

CONNECTICUT SITING COUNCIL

DOCKET NO. 366

IN THE MATTER OF:

MAR 12 2009

CONNECTICUT
SITING COUNCIL

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 52 STADLEY ROUGH ROAD, DANBURY, CONNECTICUT

POST HEARING BRIEF

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Proposed Findings of Fact and Post Hearing Brief of Party City of Danbury

The City of Danbury ("City"), a party to this proceeding pursuant to the Siting Council's ("Council") order of August 28, 2008 submits the following proposed findings of fact and argument in support of its position that the Council should deny the application of Optasite Towers LLC and Omnipoint Communications, Inc. ("Optasite" or "Applicants") for a certificate of environmental compatibility and public need for the construction, maintenance and operation of a telecommunications facility ("Facility") pursuant to C.G.S. Section 16-50p.

I. City's Proposed Findings of Fact Intended to Supplement Applicants' Proposed Findings of Fact

Introduction:

1. The City is duly named as a party to the proceeding. (Council Letter dated August 29, 2008; Tr. 1 p. 6, 3:05 p.m.)
2. On September 9, 2008, the Council and its staff conducted an inspection of the proposed site beginning at 2:00 p.m. The Applicants flew a four foot by six foot diameter balloon from approximately 7:45 a.m. to approximately 11:45 a.m. It was taken down due to weather conditions and put back up at approximately 12:15 p.m. It remained up for the rest of the afternoon. The weather conditions were unfavorable; rainy and windy. Visibility was limited due to cloud cover. (Council's Hearing Notice dated July 29, 2008; Tr. 2 p. 71)

Municipal Consultation:

3. The Applicants met with Mark D. Boughton, Mayor of the City during the pre-application period. (Applicants' Exhibit 1- Application, pp. 17-18)
4. The Applicants attended a Public Hearing Comment Session of the Planning Commission on May 3, 2006 where they presented the proposed Facility to the Commission and responded to questions by Commissioners and the public. Following said session, the Applicants were presented with comments and suggestions from the Jennifer Emminger of Danbury Planning Department by memo dated May 17, 2006. (Applicants' Exhibit 1- Application p. 18) Up until the time that the application was filed there was no additional information submitted to the City regarding the proposed Facility.
5. At the public hearing on September 9, 2008, Mayor Boughton stated that the City was very concerned about the Facility being built at the proposed location. Mayor Boughton expressed concern that the Applicants failed to explore all other options and alternate locations upon which to locate the Facility. (Tr. 1, pp. 8-10, 3:05 p.m.; Tr. 1, pp. 11-13, 7:10 p.m.)
6. If a Facility is approved, the City prefers that it be constructed as a two site solution utilizing the PAL site at 35 Pembroke Road and the Kaufmann water tank site at 21 Hollandale Road, and if required, along with distributed antenna system ("DAS") nodes installed along Stadley Rough Road. (City of

Danbury's Submission of Supplemental Information dated February 11, 2009, City Solutions for T-Mobile Wireless Coverage for All Remaining Areas in Northeast Danbury, Including All Areas Covered by the Proposed Stadley Rough Road Site)

7. The Applicants did not hold a Public Comment Session before the City's Environmental Impact Commission ("EIC") regarding the proposed Facility. (Applicants' Exhibit 9- Responses to City of Danbury Pre-Hearing Interrogatories, Set II, Q.58)

Site Selection:

8. At the City's request, the Applicants examined the possibility of locating the Facility on the following alternate sites: PAL, Kaufmann, ConnDOT. (Applicants' Exhibit 7- Submission of Supplemental Information dated October 24, 2008; Applicants' Exhibit 13- Responses to City of Danbury Pre-Hearing Interrogatories Set III Supplemental Information on Alternative Sites as Requested by the Council and Rebuttal of Comi Direct Testimony Filed January 15, 2009) The Applicants did not conduct any field testing of the aforementioned proposed sites.
9. Despite the City's request that the Applicants consider DAS as a viable alternative, the Applicants have rejected DAS technology as a viable alternative. (Applicants' Response to the City's Post Hearing Filing of the "Comi Solution")

Site Description:

10. The Facility proposed to be located at 52 Stadley Road ("Site") is located on a parcel of approximately 5.0 acres and owned by Christ the Shepherd Church. A church is located adjacent to the Site to the south, a City school is located to the southeast, and dense residential development is found in the surrounding area. (Applicants' Exhibit 1 -Application p. 16; Tab 3)
11. The Site is zoned RA-40 Single Family Residential. (Applicants' Exhibit 1 -Application, p. 2)
12. The closest residential property is located approximately 40 feet from the boundary of the proposed Facility to the west, and owned by Christina and Jose Carneiro, 14 Indian Spring Road. (Applicants' Exhibit 1 Application p. 12; City's Exhibit 10- Second Addendum to Fourth Supplemental Exhibit List, Item 2)
13. Two identified wetlands are located within the proposed lease area and will be impacted by the construction and installation of the proposed Facility. (Applicants' Exhibit 4(b) - Kleinfelder Report dated April 9, 2008; City's Exhibit 13 - Danzer Report dated November 19, 2008)
14. There are two different delineations of the identified wetlands located within the lease area. (City's Exhibit 13- Danzer Report dated November 19, 2008)
15. Construction of the Facility will necessitate the removal of nine trees in the lease area.(Tr. 3 p. 76)
16. The owner of the site has failed to establish that a reserve code complying area exists for its subsurface sewage disposal system. (City's Exhibit 16- Supplemental Information, Pre-filed Testimony of Daniel Baroody, dated January 14, 2009)
17. The Facility is proposed to be located in the 6th and least preferred location enumerated in Section 3.E.6.c of the City of Danbury Zoning Regulations. (City's Exhibit 2- Pre-filed Testimony of Sharon Calitro, dated August 26, 2008)

18. The proposed Facility fails to comply with Section 3.E.6.d.(2) of the City of Danbury Zoning Regulations regarding minimum yard setback requirements for proposed towers. (City's Exhibit 2- Pre-filed Testimony of Sharon Calitro, dated August 26, 2008)

Visibility

19. The tree canopy height used in the visibility analysis is 65 feet. (Applicants' Exhibit 1- Application Tab 5)
20. The proposed Facility would rise 75 feet above the average tree canopy of 65 feet. (City's Exhibit 2 - Pre-filed Testimony of Sharon Calitro, dated August 26, 2008)
21. Almost 10% of the visual study area is surface water of Candlewood Lake and the tree canopy is comprised mainly of mixed deciduous hardwood species. (Applicants' Exhibit 1- Application Tab 5)
22. More distant seasonal views, approximately .50 miles from the proposed Facility may occur from discrete areas of Great Plain Road to the southwest. (Applicants' Exhibit 1- Application Tab 5)
23. The base of the tower of the proposed Facility is to be located within forty-two feet of the property line of 14 Indian Spring Road and will be visible from 14 Indian Spring Road all year round. (Tr. 4. pp-18-39; Tr. 3 p. 75; City's Exhibit 10- Second Addendum to Fourth Supplemental Exhibit List, Item 2)

II. Argument

A. The Optasite Application Fails to Satisfy the Criteria of C.G.S. Section 16-50p for Issuance of a Certificate of Environmental Compatibility and Public Need

Pursuant to Connecticut General Statutes ("C.G.S.") Section 16-50p, Optasite is required to satisfy two main elements in order for its certificate of environmental compatibility to be granted. Initially, pursuant to C.G.S. Section 16-50p(a)(3)(A), Optasite must demonstrate that there exists a "public need for the facility". Next, Optasite must satisfy the criteria of C.G.S. Section 16-50p(a)(3)(B). This section provides, in pertinent part that the Council shall not grant a certificate unless it shall find and determine,

The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including but not limited to, electromagnetic fields that, 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;

The record evidence demonstrates that the adverse effects mentioned in subparagraph (B) above of Section 16-50p(a)(3) are a sufficient reason to deny the application. Accordingly, the City submits that

◇ pursuant to C.G.S. Section 16-50p(a)(1)(3)(c) the Council cannot find and determine that the adverse effects referred to in C.G.S. Section 16-50p(a)(3)(B) are not sufficient reason to deny the application. The City submits that the record evidence fails to establish that Optasite has satisfied the statutory requirements, and therefore it should not be granted a certificate of environmental compatibility and public need.

1. Optasite Has Failed to Demonstrate that a Public Need for the Proposed Facility Exists.

The Application was submitted to the Council on June 30, 2008, pursuant to Chapter 277a, Sections 16-50g et seq. of the C.G.S. as amended and Sections 16-50j-1 et seq. of the Regulations of Connecticut State Agencies ("R.C.S.A.") as amended.

The stated purpose of the Application is that the "proposed facility is a necessary component in the network plan of T-Mobile to provide personal wireless communication services" and that the "proposed facility will provide wireless service in the northeast portion of the City of Danbury, particularly north of the I-84 junction with Route 7 in an area between Candlewood Lake, the Town of Brookfield border and Padanarman Road." (Applicants' Exhibit 1- Application, p.1) However, in other parts of the application the area to be serviced is described differently. It is claimed by the Applicants that a gap in coverage exists "specifically along I-84 west of the junction with Route 7 and in the area north of I-84 and south of Candlewood Lake." (Applicants' Exhibit 1- Application, p. 5, Tab 2) In another portion of the application, the area to be serviced by the facility is described differently. Due to the differing descriptions it is not clear where the Applicants believe that the gap exists. The areas described and depicted by the search ring, the narrative description and the propagation plot are not the same. What is evident is that portions of the written testimony and other submissions regarding this (gap) issue were submitted under the hand of Applicants' counsel, others by the Applicant itself, and still others by vendors. It would not surprise the City if the Applicants simply "Googled" the area, and then quite simplistically and arbitrarily established its estimated target area, as is already in evidence. The City has debunked that method by showing that this system was poorly developed, and that even were the subject site area necessary (the City feels not), a viable, even better site, and one covering more area can be utilized.

On cross examination, Mr. Heffernan, the Applicants' RF expert, indicated that "a search ring doesn't match a coverage description, which doesn't always match the exact parameters of the propagation plot." (Tr. 4 p. 73) However, he also conceded that "they should be close." (Tr. 4 p. 73) It is the Applicants' contention that these items do not have to replicate each other. However, it is the City's contention that these items should closely replicate each other in order to clearly define the area where it is claimed that service is needed. In the absence of a clearly defined area where service is needed, the Applicants have failed to adequately demonstrate that a public need for the facility exists. In addition, Applicants may be simply attempting to solve a capacity problem existing on I-84 through the use of the proposed Facility. Applicants' response to the Siting Council Pre-Hearing Interrogatories indicates that "coverage from the proposed site will provide some very limited relief to those sites primarily covering Interstate 84...". (Applicants' Exhibit 2- Response to Connecticut Siting Council Pre-Hearing Interrogatories dated August 18, 2008, A.23). It is amply clear and the Council can see from the submissions, as well as the testimony, that the inconsistencies with respect to the "Gap" are quite glaring. The absence of a defined coverage objective combined with questionable capacity issues leaves the issue of need unresolved.

Additionally, the City submitted a call test report from Senator Michael McLachlan, formerly Chief of Staff to the Mayor. The results of his test indicate that while conducting a call test of the Candlewood Peninsula and using a T-Mobile cell phone he was able to make calls to his voice mail and also circumnavigate the Candlewood Peninsula while talking on the T-Mobile phone. (City's Exhibit 5- Pre-Hearing Exhibit C, Supplemental Exhibit List, dated September 2, 2008) When asked by the Council to reconcile the results of the City's report, Mr. Heffernan provided his view as to why Senator McLachlan was able to make calls in this area. (Tr. 2 pp.104-111) It is the City's position that his explanation failed to articulate adequately why Senator McLachlan was able to establish coverage in the Candlewood Peninsula area, and that the results of his call test should be considered in assessing the need for the proposed Facility. Frankly, Optasite has consistently downplayed and even denigrated the City's and the residents practical tests to determine coverage, yet Optasite has specified limitations in its own "testing". These include the inability or unwillingness to test from actual home properties which would show much clearer patterns of

signal, and "testing" conducted from only selected streets and areas poorly depicting coverage availability or limitations using their test procedures.

2. Optasite Has Failed to Adequately Demonstrate that it has Secured Companies to Co-Locate on the Proposed Facility.

The Application indicates that both Sprint and Verizon Wireless have expressed their need to co-locate on the proposed Facility. However, neither party has intervened in this proceeding. Verizon has only provided a letter indicating that it intends to co-locate at a future time when the project is included in their budget. (Applicants' Exhibit 1 - Application Tab 6) There is no formal contract presented, merely a speculative letter indicating an intent to consider the matter in the future. The Application also contains a site lease between Nextel and Optasite; however, the Master Site Agreement referred to and incorporated by the site lease is not provided. Therefore, the terms of the lease arrangement are unknown. Accordingly, it is the City's contention that in the absence of a definite commitment by other carriers to locate on the proposed Facility a tower of the proposed height is not justified.

3. Optasite has Failed to Rebuff or Address the Availability of Alternative Options for Siting.

During some earlier testimony proceedings, the City had commenced its cross examination of Applicants' witnesses on their level of due diligence in attempting to secure other site(s). Due to the curtailing of this testimony as a result of the Council's wish to have specific, technical data on alternate site availability, the City could not make its point; (December 8, 2008 hearing) namely, that it was/is not in the financial interests of (any) cell tower applicant to continue to pursue other sites when it has contractually committed itself to an inexpensive and easily available site. The City firmly believes that the record evidence demonstrates that to be the case here, due to the evidence that caused it to secure the subject site in the first place (i.e. low rent, church need for funds, avoidance of two site solution).

The City, through its expert, Richard Comi, has analyzed a number of alternative sites. These are in the record, as are Applicants' responses to these proffers of options. If there is an actual public need, as required by statute, that public need can be met through one or a combination of these sites. The only

◇ limitation is cost and (technical) examination, both of which the Applicant, for financial reasons, is understandably unwilling to commit adequately to fully assess and develop these possibilities.

Finally, the City's proffer of an "Ideal Site Solution" on February 11, 2009, conclusively shows that not only is an alternative combination site viable and available, but that the site reaches more area with less residential impact. If the Council seeks to remedy a perceived need in the community, this solution is offered, available and realistic. The City respectfully suggests that this Council insist that the Applicant develop and submit a proper and technically comprehensive plan to offer this option as an alternative. It should not, parenthetically, be the City's responsibility to find one and develop it for them.

B. Optasite has Provided Insufficient Information Concerning the Nature of the Probable Environmental Impacts of the Proposed Facility.

When considering the nature of the probable environmental impacts the City submits that the Council must consider the lack of evidence and the incomplete evidence presented by the Applicants regarding the potential adverse effect of the proposed facility on 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.

1. Optasite Has Failed to Establish that the Proposed Facility will not Have a Significant Adverse Effect on the Natural Environment, the Ecological Balance, the Water Quality or Wildlife.

◇ The two reports presented by Steven Danzer, PhD on behalf of the City regarding the potential adverse impact of the proposed facility on the wetlands and watercourses indicate that there are several issues which were not sufficiently addressed by the Applicants prior to the close of the hearing regarding the potential adverse effects on the wetlands and watercourses which would be caused by the erection of the proposed Facility. The proposed Facility will be located in close proximity to two wetland systems identified on the site. (Applicants' Exhibit 4(b)- Kleinfelder report, dated April 9, 2008) The Applicants' first report regarding the wetlands and watercourses, dated April 9, 2008, signed by Jeffrey R. Shamas of Kleinfelder East, Inc, indicates that the distance from the proposed Facility where ground disturbance would occur to the

nearest wetland is approximately six feet. (Applicants' Exhibit 4(b)- Kleinfelder report, dated April 9, 2008)

The record evidence indicates that the following identified issues are highly relevant and should be considered by the Council when making its determination regarding the wetlands and watercourses.

- a.) Conflicting Information is Provided by the Applicants Regarding the Extent and Boundaries of the Wetlands Resources Located on Site.

Dr. Danzer's report dated November 19, 2008, points out that the application materials contain conflicting accounts regarding the "geographical extent and shape" of the wetland pocket and the water course. (City's Exhibit 13- Danzer Report dated November 19, 2008, p. 2) Dr. Danzer's report indicates that both wetlands are remnants of a larger wetland which existed prior to the construction of the church. On cross examination, the Applicants' wetlands expert, Benjamin Rieger, testified that there are two different accounts of the wetlands and agreed that where there is conflicting information on the delineation of the wetlands it would be appropriate to have the information evaluated by an independent third party where it made a difference in the outcome. (Tr. 4 p. 138) In fact, the Applicants' own experts from the same firm conflict in their opinions regarding the distance to ground disturbance from where the project would occur to the nearest wetland and the two delineated wetlands. Mr. Shamas indicates the distance is approximately six feet, (Applicants' Exhibit 4(b) Kleinfelder Report, April 9, 2008, page 2) and Mr. Rieger indicates the distance is approximately ten to fifteen feet. (Tr. 4 p. 140)

During Dr. Danzer's response to cross examination and to questioning by the Council he indicates the following as summarized below:

- i. That the issue is not to be addressed by combining both wetland areas into a single wetland area, and then resolving the discrepancy by accepting the Applicants' delineation since it represents the greatest total area. The discrepancy between the two delineations is not only in their boundaries, but in the extent and location of the two separate wetland areas. Conceivably, the wetlands could be much closer to the project than stated. In fact, the Applicants' expert, Mr. Rieger, even indicated (Tr. 4 p. 139) that the pocket wetland could be larger, or even located in another area. (Tr. 4 pp. 210-213)

- ii. If such a discrepancy exists in the course of application review by a wetland commission, then an objective third party verification is in order. (Tr. 4 p. 210; City's Exhibit 13- Danzer Report dated November 19, 2008, p.3)

It is the City's position that no explanation for the discrepancy was provided, although in response to the City's subsequent interrogatories, the Applicants furnished the soil scientist credentials of the two personnel who performed each wetland delineation. (Applicants' Response to City's Post Hearing Interrogatories on Kleinfelder's Rebuttal Report and Testimony Regarding Wetlands, Q. 1- 2.) A similar request was made for the Applicants to furnish the methods employed in each of the two delineations in an effort by the City to understand the discrepancy between the two conflicting submittals. The Applicants responded to the interrogatory by referring to a previous report by URS to demonstrate that the method employed by the earlier URS wetland delineation was professionally acceptable. (Applicants' Response to City's Post Hearing Interrogatories on Kleinfelder's Rebuttal Report and Testimony Regarding Wetlands, Q. 2.) However, the City's search of the record indicates that this report is not in the record, and therefore, the reason for the discrepancy between the two different wetland delineations remains unresolved.

Accordingly, it is the City's position that the information submitted is conflicting, and therefore, insufficient with regard the location and extent of the two wetlands present on the site. Therefore, it is not possible to fully analyze potential environmental impacts as a result of construction, and certainly not possible to conclude that there are no environmental impacts due to construction until it is known exactly where the wetland resources are on the site.

b.) Optasite has Provided Insufficient Details Regarding Stormwater and Erosion Control Management, and the Impact of their Management to the Two Wetland Areas.

Dr. Danzer's report dated November 19, 2008 indicates that an issue exists regarding erosion and sedimentation impacts which may be summarized as follows:

- i. The Applicants state that "moderate clearing and minimal grading will be required" . (Applicants' Exhibit 1-Application Environmental Assessment Statement, Tab 4) However, the Applicants also

maintain that detailed plans have not been provided. (Applicants' Exhibit 1-Application Site Evaluation Statement, Tab 4) Therefore, plans were lacking regarding proposed stormwater management details and proposed erosion prevention details. "Also lacking were proper wetland boundaries, and any areas of high erosion potential (which is especially significant as the pad will be constructed on erodible fill soils)." (City's Exhibit 13- Danzer Report dated November 19 2008, p. 4)

- ii. Normally, before this body these details are typically provided in a development and management plan ("d&m") subsequent to any approvals. However, it is the City's position that in this case these details are vital to any environmental review. Without this level of detail it is not possible to credibly assert that the proposed activities will not impact the wetland resources. (City's Exhibit 13- Danzer Report dated November 19, 2008, p. 4)
- iii. It is the City's position that this information is important because of the magnitude and proximity of the work to the wetlands, and the fact that grading is proposed towards the wetland.

During the course of the January 26, 2009 hearing the Applicants' engineering expert, Mr. Rodney Bascom, P.E., indicated that these types of details "are taken into consideration when making a decision relative to whether a project impacts a wetland." (Tr. 4 p.158) He also indicated during cross examination that no erosion control or best management details were offered on the submitted plans other than the general representation in the original application materials and that erosion controls and best management practices will be used during construction to control storm water and erosion. (Tr. 4, p. 149, Applicants' Exhibit 1- Environmental Assessment Statement, Tab 4. p. 54)

These details are typically provided on a d&m plan subsequent to approval. However, in this case there is direct evidence submitted that the Applicants are proposing grade changes that may alter the dynamics of the wetland resources on site. Consequently, these details are now germane to any environmental review and should be resolved prior to a decision being rendered by the Council. Furthermore, both the City and the Applicants recognize the value of these details and acknowledge that they would normally be required during the course of any review to a local wetland commission to enable it to assess

environmental impact. It is the City's contention that without this level of detail, it is not possible for the Council to determine that the proposed activities will not have a significant adverse effect to the wetland resources.

c.) Optasite Will Cause Hydrologic Impacts to the Wetland Areas Due to Grading.

Dr. Danzer's report dated December 22, 2008 indicates that during the course of construction, the grades of the site will be altered, thereby irretrievably altering the natural hydrology to the wetlands. Dr. Danzer's report dated December 22, 2008 indicates that an issue exists regarding hydrologic impacts to the wetlands areas due to grading as summarized below:

- i. The preconstruction grades of a portion of the area of the pad are higher than both wetland areas, subjecting the wetland areas to potential erosion during the construction process. (City's Exhibit 15-Danzer Report dated December 22, 2008, pp.4-5)
- ii. Post-construction, the final grades will be relatively equal between the pad and the stream, and since there will now be more impervious area, groundwater patterns to the stream will be altered. Therefore, the stream may pool quicker and dry quicker, to the detriment of any small wildlife or amphibians that may use it. (City's Exhibit 15-Danzer Report dated December 22, 2008, pp.4-5)
- iii. Post-construction, the final pad elevation will be below the pocket wetland. Since the watershed is relatively small to begin with, and unlike the vernal watercourse, this wetland does not have a drainage pipe to help fill it; the diminishment of natural land cover will translate into a smaller recharge area to the wetland, which will alter the wetland's natural hydrology and potentially eliminate the wetland. (City's Exhibit 15-Danzer Report dated December 22, 2008, pp.4-5)

During cross examination at the hearing on January 26, 2009, Mr. Bascom acknowledged the changes in grade, and a reduction and decrease in overland flow towards the pocket wetland, but opined that the reduction is small and will have no impact on the wetland. (Tr. 4 p. 146) However, there were not any engineering calculations submitted quantifying the reduction to back up his assertions, despite the fact that this issue was raised by the City prior to the hearing.

The Applicants originally asserted that the construction activities are upgradient of the wetlands. (Applicants' Exhibit 4(b)- Kleinfelder report dated April 9, 2008, p. 2) Later, the Applicants acknowledged under cross examination the preconstruction grades and post construction grades will differ, and also that about two feet of the top of a hill will be cut off as a result of the grading taking place during construction. (Tr. 4 p.146) The Applicants have also conceded that as a result of the grading, there will be a reduction in flow to the pocket wetland, but they do not agree with Dr. Danzer's testimony that this will have a hydrologic impact. (Tr. 4 p. 146)

It is the City's contention that due to the differences in preconstruction and post construction grades, there is a potential for erosion into the wetland areas. Furthermore, the Applicants did not offer any credible evidence other than opinion that the changes in grade would not lead to hydrologic impacts (detailed above in items 2 and 3) to the vernal watercourse and pocket wetland.

d.) Optasite Mischaracterizes the Wetland Area and the Implications of the Mischaracterization in Assessing Environmental Impact.

Dr. Danzer's report dated December 22, 2008, indicates that the Applicants have testified that the wetland is isolated and lacking in value. (City's Exhibit 15 - Danzer Report dated December 22, 2008, p. 4) The Applicants have continually tried to minimize the value of the wetland resources located on site by referring to them as "low quality", "isolated", and "manmade". (Applicants' Exhibit 4(b)- Kleinfelder Report dated April 9, 2008, p. 2)

During Dr. Danzer's response to cross examination and in his reports, he indicates that an issue exists regarding the Applicants' mischaracterization of the wetlands area and that there are implications of this mischaracterization in assessing environmental impact as summarized below:

- i. "Both wetland systems are remnants of a larger wetland that existed prior to the construction of the church. The size of the wetland corridor within the site was larger and more extensive in past years than what exists today. A large remaining portion of the wetland system still exists off site, southwest and west of the property. The proposed site for the pad is located on piles of fill that were probably

associated with the excavation for the construction of the church.” (City’s Exhibit 13 - Danzer Report dated November 19, 2008 p. 2)

- ii. “The underlying wetland soils were identified by the project’s soil scientist as the ‘Ridgebury’ soil type. This is a natural wetland soil and further indicates that the wetland area was formed naturally before the filling. The geographical extent of the wetlands was reduced due to the filling.” (City’s Exhibit 13 - Danzer Report dated November 19, 2008 p. 2; Tr. 4 p. 199) “Consequently, the remaining wetlands can be characterized as ‘altered’, though it should be noted that similar alterations in extent are quite common within the Danbury region. Since the soils are natural in origin, it is not accurate to characterize the wetland as “man-made”. (City’s Exhibit 13- Danzer Report dated November 19, 2008 p. 2)
- iii. “The fact that this wetland system may be ‘altered’ by man may limit the number of possible environmental functions of the wetland of those two functions labeled above, but from an ecological perspective a small number of wetland functions does not mean the wetland system is not worthy of protection”. (City Exhibit 13 – Danzer Report dated November 19, 2008 p. 4)

It is the City’s position that the Applicants’ characterization of the wetlands as isolated and lacking in value is based primarily on opinion rather than systematic scientific analysis, and is incorrect. It is the City’s contention that the Applicants’ characterization represents an attempt to circumvent the question of environmental impact by providing a minimalist approach to assessing the environmental resources. It appears that the Applicants’ implication is that if the environmental resources are of minimal quality, that any potential impact has to be minimal as well. It is the City’s position that the record evidence demonstrates that wetland does in fact have some functions, is a remnant of a larger system, is worthy of preserving and that if the proposed Facility causes the environmental resources to be diminished in any way it will be a significant adverse effect.

e. Quality and Value of the Site and Impacts upon Wildlife.

Dr. Danzer's report dated November 19, 2008 indicates that the whole site, including both the wetland and upland areas, have demonstrable functions and values, and that development activities will have an impact on wildlife, as summarized below:

- i. The wetland areas within the site are surviving remnants of a larger wetland system that still exists off site. "Both the wetland area and the upland portions of the site are also part of a larger wooded corridor that exists between several residential and two church properties. This corridor provides habitat for local wildlife such as deer and turkey." (City's Exhibit 13 -Danzer Report dated November 19, 2008 p. 3)
- ii. The stone walls nearby also provide cover habitat to reptiles and small mammals that may use the watercourse. It further indicates that natural wetland buffer will be removed for the pad and tower. (City's Exhibit 13 -Danzer Report dated November 19, 2008 p. 3)
- iii. The site currently provides opportunities for cover and limited food to the smaller wildlife that use the wetland corridor. Removal of this habitat will eliminate these ecological functions from the buffer landscape. The intermittent vernal watercourse very likely provides at least a limited degree of habitat for local amphibians. (City's Exhibit 13 -Danzer Report dated November 19, 2008 pp. 3- 4)
- iv. "The two major wetland functions for the system include groundwater recharge and wildlife habitat. Additionally, the fact that the wetland system is a remnant system adds a level of conservation value to the system since there is not much wetland left within the site." (City's Exhibit 13- Danzer Report dated November 19, 2008 p. 3 ; Tr. 4 p. 220)

It is the City's contention that although the site is a remnant system, the site still has demonstrable environmental functions and values. Furthermore, the fact that the wetland is a remnant system adds a level of conservation value to the system because a reduced wetland is left within the site because of past uses,

thus any impact on the wetlands functions due to the erection of the proposed Facility will also further exacerbate the situation and result in an adverse effect on the quality of the site and upon the wildlife.

f. The Proposed Activity is Regulated Within the Meaning of the City of Danbury Inland Wetlands and Watercourses Regulations.

Absent preemption, if the Applicants were required to appear before the EIC, the proposed Facility would be a regulated activity within the meaning of the City's Inlands Wetlands and Watercourses Regulations as it involves removal of trees within 100 feet of a wetland or watercourse. The activity would therefore, require a regulated activity permit. (City's Exhibit 15 - Danzer Report dated December 22, 2008, p. 2) The Applicants' expert, Mr. Rieger, indicated on cross examination that grubbing within one hundred feet to the outer boundary of a wetland was a regulated activity under the EIC Regulations. (Tr. 4, pp. 134-135) While filing an application with the EIC, the Applicants would be required to submit a technical analysis of impact adequate enough in scope to satisfy EIC application requirements. In addition, as Dr. Danzer indicates, despite the fact that he found sufficient evidence to conclude that there will be impacts to the wetlands, there is only a single statement submitted on behalf of the Applicants regarding impacts. (City's Exhibit 15 - Danzer Report dated December 22, 2008, page 2) The fact that there is only a single statement submitted regarding impacts, rather than a full technical analysis is very significant because all relevant information regarding impacts should be available and fully disclosed to the Council as it deliberates on the pending application.

It is the City's position that the Council should have the same information available to it that would ordinarily be considered by the EIC when it deliberates on the instant application. It is the City's contention that the application is incomplete as it lacks a sufficient impact analysis which the Council should have before it order to make its determination under the statute regarding the nature of the probable environmental impact of the facility. In the absence of such information, the Council does not have enough information upon which to make an informed determination.

2. Optasite Has Failed to Establish that the Proposed Facility will not Have a Significant Adverse Effect on the Public Health and Safety Due to the Lack of Reserve Code Complying Area Approval for the Site.

The record evidence indicates that the owner of the site, Christ the Shepherd Church, has failed to identify and receive approval from the City of Danbury Health, Housing and Welfare Department for an alternate location for a reserve code complying area for its subsurface sewage disposal system. (City's Exhibit 16- Baroody Pre-filed Testimony dated January 14, 2009) It is the City's contention that in the absence of approval of an alternate location for a reserve code complying area, the Council cannot be assured that any such alternate code complying area would not fall within the same area in which the Facility is proposed to be located. The pre-filed testimony of Mr. Baroody dated January 14, 2009, sets forth the reasons as to why the City has reason to believe that it is necessary for the owner of the site to establish a new reserve code complying area, as it has reason to believe that the current reserve code complying area is located within 50 feet upgradient of the curtain drain placed in the easement area serving the subsurface sewage disposal system for 14 Indian Spring Road. As Mr. Baroody indicated in his testimony at the hearing on January 26, 2009, the Health, Housing and Welfare Department wants to know that the cell tower is not taking up an area which may be used as a reserve area, also that the land that is going to be taken by the cell tower does not make it impossible for the Church to replace its septic system on its own land. (Tr. 4, pp. 190-194). In fact, the church may have plans to expand its own facilities, as apparently the Church cited future expansion as a reason not to enter into an amended agreement with the Applicants for any revision to the tower location. (Applicants' Exhibit 8- Submission of Supplemental Information, December 1, 2008, p. 3) Thus, it is also necessary that the reserve code complying area be established so that the Church is not precluded from expanding into certain parts of its property in the future, if the area to be utilized by the proposed Facility were to take up the only available space for a reserve code complying area.

Mr. Baroody submitted additional information in the form of pre-filed testimony regarding the approximate size of the existing leaching area as he was requested to do so by Chairman Caruso at the hearing on January 26, 2009. (Tr. 4 pp. 266-267) The response by the Applicants to this information

contains a vast oversimplification of the requirements that would need to be met for a new reserve code complying area to be approved by the City. It also presumes that the square footage of the existing reserve area only needs to be doubled and that the reserve code complying area could be located in approximately the same area where the system is now believed to be located. The standards set forth in the current Public Health Code must be complied with, not the code that existed at the time the system was approved in 1974. In fact, the sketch attached to the Applicants' Response to the City's Pre-Hearing Interrogatories Set V depicts a circle with a 200 foot radius for a well setback within which the Applicants indicate that the reserve code complying area cannot be established. The City submits, and as Mr. Baroody's pre-filed testimony further indicates, that if it is determined through the B100a review process that a suitable location for a reserve code complying area does not exist in any other location on the site, then the proposed cell tower should not be considered until the situation is resolved. Given all of the above, and the various questions and uncertainties referenced, this Council ought not approve this application, pending a much closer examination of such compliance matters.

3. Optasite Has Failed to Establish that the Proposed Facility will not Have a Significant Adverse Effect on the Scenic Values.

Section 3.E.6.c. of the City of Danbury Zoning Regulations sets forth a sequence of preferable locations for wireless facilities. The record evidence establishes that with respect to the City's Zoning Regulations that the location of the proposed Facility is in the sixth and least preferred location, a residential zone. (Tr. 4 pp. 234-235, City's Exhibit 2 - Pre-filed testimony of Sharon Calitro dated August 26, 2008)

The proposed Facility will also be located within forty-two feet of the adjacent single family residence, 14 Indian Spring Road. (Tr. 4 p. 19) Exhibits submitted by the City as a supplement to the resident's concerns and comments depict a cell tower located in the area where it is believed that the proposed Facility is to be constructed. (City's Exhibit- 10 Second Addendum to Fourth Supplemental Exhibit List, Item 1.) The photo renderings clearly demonstrate that the proposed Facility will be extremely noticeable and visible from the residence at 14 Indian Spring Road, owned by Mr. and Mrs. Jose Carneiro. The photo renderings were created in leaf on condition, thus, the view would be even more egregious in leaf off conditions.

◇ Additionally, a letter from Mr. and Mrs. Carvalhiero, submitted as part of the Second Addendum to the Fourth Supplemental Exhibit List indicates that depending on the final location of the cell tower it could be a little more than 40' from their property line and visible from their entire 3.5 acre plot. (City's Exhibit 10- Second Addendum to Fourth Supplemental Exhibit List, Item 2.) The Applicants have submitted supplemental information indicating that in their opinion the photo renderings are inaccurate, however, the Applicants have failed to provide any photo renderings depicting the views of the proposed Facility from 14 Indian Spring Road. (Applicants' Exhibit 12- Supplemental Information Regarding 14 Indian Springs Road, Item 5.) The Applicants have consistently maintained that it is not their policy to enter onto private property, but in a situation such as this where the proposed Facility will be located so close to a single family residence and so directly visible, it seems that the Applicant should be required to contact the property owner directly. In addition, nine trees six inches and above are targeted to be removed during construction, with two trees in a direct line of vision of the house located at 14 Indian Spring Road. (Tr. 3 P. 76, p. 80) The Applicants' viewshed expert, Mr. Libertine, opined on cross examination that the removal of the trees will open a bit of the view. He acknowledged that "it's a tough call." when asked whether the removal of the trees would affect the house at 14 Indian Spring Road. (Tr. 3 p. 81) It is the City's contention that if the proposed Facility is constructed as currently proposed, it will be highly visible from the residence at 14 Indian Spring Road year-round, and thereby will have a significant impact on scenic values.

The Applicants' Visual Resource Evaluation Report dated June of 2008 prepared by Vanasse Hangen Brustlin, Inc. ("VHB") indicates that it conducted a balloon float on May 28, 2008 to further evaluate the potential viewshed within the Study Area. During the balloon float, VHB drove the public road system to inventory areas where the balloon was visible and photographed the balloon from different vantage points. However, the report indicates that photos were only taken from nine locations, five from the same road. It is notable that no photos were taken from 14 Indian Spring Road, nor were photos taken from any surrounding communities, and the areas chosen were very limited in scope. Accordingly, it is the City's contention that the sampling was not broad enough and that it is certainly possible that the proposed Facility

◇

will be visible from a far greater number of residences and as such will have a significant impact on scenic values.

The City respectfully suggests that the Council take a look at the "viewshed map" appended to Tab 3 of the Applicants' technical report filed approximately January 2006 (no cover date placed on the report). This is instructive to show the high level of preservation land, watershed land, conservation property, parklands, open space, recreation, vacation areas, schools, state forests, DEP waterbodies, historic preserves, fish hatcheries and other depicted areas located in the proposed "gap" location. This map was prepared by Applicants' own retained expert, VHB, and makes clear that the area in question is really not the most sensible, suitable or justifiable area to locate a large and obtrusive cell tower. While the Applicant has brought in a host of reports on how minimal the impact of a tower would be in this area, it is amply evident that large portions of this macro area are neither suitable nor amenable for such an obstruction at such a high impact, obviously residential location.

One other item with respect to the technical report is to note the number of discrepancies between the technical data contained in those pages and the Application that duplicates some of the earlier submitted materials and data. Upon examination of these submittals, it becomes clear that certain relevant changes were made between the time of the technical report and the time of the final application to the Council. Even more importantly, there is no evidence anywhere that these referenced changes, adjustments or amendments were ever reported to the Mayor of Danbury as required pursuant to the statutes that mandate consultation with local officials. C.G.S. Section 16-50I(e) requires notification and consultation with such officials regarding application submittals. Obviously, if changes were made between the time of the 2006 technical report and the 2008 Application without notification, consultation and advisement to City officials, there could have been, and was, no opportunity for review and comment. There is nothing in the Application or correspondence attached therein that sets forth in writing and in an organized fashion, the changes that were to be made between the first document and those that followed, including the Application itself. Thus, there was no way for local officials to know of and to comment upon the changes.

4. Optasite Has Failed to Establish that the Locations of Proposed Facility in Close Proximity to the Residence at 14 Indian Spring Road will not Have a Significant Adverse Effect on the Public Health and Safety.

The proposed Facility is to be located within forty-two feet of the adjacent single family residence, 14 Indian Spring Road. (Tr. 4 p. 19) The proposed Facility will not be built in accordance with Section 3.E.6.d.(2) of the City of Danbury's Zoning Regulations which provides minimum yard setback requirements for proposed towers. Section 3.E.6.d.(2) of the Zoning Regulations requires that a tower of 140 in the RA zone feet have a minimum yard setback of 165 feet. (City's Exhibit 2- Pre-filed testimony of Sharon Calitro, dated August 26, 2008) The pre-filed testimony of Ms. Calitro also indicates that "more than one-half of the area of the 'tower radius' is located on adjacent property and within what appears to be only a few feet from an adjacent residential building." It is the City's contention that the location of a tower within such close proximity to this single family residence will present an unreasonable risk to health and safety should the tower collapse, fall, or ice accumulate on the tower. As relevant testimony has shown, the City believes that the risk of damage or injury of falling or flying ice and debris, as well as fire hazards, poses a real issue that the Applicant has entirely failed to address, except through poorly articulated theory or reliance on (tower) manufacturers. This, as the City's expert has made clear, raises important questions that require more than just cursory commentary; rather, it becomes yet another element of a failure of due diligence. The proposed Facility is in such close proximity to the residence on the adjoining property at 14 Indian Spring Road, that if the tower fell, it could potentially fall into the swimming pool or into the residence itself. Even though the Applicants in testimony have discussed the yield point extensively and indicated that they can adjust the yield point to 30 feet, it is still the City's contention that the record evidence fails to adequately substantiate that there would not be a significant adverse effect on public health and safety if the facility is located as proposed, with the base of the tower within forty-two feet of the property line of 14 Indian Spring Road. (Tr. 4. pp.18-39)

As shown in separate, but related testimony and submissions, it should be nothing less than alarming to the Council that the Applicants have remained so clearly oblivious to the rights of and effects upon their neighbor, the Cavalheiros. As stated above and in detailed testimony, the Applicants have

◇ basically and simplistically claimed that "it was there first". This is not only untrue, it belies Applicants' arguments that there will be no relevant impact, since it is clear that not only could the previous owners of 14 Indian Spring Road **not have been able to know** what the lease arrangements were (since only a Notice thereof had been filed, without ANY specifics), but the building and zoning applicant process was already in process *before* the Notice of Lease was ever filed. Even if one were to discount that, the Applicants have been so totally dismissive of the Cavalheiro's rights to know and opportunity to be heard, that one can only surmise that there IS a known impact, but the Applicants have chosen to downplay it, in the interests of its profit motivations. This is amply displayed by the **absence of meaningful** efforts by the Applicants to appropriately communicate with this family regarding this significant obstruction at their back door.

5. Failure of Applicants' Housing Values Analysis

The Applicants offered up as their property value expert Mr. Edward J. Ferrarone of Lane Appraisals in Larchmont, New York. While Mr. Ferrarone, in his report states that he "inspected" the proposed location he did not do a complete study of the impact of similar towers within the Danbury area. In fact, it appears that Mr. Ferrarone did not do an examination of the subject site with respect to property values. He certainly never examined the property at 14 Indian Spring Road; rather he extrapolates values from New York locations that have little apparent relevance to a different state and a different environment. Mr. Ferrarone is neither licensed nor certified in Connecticut. His listing of clients has no municipalities in Connecticut and he cannot recite any court experience in the State of Connecticut. He concludes his written report of September 2, 2008 with a reference to Pound Ridge, New York but without any logical or comparative information. Finally, Mr. Ferrarone makes no comment on statements and reports submitted by actual, licensed Connecticut real estate professionals who submitted reports in the record as part of the residents' submittals, frankly, this, again indicates the true lack of due diligence that the Applicants have displayed throughout the proposal process.

◇ C. Optasite Has Failed to Demonstrate that the Need It Claims to Address by the Proposed Facility Cannot be Addressed by Locating the Facility at an Alternate Site.

◆ This Council has many times sought to receive and consider relevant information pertaining not only to wetlands concerns, but importantly, to the availability of alternative sites. The City has always taken this very seriously, and has, on a number of occasions throughout these proceedings, developed and submitted a number of proposals and suggestions. This includes, but is not limited to Mr. Comi's submitted testimony filed January 15, 2009 as well as Mr. Comi's most recent submittal, setting forth a specific, targeted proposal, suggested by members of the panel, that could provide a proper and technically sufficient alternative to provide the coverage the Applicants claim they require to service the area in question, such as may be defined by the Applicants (see above discrepancy in areas to be served). While the City cannot claim that the Applicants have been unwilling to consider and to review alternatives, what it can claim is that the Applicants have been reluctant to **propose** and institute serious consideration of such alternatives. The Applicants have been reactionary in every sense of the word throughout the alternative site selection process, opposing the sites largely because they appear unwilling to expend the resources to make it work and/or to pursue the necessary negotiations to make it happen. Instead, they leave it to the Council and to the City to prepare and present these proposals.

The City offers that there is no **perfect** site (i.e. that does not affect *somebody*). A tower is a tower. However, the City, through its referenced alternative site submittals, has given the Council options that would provide the service that Optasite deems necessary, but at a location(s) not having the risks and inconsistencies inherent with the subject site at Stadley Rough Road. Surely this Council is aware of the vigorous and large community opposition, as well as the potentially risky impact on the neighbors at 14 Indian Spring Road and on church children and others situated in the shadow of the proposed tower. These are well documented.

◆ Mr. Comi has placed in the hands of this Council, a workable and sensible alternative site solution that does precisely what has been requested; namely, a dual site remedy, with lesser impact on the residential area, but one which in fact confers even **more coverage** than even the site that the Applicants have been claiming is the only site. It is clear from the Applicants' filed response to Mr. Comi's most recent proposal in this regard, that the only arguments they can put forward are (and continue to be) those which

◇ argue *in the negative*; that is, they (the sites) have views, it (Optasite) has other towers in the area and a general smattering of disparaging remarks on the work. There is nothing in these Applicant responses that provides a legitimate, technical, reasoned analysis of why this combination of sites could not be made to work, given some effort and willingness.

The City has long made the argument that the Applicants' subject site is "low hanging fruit". This is based on what appears to be a lease arrangement negotiated with a landlord that was in desperate need to sell its property, a desperate need for funds, and a successor landlord church that, through documented statements in the local press, did not want the tower and would not have entered into the lease were it not foisted upon it by the prior owner and by contractual requirements. Understandably, Optasite and T-Mobile desire to derive as much profit as possible with as little expenditure as possible. Therefore, they stick with a site that is the cheapest (both in terms of rent and costs) and determine ways to avoid having to seek another site, in the face of mounting community opposition. Additionally, they seek to have the City expend its resources to provide such alternatives, but then also determine not to have an open mind about their value and examination. Mr. Comi has obviously shown himself to be a highly competent and experienced expert in this field. The Applicant, however, has continued to question his capabilities, when in fact, their own technical expertise has, many times, been questioned and questionable, as shown in testimony and in earlier portions of this brief.

D. Additional Reasons that the Applicants have not Justified the Need for the Proposed Facility at the Height Requested.

As more fully set forth in the body of the brief above, the City asserts that the pending application should be denied for a multitude of reasons. Additional reasons are set forth below indicating areas in which the application is also deficient are as follows:

- ◇ 1. A fully developed d&m plan which provides the City with the opportunity to have input and comment prior to Council approval has not been provided. The Applicant has failed to provide a detailed construction plan associated with proposed improvements, including an erosion and sedimentation control

and rehabilitation plan, a storm water discharge plan and a dewatering plan. The d&m plan required by the R.C.S.A. Section 16-50j-75 et seq. should be required to be submitted, for this Application, prior to the Council's decision as both neighbors and the City have expressed significant structural and construction concerns relative to development on the subject site. Failure to submit this plan prior to action by the Council does not avail the Council of the information it needs when considering the nature of the probable environmental impact of the facility and every significant adverse effect on public health and safety, the natural environment water purity and wildlife as more fully set forth in C.G.S. Section 16-50p(a)(3)(B).

2. A B100a review establishing a reserve code complying area approved by the City of Danbury Health, Housing and Welfare Department has not been conducted, therefore it is not currently known if the land upon which the Facility is proposed to be located will need to be utilized by the current property owner to establish its reserve code complying area. The property owner has failed to provide the materials required for the City of Danbury Department of Health, Housing and Welfare to conduct a B100a review establishing a reserve code complying septic system area for the existing Church. Absent such review and approval by the City, the City cannot find that the property has sufficient land area available to establish a reserve code complying area. Notwithstanding the Applicants lease and the rights contained therein, the City contends that neither the Council nor any land use commission or authority should act on an Application which would allow an additional use on the property and further compromise land area available for said reserve code complying area until such time as the area is defined and approved by the City.

3. A plan providing measures for a fully insulated equipment area enclosed with noise dampening materials, specifically taking into account the close proximity of the backyard and pool at 14 Indian Spring Road has not been provided. The Applicants have failed to provide a plan that identifies construction techniques or design measures to reduce noise impacts associated with the equipment cabinets. While they have committed to add noise dampening materials to the cabinet design, such measures have not be reviewed nor approved by any agency, including the City of Danbury Building Department.

4. A detailed full scale pre-construction tree removal plan and post-construction tree planting plan has not been provided. There is no guarantee that proposed plantings will be maintained in perpetuity and/or replaced if they do not survive. Such plans should be submitted to the City for review and approval prior to Council action. All erosion and sedimentation control guarantees required in the City of Danbury Zoning Regulations should be applied to this project.

5. A specific structural design plan with a break point intended to reduce the radius of the fall zone so that in the event of failure the tower will not fall onto any adjoining property, particularly 14 Indian Spring Road has not been provided. The Applicants have failed to provide a detailed structural design plan for the proposed tower that would confirm their position that the break or yield point will be placed on the tower at a location and of such design as to minimize risk of damage to the adjacent property(ies), specifically the residence and appurtenant structures located at 14 Indian Spring Road.

6. A plan designing the tower so that the antennas are separated by less than the standard 10 feet center line to center line separation distance has not been provided. The Applicants have failed to provide a design of the tower that minimizes the need for additional height beyond that required for T-Mobile, and specifically reducing the standard 10 foot separation distance between antennae for different carriers.

7. A plan designing the tower only for the carriers which have demonstrated to the Council's satisfaction that they are legally obligated to located on the tower, with it designed to be extendable, if necessary, for future providers has not been provided. The Applicants have failed to substantiate the need for a tower height as proposed. There are no contractual obligations from other carriers that would require a tower height of greater than required for T-Mobile, of approximately 130 feet. In fact, the record indicates that Sprint/Nextel is not an Applicant in the proceeding and no propagation modeling has been submitted. Therefore, the Applicant has not demonstrated a need for the issuance of a certification of need for a tower height at 140 feet as proposed by the Applicant.

8. A plan designing the tower so that the antennas are mounted inside of the pole to further conceal any exterior mounted equipment has not been provided. The Applicant has failed to provide an

◇ alternate design for the tower that minimizes visual impacts and intrusion into the single family neighborhood.

Specifically, a tower design plan that provides for interior mounting of all antennae has not been provided.

9. The applicant has not agreed to conduct a preconstruction survey of the nearest residence (14 Indian Spring Road) to record existing conditions of the residential structure, appurtenant structures on the property, the pool deck and pool to ensure that such features are not damaged during any soil removal, compaction and related construction activities on the subject site necessary for installation of the proposed Facility. The Applicant has failed to provide any assurances that it will correct damages sustained to the adjacent property to preconstruction conditions considering the proximity of the structures and other features on the adjacent property to the proposed Facility location on the subject site.

10. The Applicant has failed to provide proper hold harmless and indemnifications to the City and the property owners at 14 Indian Spring Road from risks, contingent liabilities and associated costs and damages resulting from the consequences of the installation and use of the proposed Facility.

11. The Applicant has failed to reconcile the wetland delineation boundaries and therefore quantitatively and qualitatively evaluate wetland impacts. A third party independent wetland soil scientist should have been retained by the Applicant, as approved by Council and the City, said approval not to be unreasonably withheld, to delineate the wetland boundaries and evaluate the potential impacts to the wetland and watercourse. Absent such confirmation, Council will not have the information it needs when considering the nature of the probable environmental impact of the facility and every significant adverse effect on public health and safety, the natural environment water purity and wildlife as more fully set forth in C.G.S. Section 16-50p(a)(3)(B).

12. The Applicant has failed to provide a plan indicating safety measures which will be taken to protect the property owners, adjoining property owners, church members, employees and invitees from the dangers of falling ice which may accumulate upon the Facility.

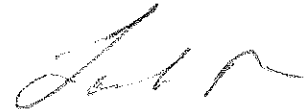
Assuming arguendo that the Council determines that the pending Application should be granted, the City respectfully requests that the above aforementioned deficiencies contained in Section D. be mandated as conditions of approval of said Facility.

Conclusion

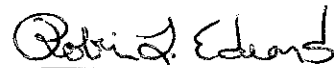
For the foregoing reasons, the Party City of Danbury respectfully requests that the Council deny this application on the ground that the Applicants have failed to satisfy the criteria set forth in C.G.S. Section 16-50p.

Dated at Danbury, Connecticut, this 12th day of March 2009.

City of Danbury



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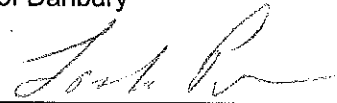
CERTIFICATE OF SERVICE

I hereby certify that the original and twenty (20) copies of the foregoing was hand delivered to the Connecticut Siting Council and one (1) copy was mailed to the Applicants' legal counsel via 1st class, U.S. mail, as follows:

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Dated: March 12, 2009

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