

DOCKET NO. 366 - Optasite Towers LLC and Omnipoint } Connecticut
Communications, Inc. application for a Certificate of }
Environmental Compatibility and Public Need for the } Siting
construction, maintenance and operation of a telecommunications }
facility located at 52 Stadley Rough Road in Danbury, } Council
Connecticut.

April 23, 2009

Opinion

On June 30, 2008, Optasite Towers LLC (Optasite) (now SBA Towers II, LLC) and Omnipoint Communications, Inc. (T-Mobile) applied to the Connecticut Siting Council (Council) for a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, maintenance and operation of a wireless telecommunications facility to be located at 52 Stadley Rough Road in Danbury, Connecticut. Optasite and T-Mobile are seeking to develop a facility on a five-acre parcel owned by Christ the Shepherd Church. T-Mobile's objective in locating on this facility is to 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's municipal boundary, and Padanaram Road. The City of Danbury participated as a party in this proceeding in order to express the municipality's opposition to the proposed facility.

Optasite proposes to construct a 140-foot steel monopole within a 55-foot by 90-foot fenced compound in a wooded area in the southwesterly portion of the church property. Vehicular access to the facility would be over an existing paved driveway along the church's southerly boundary and then over a new gravel drive that would be installed for an approximate distance of 175 feet. The new gravel drive would be curved to avoid disturbing two small existing wetland areas that are proximate to the proposed compound. Utility service for the proposed facility would be extended underground from Stadley Rough Road and would run adjacent to the access ways. The tower would be designed to accommodate up to four commercial antenna placements plus City of Danbury public safety antennas. Optasite would require antennas to be flush-mounted on the tower. In addition to T-Mobile, Nextel Communications of the Mid-Atlantic, Inc. (Sprint/Nextel) has executed a lease with Optasite to place antennas at a centerline height of 127 feet above ground level.

The proposed tower's setback would extend approximately 98 feet onto an adjacent residential property to the west and approximately 103 feet onto an adjacent property to the south, which is owned and utilized by another church. Optasite has proposed designing a yield point into the tower in order to reduce the likelihood that a tower collapse would encroach on the neighboring properties. The yield point would occur approximately 40 feet below the top of the tower.

The proposed tower would be at least partially visible year-round, above the tree canopy, from approximately 25 acres within a two-mile radius of the site. It would also be seasonally visible from an additional 19 acres. Most of this acreage is located within one-quarter mile of the tower location. Approximately 14 residences would have partial year round views of the proposed tower, and 10 additional residences would have seasonal views of the proposed tower.

The proposed facility is located in a wooded area characterized by mature, mixed deciduous hardwood species. There are two small wetland areas a short distance east of the compound. The closer of these areas is approximately six feet from where the compound's easterly fence would be. There was some discussion during the proceeding about relocating the facility about 40 or 45 feet to the north and east of its proposed location in order to preserve more vegetation between the compound and the adjacent properties to the west and south. Such a move, however, would require the disturbance of the wetland areas.

There are no state or federally listed species or significant natural communities located at or in the immediate vicinity of the proposed facility.

The City of Danbury raised concerns about the proposed facility's potential impact on six historic properties whose view sheds encompass the 52 Stadley Rough Road location. Based on a visual impact analysis performed for Optasite, these historic properties would not have views of the tower.

The search for a telecommunications site in this area of Danbury was originally initiated by Sprint PCS sometime prior to the fall of 2000. Sprint applied to the Danbury Planning Commission, which had jurisdiction at the time, for approval of a site on Great Plain Road. The Planning Commission denied Sprint's application in December, 2000.

Between 2000 and 2005, Verizon and T-Mobile continued to search for a suitable telecommunications site in this area. In June, 2005, Optasite began its investigation, in consultation with the wireless carriers, of locations where a new tower might be feasible. In the course of its investigation, Optasite identified the property at 52 Stadley Rough Road as an available and feasible location that would be able to provide acceptable coverage.

During this extensive proceeding, many other potential alternate locations were investigated. Some locations were suggested by local residents. Others were suggested by the City of Danbury or the Council. Some suggested locations were on properties either being planned for residential development by their owners or designated as open space. These locations, therefore, could not be developed as a wireless telecommunications facility. Many of the sites investigated were either unable to provide the necessary coverage or were owned by persons or entities, including the City of Danbury, which were unwilling to lease space for a telecommunications site.

The difficult topography in the target area was a factor limiting the feasibility of several of the suggested alternate locations. To provide coverage comparable to the coverage from the proposed site, towers at some of these alternate sites, such as the State Department of Transportation yard, would have to be much higher than the proposed 140-foot tower. Other locations, such as the water tower at the Sterling Woods condominium complex, would create coverage redundant to T-Mobile's nearest existing sites, which would lead to network problems for T-Mobile. Towers at many of the suggested alternate locations would be visible from more acreage and from more residential properties than the tower at 52 Stadley Rough Road.

The applicants also explored potential multi-site solutions that would enable T-Mobile to cover its target area with two or more lower towers instead of the one 140-foot tower proposed. However, none of the multi-site solutions were able to provide coverage equivalent to the coverage from the proposed site. A multi-site solution that would consist of two 90-foot towers—one at the proposed site and one at one of two churches in the Pembroke Road area—would not achieve satisfactory coverage in T-Mobile's target area. The solution proposed by the

City of Danbury would require a taller tower in conjunction with a distributed antennas system (DAS). The taller tower would be more visible from surrounding neighborhoods and from Candlewood Lake compared to the tower proposed by the applicant. DAS would require the installation of numerous utility poles which would be incompatible in an area that currently has underground utility service.

The Council recognizes the difficulty of locating a facility in this part of Danbury. The topography severely limits the number of sites feasible. The area is suburban and residential. The few properties large enough to accommodate a telecommunications facility are restricted either by pre-existing City land-use policies or by property-owners' plans for further housing developments. The long history of industry attempts to locate a facility in this area testifies to the difficulty of securing a suitable site; the same history, however, supports the need for coverage in this area. Should the Council not approve this proposed facility, the Council may be consigning this section of Danbury to inadequate or non-existent coverage contrary to the Telecommunications Act.

Nevertheless, the Council acknowledges neighborhood concerns and would not approved the facility without conditions. The Council would like to see Optasite provide substantial landscaped screening to mitigate the compound's visual impact on its nearest neighbors. The Council would also like the applicant to give its compound an architectural treatment to make it more palatable to the neighborhood. Further, the Council would recommend that Optasite attempt to move its compound, to the extent feasible, within its lease area to preserve as much as possible the existing vegetation along the boundaries of the properties to the west and south. Thus the Council shall order the applicant to address these concerns in the Development and Management Plan.

It is the Council's policy to strongly encourage collocation for future carriers in the area, in accordance with CGS § 16-50aa. The proposed tower would afford full opportunity for collocation. While Council-issued Certificates for electric power and fuel transmission lines permit the transmission company Certificate Holder the ability to exercise the right of eminent domain, Certificate Holders for telecommunications towers do not acquire such rights. While the Council is not limited by any lease, or the terms of such lease, or the acquisition of any other interest in land by an applicant (and has no authority to adjudicate conflicts over leases or other interests in land), the Council may consider the availability or non-availability of a site in deciding whether to consider alternative sites to those proposed by the applicant. Thus, the Council cannot force a landowner to accept a telecommunications facility, no matter how desirable the site.

According to a methodology prescribed by the FCC Office of Engineering and Technology Bulletin No. 65E, Edition 97-01 (August 1997), the combined radio frequency power density levels of the antennas proposed to be installed on the tower have been calculated by Council staff to amount to 2.72% of the FCC's Maximum Permissible Exposure, as measured at the base of the tower. This percentage is well below federal and state standards established for the frequencies used by wireless companies. If federal or state standards change, the Council will require that the tower be brought into compliance with such standards. The Council will require that the power densities be recalculated in the event other carriers add antennas to the tower. The Telecommunications Act of 1996 prohibits any state or local agency from regulating telecommunications towers on the basis of the environmental effects of radio frequency emissions to the extent that such towers and equipment comply with FCC's regulations concerning such emissions.

Based on the record in this proceeding, the Council finds that the effects associated with the construction, operation, and maintenance of the telecommunications facility at the proposed site, including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are not disproportionate either alone or cumulatively with other effects when compared to need, are not in conflict with policies of the State concerning such effects, and are not sufficient reason to deny this application. Therefore, the Council will issue a Certificate for the construction, operation, and maintenance of a telecommunications facility that includes a 140-foot steel monopole at 52 Stadley Rough Road, Danbury, Connecticut.