

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

ORIGINAL

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 39 MAENNERCHOR AVENUE
NORWICH (TAFTVILLE), CONNECTICUT

DOCKET NO. 365

RECEIVED
SEP 23 2008

CONNECTICUT
SITING COUNCIL

Date: SEPTEMBER 22, 2008

POST- HEARING BRIEF OF CO-APPLICANT OPTASITE TOWERS LLC

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies ("R.C.S.A."), co-applicant Optasite Towers LLC ("Optasite") submits this post-hearing brief in support of the above-captioned application. This brief is limited to (1) the public need for this telecommunications facility, (2) the lack of environmental impact of the proposed facility, and (3) consistency with the mandate of the Connecticut Legislature to avoid the unnecessary proliferation of towers in the state. Optasite also submits its Proposed Findings of Fact in conjunction with this Post-Hearing Brief.

I. BACKGROUND

Optasite, along with Omnipoint Communications, Inc. ("T-Mobile") collectively the ("Co-Applicants"), in accordance with the provisions of Connecticut General Statutes ("C.G.S.") §§ 16-50g through 16-50aa and §§ 16-50j-1 through 16-50j-34 of the Regulations of Connecticut State Agencies ("R.C.S.A."), applied to the Connecticut Siting Council ("Council") on June 11, 2008 for a Certificate of Environmental Compatibility and Public Need ("Certificate").

Co-applicant Optasite proposes to construct a 120-foot steel monopole

telecommunications facility in the southern portion of a 7.01 acre parcel of land owned by the Maennerchor Club known at 39 Maennerchor Avenue, Assessors Map 55, Block 20, Lot 43 of the Norwich Tax Assessor's Records (the "Site"). The Site is currently developed with the club building and associated parking area with large portions of the Site remaining undeveloped and wooded. The 70-foot by 70-foot leased area will include a 65-foot by 65-foot fenced compound area at the Site ("Facility"). This Facility will be designed to accommodate the antenna arrays and associated equipment of T-Mobile, AT&T, the equipment of two (2) other telecommunications carriers as well as the Norwich Fire Department and Police Department.

The purpose of this Facility is to provide wireless telecommunications services to Norwich, including along Routes 12, 97 and 169 and surrounding areas. See Pre-filed Testimony of Alex Murillo. T-Mobile currently experiences significant gaps in coverage and inadequate coverage in the area. In addition, AT&T Wireless ("AT&T") has expressed its need for a Facility in this area of Norwich. Finally, both the Norwich Fire Department and Norwich Police Department have expressed their need for emergency services coverage in this area of Norwich. A Facility at the Site will provide wireless coverage service and emergency services coverage to this area of Norwich which currently suffers from inadequate coverage.

II. A SIGNIFICANT PUBLIC NEED EXISTS FOR A TELECOMMUNICATIONS FACILITY IN THIS AREA

Connecticut General Statute ("C.G.S.") §16-50p(a) mandates that the Council "shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (1) A public need for the facility and the basis of the

need..." C.G.S. §16-50p(a). There can be no dispute that there is a significant public need for this Facility. (Co-Applicants' Exhibit 1 ("App.") at Exhibit G).

There are no other telecommunications facilities in this area of Norwich and no utility structures or other suitably tall structures on which to locate a telecommunications facility. In particular, Optasite investigated the possibility of locating equipment on existing CL&P lines near the Preston/Norwich town line. However, T-Mobile determined that those lines were of insufficient height to fill its existing coverage gaps. (Co-Applicants' Exhibit 4).

T-Mobile has established that it is currently experiencing significant coverage gaps along Routes 12, 97 and 169 and the surrounding area which result in inadequate coverage in this area. In addition, AT&T has expressed its need for a Facility in this area of Norwich. (Co-Applicants' Exhibit 2 at Exhibit 2). These communications issues can be alleviated with the construction of this Facility, which will provide benefits for both the residents and businesses in Norwich.

Finally, both the Norwich Fire Department and the Norwich Police Department have indicated their need for emergency services coverage in this area of Norwich. (Co-Applicants' Exhibit 2 at Exhibit 1; 3:00 Hearing Transcript ("3:00 Tr.") at 11). Clearly, the provision of reliable emergency services is important for the community and residents of this area of Norwich and is filling a vital public need.

III. THE FACILITY WILL HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating the public need for the Facility, Optasite has identified "the nature of the probable environmental impact, including a specification of every significant adverse effect, whether alone or cumulatively with other effects,

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, aquaculture and wildlife..." as required by C.G.S. §16-50p(a).

The record is replete with expert testimony that 1) the Facility will have no adverse environmental impact; 2) the Facility will have no effect on historic resources, as determined by the State Historic Preservation Office; and 3) the Facility will have minimal visual impact.

Indeed, the record in this matter convincingly demonstrates that the Facility will have a minimal environmental impact on the surrounding areas, and will not conflict with any environmental policies of the State of Connecticut. Several Court decisions have affirmed the issuance of Certificates for similar facilities and projects that involved comparable or greater environmental impacts than that proposed in the present Application. Westport v. Connecticut Siting Council, 47 Conn. Sup. 382 (2001), Aff'd, Westport v. Connecticut Siting Council, 260 Conn. 266, 796 A.2d 510 (2002); Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

Optasite conducted a complete and comprehensive environmental analysis of this proposal, which can be found in the Application at Exhibits: J (Visual Resource Evaluation), K (NEPA Compliance Documentation) and Exhibit L (Wetlands Report). The State and Federal Agencies contacted as part of this environmental analysis provided substantive responses and conclusions. The environmental analysis concludes that:

- i. No wetlands on the Site; neither the access nor the compound area is located within any wetlands or designated upland area; no direct or indirect impact on wetlands or watercourses (See Pre-Filed Testimony of Benjamin Reiger at 3; App. at Exhibit L);
- ii. No species of concern exist on the Site (See App. at Exhibit K; 3:00 Tr. at 22);
- iii. The Site is not located in a designated wilderness or wildlife preserve area (See App. at Exhibit K);
- iv. No listed species or designate critical habitats occur on or near the Site. (See 3:00 Tr. at 22; App. at Exhibit K);
- v. According to the State Historic Preservation Office, there will be no adverse impact on cultural resources, including historic areas (See App. at Exhibits K, M; 7:00 Tr. at 28);
- vi. The Site is not located on lands belonging to any federally recognized Indian tribe in Connecticut (See App. at Exhibit K);
- vii. The Facility will be located outside of the 100 year flood zone; (See App. at Exhibit K); and
- viii. The tower will not be lit (See App. at Exhibit P).

As far as the Facility's potential visibility, the Facility is proposed to be located on the Property in order to minimize impact to residential receptors. The topography in the vicinity of the Property and the existing vegetation will significantly limit the visual impact of the Facility.

Views of the Facility are expected to be limited to primarily within the immediate vicinity of the Facility. The proposed Facility will be visible from only 175 acres within a two-mile radius of the proposed Facility, which is just over 2% of the study area. A large portion of the anticipated visibility will occur over open fields to the southeast of the Facility. Of note, there will be no visibility from any scenic roads

or areas, state parks or cultural or recreational receptors. The proposed Facility will be visible from approximately thirty (30) residences year-round and an additional fourteen (14) residences will experience limited seasonal views of the Facility.

As the foregoing demonstrates, any environmental impacts associated with the Facility will be extremely limited. Further, the Facility will eliminate the need for additional facilities in this area of Norwich, thereby reducing the cumulative environmental impact on the Town to the greatest extent possible.

IV. A CERTIFICATE SHOULD ISSUE TO OPTASITE FOR THE PROPOSED FACILITY TO AVOID THE UNNECESSARY PROLIFERATION OF TOWERS

The Connecticut legislature has declared that the sharing of towers to avoid the unnecessary proliferation of towers is in the public interest. C.G.S. §16-50aa. In addition, §16-50p(b) directs that, when issuing a certificate for a telecommunications tower, the Council “may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state.” “The sharing of facilities is encouraged, if not required by General Statutes §16-50p(b)(1)(A).” Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

Certification of the proposed Facility will help to avoid the unnecessary proliferation of telecommunication facilities in this portion of the state. There are no other existing facilities or structures in this area from which the carriers could co-locate to provide such coverage. T-Mobile and AT&T have both expressed their need for a Facility in this area of Norwich. In addition, both the Norwich Fire Department and Norwich Police Department have expressed their need to locate

emergency services equipment on the proposed Facility. Because all major telecommunications carriers could utilize the Facility as well as local emergency services, as requested, approval by the Council will uphold the state mandate to avoid the unnecessary proliferation of towers.

V. CONCLUSION

It is clear from the evidence presented in the docket that approval of the Facility in this area of Norwich is necessary to provide adequate wireless coverage. Optasite has demonstrated that utilization of the Property provides the best location for a Facility in this area of Norwich. This Facility is the optimal solution for the lack of coverage in this area, with the least amount of environmental impact. As such, Co-Applicant Optasite respectfully urges the Council to issue a Certificate for the proposed Facility.

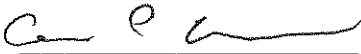
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CERTIFICATE OF SERVICE

I hereby certify that on the date hereof, a copy of the foregoing was delivered by regular mail, postage prepaid, to all parties and intervenors of record.

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