

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

In Re: Application of New Cingular Wireless : Docket No. 373
PCS, LLC (AT&T) for a Certificate of Environmental :
Compatibility and Public Need for the Construction :
Maintenance and Operation of a Telecommunications :
Tower Facility at St. Matthew Lutheran Church at :
224 Lovely Street in the Town of Avon : JULY 16, 2009

TOWN OF AVON BRIEF ON SITING COUNCIL'S CONSIDERATION OF MUNICIPAL
REGULATIONS IN ITS DECISION TO APPROVE OR DENY A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

At the request of the Connecticut Siting Council ("Council"), the Town of Avon ("Avon" or "Town") respectfully submits this brief on the narrow issue of whether the Council may consider municipal regulations pertaining to property values in evaluating whether to approve or deny a Certificate of Environmental Compatibility and Public Need for a telecommunications tower facility. Pursuant to Conn. Gen. Stat. § 16-50x(a), Avon recognizes that the Council has exclusive jurisdiction over the siting of telecommunications facilities. However, the statute specifically states that when evaluating an application for a telecommunications facility, the Council shall consider a municipality's location preferences or criteria or any criteria that may exist in the zoning regulations. Further, the statute requires the Council to give such consideration to other state laws and municipal regulations, as it shall

deem appropriate. As provided in greater detail below, Avon's Zoning Regulations, which are part of the record in this proceeding, allow for the consideration of whether a proposed use will have any detrimental effects upon property values.

DISCUSSION

The Council's exclusive jurisdiction over the siting of telecommunications towers and the decision making criteria it may consider are set forth in Conn. Gen. Stat. § 16-50x(a).

Specifically, subsection (a) of the statute provides:

Notwithstanding any other provision of the general statutes, except as provided in section 16-243, the council shall have exclusive jurisdiction over the location and type of facilities and over the location and type of facilities subject to the provisions of subsection (d) of this section. When evaluating an application for a telecommunications tower within a particular municipality, the council shall consider any location preferences or criteria (1) provided to the council pursuant to section 16-50gg, or (2) that may exist in the zoning regulations of said municipality as of the submission date of the application to the council. In ruling on applications for certificates or petitions for declaratory rulings for facilities and on requests for shared use of facilities, the council shall give such consideration to other state laws and municipal regulations as it shall deem appropriate. Whenever the council certifies a facility pursuant to this chapter, such certification shall satisfy and be in lieu of all certifications, approvals and other requirements of state and municipal agencies in regard to any questions of public need, convenience and necessity for such facility.

Conn. Gen. Stat. §16-50x(a)(emphasis added).

Pursuant to Conn. Gen. Stat. § 16-50gg, Avon submitted its location preferences and siting criteria as part of this proceeding. See Avon Ex. 1. As part of this submittal, Avon provided, for the Council's consideration, the relevant criteria set forth in the Town of Avon's Zoning Regulations ("Regulations"). Id. Avon does not suggest that its Regulations are controlling in this proceeding. Clearly, Section 16-50x provides the Council the power to

override municipal zoning provisions. Corcoran v. State Siting Council, 50 Conn. Supp. 443 (Conn. Super. Ct. 2006), aff'd by 284 Conn. 455 (2007). Nonetheless, in its evaluation of an application for a Certificate, relevant for the Council's consideration are a town's location preferences or criteria provided for pursuant to § 16-50gg or criteria that may exist in a town's zoning regulations. Other state laws and municipal regulations are also relevant for the Council's consideration, as it shall deem appropriate. Conn. Gen. Stat. § 16-50x(a).

Avon's Zoning Regulations (as detailed in Ex. 1), and in particular Avon's Special Exception Criteria set forth in Section VIII of the Regulations, apply in the Avon Planning & Zoning Commission's review and approval of types of land uses that are not specifically allowed under the Regulations. In the absence of the Siting Council's exclusive jurisdiction, a proposal for a telecommunications facility in Avon would need to be evaluated under the Special Exception Criteria. The following Special Exception Criteria relate to consideration of the impact of a proposed use on property values, which must be met in order to obtain local approval:

A. *Suitable location for use.* That the location and size of the proposed use and the nature and intensity of use in relation to the size of the lot will be in harmony with the orderly development of the area and compatible with other existing uses.

B. *Suitable structures for use.* That the kind, size, location and height of structure and the nature and extent of landscaping on the lot are appropriate for the use and will not hinder or discourage the appropriate use of adjoining property or diminish the value thereof.

C. *Neighborhood compatibility.* That the design elements of the proposed development are attractive and suitable in relation to the site characteristics and style of other buildings in the immediate area, and that the proposed use will not alter the

essential characteristics of the area or adversely affect property value in the neighborhood.

...

I. *Consistent with purposes.* That the proposed use will not have any detrimental effects upon the public health, safety, welfare, or property values, and that the proposed use will not conflict with the purposes of the regulations.

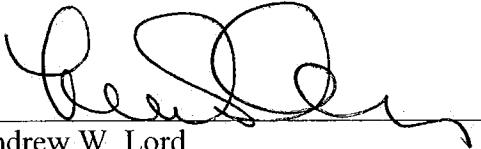
Town of Avon Zoning Regulations, Section VIII (underlined emphasis added).

CONCLUSION

Based on the foregoing, Avon respectfully submits that the Council may consider Avon's Zoning Regulations, including the impact on property values, in evaluating whether to approve or deny a Certificate of Environmental Compatibility and Public Need for a telecommunications tower facility.

THE TOWN OF AVON

By: _____

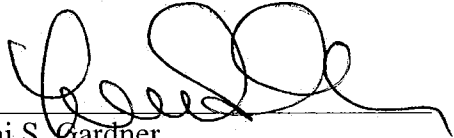

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CERTIFICATE OF SERVICE

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