

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF OPTASITE TOWERS LLC AND) Docket No. 366
OMNIPOINT COMMUNICATIONS, INC. FOR A)
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY)
AND PUBLIC NEED FOR THE CONSTRUCTION,)
MAINTENANCE AND OPERATION OF A)
TELECOMMUNICATIONS FACILITY AT 52 STADLEY)
ROUGH ROAD, DANBURY CONNECTICUT) Date: March 13, 2009

APPLICANTS'
POST HEARING BRIEF

Respectfully Submitted,

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INTRODUCTION

On behalf of Optasite, Inc., (“Optasite”), we respectfully submit its post hearing brief in support of the Applicants' request for a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct a 140' brown monopole with flush mounted antennas and related equipment at grade on property owned by Christ the Shepherd Church at 52 Stadley Rough Road in the City of Danbury. Our brief is intended to summarize the facts, outline the credible and relevant evidence presented to the Council and identify various statements made by City of Danbury representatives and consultants that should be given little or no weight by the Council in adopting factual findings. Additionally, we offer our own opinions on how those facts relate to the siting criteria set forth in relevant State Statutes to assist the Council in formulating its own formal opinion and ultimately rendering a decision and order in this Docket. In preparing this Brief, we have relied on the substantial record developed before the Council which supports our statements and opinions and which is being offered without specific recitation and citation to the record in an effort to provide the Council with a reader friendly document that succinctly concludes these proceedings.

STATEMENT OF FACTS

A. A Decade of Local Denials & Lack of Siting Options for the Industry

This Application addresses a decade of effort by all major wireless carriers to identify locations in the northeast section of Danbury to build wireless facilities needed for service to the public. Some of these efforts date as far back as the year 2000 and included a zoning application by Sprint for a tower on property along Great Plain Road. Sprint's application was ultimately denied by the City of Danbury Zoning Commission at a time when the Siting Council was without jurisdiction over PCS towers. Subsequent siting efforts included

pressure by City Officials and a United States Congressman on the Federal Bureau of Prisons to open up the Danbury Federal Correctional Institution to commercial tower siting, all of which political efforts were unsuccessful. Other independent siting efforts were undertaken by AT&T to try and use a City water tank in Sterling Woods, a several hundred unit condominium complex, an effort that failed due to the City's lack of control over the real property and despite efforts to convince the condominium association to lease property to the carriers. Indeed, over the past decade, Sprint/Nextel, Verizon, AT&T and T-Mobile have all conducted independent searches for sites in this area of the City at various points in time, all of which have led to an interest in the tower proposed in this Docket by Optasite.

B. Optasite's Site Search

In 2005, Optasite started its own independent attempts to identify properties for the siting of a wireless facility in the northeast section of Danbury. In conjunction with T-Mobile, Optasite investigated no less than 12 different properties including the City owned water tank at Sterling Woods, the State DOT property near I-84 and other parcels more central to the area of T-Mobile's need including the proposed site, neighboring properties and the City's Elementary School on Stadley Rough Road. T-Mobile itself looked at still other properties as part of its own site search dating back to creation of its initial search ring in the fall of 2000. Whether it involved unwilling property owners including the City itself, properties where a tower could not produce the required coverage due to relative terrain or network and legal preclusions for the only nearby existing structure, no siting alternatives were identified by Optasite or T-Mobile other than the church at 52 Stadley Rough Road (the "Church Site").

C. Public Vetting of the Church Site & Still a Lack of Viable Alternatives Identified

The public process for Optasite's proposed tower at the Church Site started in January of 2006 with the filing of a technical report with the City. After numerous meetings and four months of local review including a public informational session with the City's Planning Commission, a detailed list of comments and recommendations were provided to the Applicants. In its comments, the City recommended various alternative sites, all of which were thoroughly investigated by Optasite and T-Mobile as detailed in its Application and the voluminous record in this Docket. These investigations included review of a purported Sprint tower proposal on the other side of Candlewood Lake which turned out to be abandoned by Sprint long ago and which would not provide the required coverage. Optasite and T-Mobile even took second and third looks at the City water tank at the Sterling Woods condominium complex and the State DOT site along I-84. As part of its pre-application process, Optasite reconfirmed that the City's water tank was not viable based on both T-Mobile's analysis of its existing network and its own confirmation that the Sterling Woods Condominium Association would not lease property for such a site regardless of the City's ownership of the water tank. T-Mobile also reconfirmed that a new tower at the State DOT site simply could not generate the required coverage to the north in the area of need in northeastern Danbury. Only then and after a complete rescrubbing of the area by Optasite and re-review of other large residential parcels in northeast Danbury, did Optasite conclude there simply were no alternative sites to the Church Site.

D. On-Site Alternatives Investigated by Optasite Prior to Council Filing

Well prior to filing this Application with the Siting Council, Optasite engaged the new owners of the Church Site on possible on-site alternatives including steeples, alternative tower

locations on the property and alternative tower structures as a form of mitigation of the monopole with antenna platforms as initially proposed. As part of those discussions with the new property owners, Optasite was unable to get legal authority to materially relocate the tower lease area or permission to build a church steeple and for good reason -- the new owners of the property bought the property with an intent to expand the physical size of the church in the future and support a growing congregation. In consultation with the new property owner, Optasite was nevertheless able to modify the tower project to incorporate a brown monopole with flush mounted antennas to accommodate the three wireless carriers interested and committed to using the Church Site and make other site modifications in an effort to address the City's comments and recommendations issued as part of the technical consultation.

E. Siting Council Certificate Application Process

Optasite followed up with City officials in 2007 and 2008 to provide the City with updates on its site search and the status of the project. In June of 2008, this Application was filed by the Applicants some two years after initial consultations with the City and significant additional due diligence. The Docket itself was the subject of 4 separate public hearings and notice of the proceeding was widespread. Numerous filings were made throughout the process by residents and the City of Danbury as a party. Anyone with an interest in the Application had a full and fair opportunity to present their point of view to the Council and legally participate in the Docket to the extent desired. Indeed, the City itself was given every conceivable opportunity to present its case in the Docket. As such, no one including the City can credibly claim any procedural or due process concerns with the Council's administration of the Docket.

F. Substance of the Application Proceedings

This Docket was certainly more about the opposition than the Applicants. Participation in this Docket by various residents and as supported by the only party, the City of Danbury, can best be characterized as probing and critical, but without factual support. As the Council will recall, several residents in the area banded together and marshaled City support to oppose the tower as proposed by the Applicants based largely on generalized concerns. While a volume of resident materials were certainly provided to the Council in the early part of the proceedings, the Applicants' clearly showed how the residents' filings had flawed visual materials that did not represent the tower location or type, lacked any credible testimony on alternative sites and was likely based on health concerns that essentially advocated for a "not in our neighborhood" approach to wireless siting. Indeed, in reviewing the evidentiary portion of the proceedings, the Council will be unable to find any direct testimony by any resident as to how they would be specifically impacted by siting of the proposed facility.

With respect to the City, the Council will certainly recall its efforts at subpoenaing the pastor of the Church Site in an effort to divert the Council to completely irrelevant issues such as the financial consideration in Optasite's lease. The Council will also recall the City's continual focus on its water tank at Sterling Woods only to finally admit that it was not available for lease to the wireless carriers and there was no hope of that ever happening. Thereafter, the City tried to discredit the Applicants' onsite environmental evaluations of the Church Site in relation to the Church's septic system and some isolated pockets of wetlands which have not been shown to have any true qualitative value let alone support species of concern. Ultimately, the City relied on a "siting consultant" that concluded that the Applicants and wireless industry should build out their networks in this part of the City with

at least two new traditional tower sites in similarly zoned and denser residential neighborhoods along with new utility tower and antenna systems in other residential areas to the north. While the Applicants' certainly rebutted all of the City's efforts, we believe the Council can see the City's submissions for what they are and give them very little weight, if any, as more fully set forth below.

POINT I

THE RECORD CLEARLY DEMONSTRATES A PUBLIC NEED FOR A NEW TOWER FACILITY

Pursuant to Connecticut General Statutes, the Council is required to find and determine as part of any Certificate application, “a public need for the proposed facility and the basis for that need”. CGS §16-50p(a)(1). The record in this proceeding clearly demonstrates the need for a telecommunications facility in the northeastern part of Danbury in order for wireless carriers to provide service to the public. A decade of evidence exists with all four major carriers searching for sites in the area. T-mobile has supplied drive test data in the record to confirm it does not currently have adequate or reliable coverage in this area of Danbury. Moreover, there simply is no credible evidence in the record disputing the carriers' need for a site in this part of the City. As such, and for the reasons more fully set forth below, a public need exists for a new facility as proposed by the Applicants.

A. Technical Need

T-Mobile, Sprint/Nextel and Verizon have all affirmatively indicated a need for and desire to locate on the tower proposed by Optasite at the Church Site. A 140' tower is being proposed with flush mount antennas to reasonably accommodate these and other carriers with a need to provide service in this area of Danbury. The proposed height of the tower is fully supported by the Sprint/Nextel plots in the record indicating a need for a 137' height and the

T-Mobile drive data, plots and testimony of Mr. Heffernan regarding its minimum height of 127'. Other statements of need have been directly transmitted by Verizon and indirectly by AT&T given their search for sites in this part of the City.

At this point in time, we do not believe the City can credibly dispute the carriers' technical need for a new wireless facility in this part of Danbury. There have been 10 years of repeated efforts by the wireless industry as a whole to site a facility in this area of Danbury with significant amounts of review and testimony in not just this proceeding, but local zoning applications dating back to 2000. Indeed, Mr. Graiff who was involved in Sprint's local zoning proceedings in 2000 was initially retained by the City as a consulting radio frequency engineer in this Docket. In our experience, Mr. Graiff is a qualified radiofrequency engineer and as such his parting of ways with the City is disturbing to say the least. We suspect that Mr. Graiff was prepared to testify that, in fact, T-Mobile and other carriers have demonstrated a need to site new wireless facilities in this area of the City in order to adequately serve the public. Unfortunately, the Applicants were never given the opportunity to elicit that testimony from Mr. Graiff and the City.

As such and what the Council is left with from the City is one lay persons effort at a call test on T-Mobile's network to suggest it is "OK" and a siting consultant in Mr. Comi who simply does not have the expertise to testify on matters of radiofrequency engineering. Indeed, Mr. Comi never attempted to provide any contradictory evidence (i.e. plots of his own or drive data) instead attempting to suggest T-Mobile had not supplied "required information" for him to evaluate the veracity of T-Mobile's testimony and data in the record. That is a tactic employed by Mr. Comi in numerous jurisdictions outside of Connecticut to delay

proceedings on behalf of his municipal clients and something this Council should give no credence to whatsoever.

Ultimately, this Council has significant experience and knowledge regarding radio frequency propagation analyses as related to the public's need for service. We simply suggest that the Council rely on that experience and knowledge when sifting through the City's arguments which will no doubt try to suggest there is no public need despite their lack of any technical support. Indeed, we trust that in weighing the credible evidence and testimony provided in this Docket, you will factually find that a technical need does exist for a new facility in this part of Danbury for T-Mobile and other carriers to provide wireless services to the public.

B. No Practical or Feasible Alternative Sites or Technologies Exist

The record and testimony in this Docket demonstrates that there simply are no realistic alternatives to the tower as proposed by Optasite in enabling wireless carriers to provide their services in northeastern Danbury. Early on, residents suggested several possible "alternative tower sites" which turned out to be either sites previously denied in zoning by the City, unavailable federal properties despite political efforts by the City, or sites located in other residential areas of the City which were not technically viable. Indeed, several of the suggested alternatives were located in or adjacent to open space preserves on either side of Candlewood Lake with the potential for very significant adverse environmental impacts.

The City itself also suggested several "alternative sites" throughout the process. Yet every time these so-called alternatives were evaluated by the Applicants, they turned out to be legally unavailable or in completely other parts of the City without any possible ability to technically serve the area of need in northeastern Danbury. Indeed, almost every alternative

suggested by the City was in a geographic area already being served by T-Mobile's existing wireless sites, a fact completely ignored by the City's consultants to this day.

After the close of the public hearings, the City actually articulated a preference in this case for the first time--a multi-site solution to coverage. Yet, the City failed to show how such a solution would be technically viable. Moreover, the City's so-called solution would rely on the construction of numerous towers and DAS nodes in other residential areas of the City to the west, south and north. Beyond the lack of technical support, we are at a loss to understand how such a "solution" would be better for all the residents of Danbury let alone the environment. There simply is no credible environmental or long term planning rationale whatsoever to support the City's stated siting preference as offered by Mr. Comi.

In evaluating the lack of alternative sites and the City's so-called preferences, we again ask the Council to use its considerable expertise and judgment in comparing the proposed site with what has been proffered by residents and the City. This area of Danbury has significant terrain features along Stadley Rough and Great Plain Road and is almost universally zoned and developed as residential. These factors significantly affect legitimate siting opportunities. Optasite's efforts have always been appropriately focused on larger non-residential parcels in this part of the City including the church parcels and City property used as an elementary school which the City refused to consider as a possible tower site. Simply put, no alternative site has been identified in this part of the City that would meet the carriers' needs.

In the end, this simply is not a case where a tower developer found a friendly property owner and pursued an application with reckless abandon. Rather, the story started 10 years ago with Sprint's siting efforts which were denied by the City. Since that time, there has been a persistent coverage gap for the entire industry. Moreover, no credible alternative sites have

been identified in the intervening decade despite significant efforts by the industry, City and others to identify or justify such an alternative site. As such, we respectfully submit that the public need for services in northeastern Danbury has gone unfulfilled for far too long and that the Applicants' proposed tower at the Church Site should be approved by this Council.

POINT II

THE APPLICANTS' PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

Pursuant to CGS §16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impact and any significant adverse effects of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forest and parks, air and water purity and fish and wildlife and whether such impacts have a significant adverse effect. The primary and operative words from this portion of the Statute are "probable environmental impact" and "significant adverse effect". The Applicants respectfully submit that the proposed tower at the Church Site will have no probable environmental impacts on the resources listed in the Statute itself let alone impacts that are significantly adverse on the environment. Indeed, suggestions by the City to the contrary are based simply on emotion and utterly unsupported by any credible factual submission or evidence in the record as more fully set forth below.

A. Minimal Impacts to the Environment & Public Safety

The record in this Docket clearly demonstrates that any environmental impacts associated with the proposed tower site are minimal and consistent with numerous other facilities approved by the Council. Tree clearing has been minimized to the extent practicable and a modest extension of an already existing internal access drive is proposed. Any sound attributable to the operation of wireless facilities will be limited and well within State

requirements. The cumulative radio frequency power density at the tower site would be below the standard adopted by the Connecticut Department of Environmental Protection as set forth in Section 22a-162 of the Connecticut General Statutes as well as the maximum permissible exposure (“MPE”) standards adopted by the FCC. Additionally, the height and location of the proposed tower will not be an aviation hazard and does not require lighting or marking pursuant to the FAA.

Moreover, no historic, cultural or plant or wildlife impacts were identified by either the Connecticut SHPO or the DEP. The Connecticut Commission on Culture & Tourism reviewed the proposed telecommunications facility and found that the undertaking will have no effect on historic, architectural, or archeological resources including those listed on or eligible for the National Register of Historic Places. Further, the Department of Environmental Protection knows of no populations of Federal or State Endangered, Threatened or Special Concern Species on or near the Site. On site reviews by the Applicants' consultants noted no areas of species concern either.

The only apparent disagreement between the Applicants and City on probable environmental impacts centers around the on-site wetlands delineated by the Applicants. These small isolated pockets of wetlands have no special qualitative value and their function is primarily as a drainage point. The City has nevertheless placed an inordinate amount of attention and emphasis on these areas with superficial questions and concerns by an otherwise qualified consultant that has not done an onsite evaluation. The Council need only review local actions by the City's wetlands permitting agency on other parcels in the area to note that the City places no special value on wetlands in this particular area of the City and has in the past issued permits for development on adjacent parcels that allowed direct impacts on

unrelated wetlands systems. While the Applicants do not plan to directly disturb the on-site delineated wetlands, we nevertheless respectfully submit that any such disturbance would not be a significant adverse environmental impact given the size, quality and function of the wetlands identified on the Church Site.

B. Minimal Overall Visual Impact

Despite all the controversy, the record in this Docket actually demonstrates that the proposed tower at the Church Site will have no significant visual impact on any scenic, historic or recreational resources. Indeed, visibility of the proposed tower is limited and highly localized to a few properties. The viewshed study, photosimulations and field reviews that have been conducted by the Applicants even confirm that there are no significant views from residences in the area other than the one property immediately adjacent to the tower site at 14 Indian Spring Road.

When Optasite leased the Church Site, the property at 14 Indian Spring Road was an undeveloped wooded parcel with a developer uninterested in leasing space to Optasite for a tower. As detailed in our filings, we suspect that the current owners of that parcel were in fact aware of Optasite's interest in building a tower on the adjacent Church Site prior to purchase of their property and construction of their home. Indeed, we suspect that is the reason why the owners of that property have never appeared in this Docket and worked instead through the City and its representatives.

While it is regrettable that the tower would be more visible from this one home as compared with any others, we respectfully submit that this one view does not rise to the level of significance that would be required to deny a Certificate under State law. Indeed, the tower

as proposed by the Applicants has less overall visibility in both degree and kind than that of other towers approved by the Council in other residential areas of the State.

POINT III

MODIFICATIONS AND CONDITIONS MAY BE IMPOSED AS A FORM OF MITIGATION

In considering the Applicants' request for a Certificate, there are several site development considerations that were discussed on the record as forms of potential mitigation. Typically, an applicant would incorporate any on-site modifications into a Development & Management Plan as required in any conditions of a Siting Council decision and order to issue a certificate.

Outlined below are some modifications the Applicants could incorporate into revised site development plans if required by the Council.

- 1) A yield point can be designed into the tower for added measures of safety in relation to adjacent parcels and address the City's local setback guidance further.
- 2) The tower could be relocated within the lease parcel to set it back further from adjacent parcels to address visibility at 14 Indian Springs Drive and the City's unsubstantiated claims regarding falling ice.
- 3) Additional vegetative screening and a solid residential style fence can be incorporated into the plan to address adjacent parcel views of the compound and any concerns regarding noise.
- 4) Carrier equipment locations can be reconfigured within the lease area to maximize adjacent property setbacks.
- 5) Drainage improvements can be incorporated into the D&M Plan in the event any site modifications as required by the Council involve disturbance to onsite wetlands.

The Council of course has the discretion to require other site and tower modifications which are within the Applicants control.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that there is an undisputed public need for the Applicants' proposed tower in this portion of Danbury which would remedy a 10

plus year gap in wireless services to the public. The need for such a tower outweighs any of the probable environmental impacts associated with the proposed tower and related site improvements, the effects of which are not significant. In fact, the evidentiary record establishes that this tower location represents the only practicable or feasible means for wireless siting in this area of Danbury. The Applicants were fortunate enough to find one willing non-residential property owner that would lease property for a tower site in this area of the City which is primarily surrounded by larger non-residential and residential parcels which serve to minimize visibility in the community as a whole. As such, it is respectfully submitted that the Council would be well within its discretion to issue a Certificate to the Applicants for a tower at the Church Site with any reasonable and appropriate onsite modifications the Council may require.

In closing, and on behalf of the Applicants and their consultants, we thank you for your considerable time and patience in the review of this Docket.



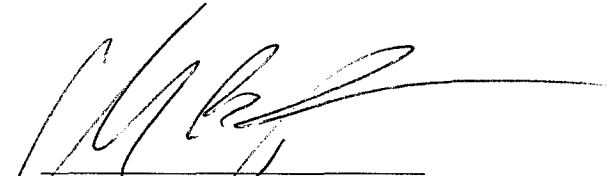
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CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and twenty one copies of the Applicants' Post Hearing Brief were served on the Connecticut Siting Council via First Class mail with a copy by First Class mail to:

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Dated: March 13, 2009



Christopher B. Fisher