applicants 6, response 38; Applicants 7 Late File, Attachment 7)

**The Northwest Connecticut Land Conservancy submitted a Public Comment in writing. They are concerned about the 250 acre core forest block that will be bisected by this almost 1700' access driveway. There is no other development for ½ mile to the south and only two houses for ¾ of a mile to the north, both located on the ridge to the east of Mauweehoo Hill and above the wetland areas, both accessed by a town road.

164. The Applicants performed a field survey for one of the species (Northern slimy salamander) in November 2020. Based on this survey, the Applicants relocated the tower on the host property approximately 185 feet to the northwest, and 24 feet lower in elevation, in order to avoid sensitive habitat for the salamander. Relocating the tower did reduce the buffer to the on-site wetland. (Applicants 1, Attachment 10; Applicants 4, response 18; Tr. 1, pp. 112-113; Tr. 2, pp. 253-254)
165. Lowering the elevation of the tower did not materially affect AT&T's coverage objectives. (Applicants 4, response 18)

**Lowering the tower to 120' would not materially affect AT&T's coverage objectives (Greenbaum 4, Attachment 12)

CERTIFICATE OF SERVICE

I hereby certify that on this day one electronic copy of the foregoing was sent electronically to the Connecticut Siting Council with one electronic copy sent to the list below, hard copy to follow.

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