

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF OPTASITE TOWERS LLC
AND OMNIPOINT COMMUNICATIONS, INC.
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
FACILITY AT 425 LITCHFIELD ROAD,
NEW MILFORD, CONNECTICUT

DOCKET NO. 342

APPLICATION OF CELLCO PARTNERSHIP
D/B/A VERIZON WIRELESS FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE
AND OPERATION OF A WIRELESS
TELECOMMUNICATIONS FACILITY AT 359
LITCHFIELD ROAD IN NEW MILFORD,
CONNECTICUT

DOCKET NO. 355

Date: APRIL 1, 2008

**OPTASITE TOWERS LLC AND OMNIPOINT COMMUNICATIONS, INC.'S
MEMORANDUM OF LAW RE: CONN. GEN. STAT. § 16-50X**

Optasite Towers LLC and Omnipoint Communications, Inc. (the "Co-Applicants") hereby submit this memorandum of law regarding compliance with the requirements of Conn. Gen. Stat. § 16-50x. When considering the criteria set forth in § 16-50x, the Council should conclude that the facility proposed in Docket 342 (425 Litchfield Turnpike) is preferred by the Town of New Milford.

FACTUAL BACKGROUND

On or about June 22, 2007, the Co-Applicants filed an application for a Certificate of Environmental Compatibility and Public Need for a telecommunications facility located at 425 Litchfield Road in New Milford (Docket

342) (the "Optasite Site"). The Council held a public hearing on Docket 342 on September 10, 2007. At that hearing, the Co-Applicants presented correspondence from the New Milford Planning and Zoning Commission regarding the Optasite Site. See Co-Applicants' Exhibit 7. The zoning enforcement officer, in that correspondence, indicated that "the site is probably a good location for a tower", that there would be "minimal visibility", and "the site is located a good distance from homes in a heavily wooded area." See Exhibit 7 at 3.

After the close of the public hearing, Cellco Partnership d/b/a Verizon Wireless ("Verizon") forwarded correspondence to the Council indicating a potential, competing site in the area of 425 Litchfield Road that Verizon was pursuing. Accordingly, the Council agreed to keep Docket 342 open in anticipation of the Verizon filing. On or about December 7, 2007, Verizon filed an application for a telecommunications facility at 359 Litchfield Road in New Milford (Docket 355) (the "Verizon Site"). Verizon received comments both from the New Milford Planning and Zoning Commission dated March 3, 2008 (Verizon Exhibit 5) and the New Milford Inland Wetlands Commission dated January 16, 2008. The Inland Wetlands Commission raised concerns about the Verizon application based on: 1) proximity and impact on existing wetlands and 2) drainage concerns associated with the construction of the Verizon site, including a 16 foot high, 140 foot long retaining wall. In addition, the comments received from the Planning and Zoning Commission noted concerns regarding the following: 1) the proximity of the proposed location to residences; 2) the tower

radius extending onto abutting properties; and 3) Life Star's ability to land safely at the property.

In reference to the combined hearing on Docket 342 and Docket 355, on March 10, 2008, the Council received correspondence from the Mayor of New Milford stating the following: ". . . I'm inclined to support whichever tower provides the greater radio frequency coverage, providing increased safety response, incident reports and emergency responder efficiencies."

LEGAL ARGUMENT

Conn. Gen. Stat. § 16-50x was modified in 2007 by Public Act 222 (2007 Ct. HB 5927). The pertinent language states as follows:

When evaluating an application for a telecommunication tower within a particular municipality, the council shall consider any location preferences or criteria (1) provided to the Council pursuant to Section 2 of this Act, or (2) that may exist in the zoning regulations of said municipality as of the submission date of the application to the Council.

Section 2 of 2007 P.A. 222 states that "[w]hen notifying a municipality pursuant to section 15-50l of the general statutes of an application for a telecommunications tower in said municipality, the Connecticut Siting Council shall request that the municipality provide to said Council, within thirty days, any location preferences or criteria for the siting of said telecommunications tower."

1. The Optasite Site is Preferred by the Town of New Milford

Pursuant to subsection 1 of 16-50x (a), the Council shall consider any siting preferences identified by the municipality in which a proposed facility is located. It is clear from the record that the Town of New Milford prefers the Optasite Site at 425 Litchfield Road.

On March 10, 2008, the Council received a letter regarding these Dockets from the Mayor of New Milford stating the following: “. . . I'm inclined to support whichever tower provides the greater radio frequency coverage, providing increased safety response, incident reports and emergency responder efficiencies.” The Optasite Site is over 200 feet higher in ground elevation than the Verizon Site, making it preferable for radio frequency coverage. See Co-Applicants' Exhibit 15. T-Mobile has submitted testimony stating that the Optasite tower is preferred to the Verizon tower because it will provide an additional two plus miles of coverage for T-Mobile along Route 202. See Co-Applicants' Exhibit 14. To the contrary, Verizon testified that the Optasite Site provided “very close” coverage when compared to the Verizon Site and that “either site works.” See 3:00 Tr. at 59, 61. In addition, Verizon stated that it could fill its coverage objective at the Optasite at 117' AGL while requiring 147' AGL at the Verizon Site in order to fill the same objective. Id. at 60. In addition, both Verizon and Optasite testified that, at either site, New Milford's emergency services would be provided space, free of charge. Id. at 39, 78-79. Clearly, based on the evidence in the record, the Optasite Site will provide greater radio frequency coverage.

2. Unlike the Verizon Site, the Optasite Site Complies with New Milford's Zoning Regulations.

Under Conn. Gen. Stat. §16-50x, the Council is permitted to consider siting preferences contained in a municipality's zoning regulations. Below is a comparison chart showing both the Optasite Site and Verizon Site's compliance with applicable regulations of the Town of New Milford.

New Milford Regulation Requirement	Optasite Site	Verizon Site
Minimum Lot Area – must comply with underlying zone (§ 150-040 (2))	Complies—lot is 28.86 acres (§ 020-010(B)) ¹	Complies—lot is 3.85 acres (§ 020-010(A))
Setbacks – Must comply with underlying zone (§ 150-040 (2))	Complies	Complies
Tower Setbacks – tower must be setback 1.5 times the proposed height (§ 150-040 (5))	Complies—proposed closest setback is 272 feet	Does Not Comply—proposed closest setback is 63 feet
Lighting – no lighting permitted unless required by the FAA (§ 150-040(3))	Complies—no lighting proposed	Complies—no lighting proposed
Regulated Activities – Regulated area includes wetlands and areas within 100 feet of any wetlands (§ 2.29)	Complies—no regulated activities proposed	Does Not Comply – Edge of clearing/grading is 32 feet away from closest wetland

As can be seen above, the Optasite Site fully complies with New Milford's zoning regulations. First, the Site is located in the B-2 general business district. See Application at 16-17. The Optasite Site meets the setback requirements established for the B-2 zone. *Id.* at 16-17. In addition, the Optasite Site meets the setback requirement set forth in § 150-040 since the tower is a minimum of 272 feet from the nearest property line. Finally, construction of the Optasite Site does not require any impact to regulated areas, as defined by the New Milford inland wetlands regulations.

¹ Of note, the property on which the Optasite Site is located is partially located in the B-2, general district zone (along Route 202) and partially located in the B-2, general business district and partially located in the R-40, residential district. The portion of the property where the Optasite Site is located is in the B-2 general business district.

The Verizon Site does not comply with the New Milford zoning regulations. The Verizon Site is located in the R-80 residential zone. See Verizon Application at 16. The Verizon Site does not meet the setback requirement contained in § 150-040 since the proposed tower is less than 200 feet from the nearest property boundary and residence. In addition, construction of the Verizon Site will require impacting regulated areas, since the edge of clearing/grading will be 32 feet away from existing wetlands at the Verizon Site.

CONCLUSION

Section 16-50x permits the Council to consider siting preferences presented by a municipality and to consider compliance with the applicable zoning regulations when making a decision concerning the location of a telecommunications facility. Based on the information contained in the record, it is clear that the Optasite Site is preferred by the Town and fully complies with the Town's zoning regulations.

By: 
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Certification

This is to certify that a copy of the foregoing has been mailed, this date to all parties and intervenors of record.

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