

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:
APPLICATION OF NEW CINGULAR WIRELESS
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

DOCKET 373

JUNE 22, 2010

RECEIVED
JUN 21 2010

CONNECTICUT
SITING COUNCIL
WRITTEN TESTIMONY OF PETER EMMETT WIESE, MARK TOOMEY,
SHERIDAN TOOMEY, THOMAS MCMAHON, AND PATRICIA MCMAHON FOR
THE JUNE 29, 2010 SITING COUNCIL MEETING

Thank you for giving us the opportunity to express our opposition to AT&T's motion to modify the approved cell tower location at ST. Matthew Lutheran Church at 224 Lovely Street Avon, CT. We oppose the proposed change in location for a number of reasons and adopt in full the position of the Town of Avon as set forth in letters dated January 13, 2010 and June 3, 2010 from Town Manager Mr. Brandon Robertson to Executive Director Mr. S. Derek Phelps (Exhibits 1 and 2 enclosed). We also adopt the written testimony of Mr. Steven Kushner, Director of Planning and Zoning, Town of Avon, CT.

As a condition precedent to the council granting relief the requested AT&T must demonstrate that "a showing of changed conditions", has occurred , General Statute 4-181(a)(b). AT&T cites as a basis for this mandatory requirement, "(t)he circumstances

associated with the change in location are related to the post-approved consultations with the property owner and their requirements for an amended lease to incorporate the Siting Council's modification of the originally proposed tower site location from option 1 to option 3" (May 19, 2010 AT&T Motion to Reopen and Modify). Clearly this is not a change in conditions.

In the January 9, 2009 Application for Certificate of Environmental Compatibility and Public Need, AT&T proposed to build a 100 ft self-supporting monopole and install up to 6 antennas at a height of 97 feet. The diameter of the antennas was projected to be a minimum of 10 feet. At least two other carriers antenna platforms were planned to be located below. The proposed location of the tower and compound was close to the back of the church, playground and adjacent to the parking lot on the South side of the property (Site 1). The placement of the tower at this location would have dramatically increased its visibility in the Greenwood Drive neighborhood. We opposed that plan.

Hearings were held on the application on March 31, April 29, and July 7, of 2009. At the hearing the parties and interveners provided sworn testimony and exhibits. Thereafter, the council instructed the parties and interveners to file post hearing proposed findings of fact and conclusions of law.

At the hearing the issues were very contentious . The last proposal by AT&T and the church was to build a stealth tree design tower at Site 1. The Council examined other locations on the church property. These locations were identified as Site 2 (the rear of the church lawn) and Site 3 (the sandpit area approximately 55 ft from the rear of the church parsonage). Mr. Richard Hines an authorized representative of the church was opposed to Sites 2 and 3. July 7, 2009 transcript pp 219-225. Further the evidence disclosed that the

June 2008 lease agreement between AT&T and the church provided for a lease of “ an additional portion of the (church) property in the agreement as “Additional Premises.” The lease provides that AT&T’s request to lease other portions of the property cannot be “ unreasonably held, conditioned or delayed” by the church (Wiese Exhibit no. 4 to March 24, 2009 written testimony para 2 “Permitted Use”).

On October 8, 2009 the Council issued it’s comprehensive Decision and Order. In relevant parts the Council made the following facts and orders:

1) “ Option 3 is located approximately 55 feet northeast of the parsonage in the area of a former sandpit.... the nearest residences are the Panetta’s residence and the Grant residence, both approximately 240 feet from the option 3 site.” (Findings of Fact no. 74).

2) “ Tower dimensions for this design would be approximately 38 inches at the base tapering to approximately 18 at the top.” (Findings of fact no. 79)

3) “ The tower shall be constructed as a 110 foot tall monopole with exterior flush-mount antennas....such tower shall not exceed a height of 110 feet above ground level” (Decision and Order para 1)

4) “The Council acknowledges all of these needs may not be meet with one single tower and agrees this may be one situation where multiple shorter towers may be preferable to one large structure in order to minimize visual imparts” (Option p2 para 5)

5) “The Council finds that a tower with exterior flush-mounted antennas would be least obtrusive if constructed in option 3 location, even considering that a 110 foot tower would be required to meet coverage objectives” (Opinion p3 para 3).

AT&T did not petition the Council to reconsider the final decision. AT&T did not file an appeal to the Superior Court of the final decision. AT&T has not constructed a facility in accordance with the final decision of the council.

It is now approximately 7 months after the issuance of the final decision and AT&T now seeks to build a tower 131 feet from the parsonage or 79 feet north of the approved location, option 3. This location encroaches upon a valuable natural resource ,the Roaring Brook, and adversely affects property owners to the east on Cold Spring Road. Further in direct violation of the Council's order that the tower not exceed 110 feet in height. AT&T proposes " As noted in the tower manufacturing drawing, a tower capable of a 20 foot expansion (130 ft) will be constructed to allow for future flexibility" (AT&T D&M Plan, May 10, 2010. Attorney Fisher's letter to the Executive Director Phelps p1 para 1).

All of these substantial changes are being represented by AT&T as " the D&M plan incorporates a shifted and smaller compound approximately 50 feet north from the location....and generally noted as "option 3" (AT&T May 19, 2010 Motion to Reopen and Modify p2).

The record is clear the present motion represents AT&T's attempt to obtain a drastically different result because neither it nor the church are satisfied with the final decision of the Council dated October 8, 2009. There are no" changed conditions" presented. The church did not want option 3 approved at the time of the hearing and does not want a tower built there today. All of this despite the fact that AT&T and the church have an existing lease which provides for the leasing of the portions of the church property would included the approved option site 3.

We therefore respectfully request that AT&T's motion to modify the site location be denied.

Peter Emmett Wiese

Peter Emmett Wiese

Mark Toomey

Mark Toomey

Sheridan W. Toomey

Sheridan Toomey

Thomas C. McMahon

Thomas McMahon

Patricia S. McMahon

Patricia McMahon

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid on this

22nd day of June , 2010 to all parties of record

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR WIRELESS
PCS, LLC (AT&T) FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION,
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DOCKET 373

JUNE 22, 2010

THE EXHIBIT LIST OF PETER EMMETT WIESE, MARK TOOMEY, SHERIDAN
TOOMEY, THOMAS MCMAHON, AND PATRICIA MCMAHON FOR THE JUNE
29, 2010 SITING COUNCIL MEETING

EXHIBIT 1: Town of Avon letter dated January 13, 2010 from Town Manager

Mr. Brandon Robertson to Executive Director Mr. S. Derek Phelps.

EXHIBIT 2: Town of Avon letter dated June 3, 2010 from Town Manager Mr. Brandon

Robertson to Executive Director Mr. S. Derek Phelps

Peter Emmett Wiese

Peter Emmett Wiese

Mark Poomey

Mark Poomey

Sheridan W. Toomey

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Exhibit 1



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January 13, 2010

Mr. S. Derek Phelps
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Dear Mr. Phelps:

I am writing to you regarding Docket 373 which relates to a request by AT&T to construct a cellular communication tower located at 228 Lovely Street on property owned by St. Matthew Lutheran Church.

A final ruling on this matter was issued by the Siting Council on October 8, 2009, after a lengthy public hearing process and review by the Council spanning approximately 10 months. During the course of the hearing there was a significant amount of discussion relating to choosing an appropriate location for the tower. The Siting Council was quite specific in its ruling, selecting what was referred to in the record as Location #3. The decision clearly named Location #3 while excluding Locations #1 and #2. The ruling also directed AT&T to work with the Town of Avon in choosing the final design of the equipment building, fence enclosure, as well as a landscape plan.

On December 8, 2009, at the request of AT&T, the Director of Planning met at the site along with two representatives of AT&T and one representative of the St. Matthew Lutheran Church. At this meeting he was shown a staked location where the tower was proposed and an area nearby where the equipment building and fence enclosure was proposed. Apparently, between the October 8 decision and the December 8 field meeting, AT&T and the church had discussions regarding Location #3 and agreed on what they believed to be a more appropriate substitute location, which shifts the tower approximately 50 feet to the north of the approved Location #3 and the equipment building also about 50 feet to the northwest. The new location appears to be about midway between Locations #2 and #3, as described in the record.

This matter was discussed with the Avon Town Council at their meeting held on January 7, 2010, at the Avon Town Hall. At this meeting, the Town Council also

Mr. S. Derek Phelps
January 13, 2010
Page 2

received input from property owners who live near the site, many of whom who sought and received intervener status during the public hearing portion of this application.

It is the opinion of the Avon Town Council that the proposed change in location is a significant deviation from the specific language in the Siting Council's decision. Location #3 was chosen by the Siting Council taking many different factors into consideration. It is also the opinion of the Town Council that the revised location presents impacts which are significantly different to 3 homes located on Cold Spring Road, to the east. The Town Council recommends that the Siting Council require that AT&T construct the tower in the location originally approved by the Siting Council.

At the meeting which took place in the field on December 8, AT&T representatives indicated to Town Staff that they were seeking input from the Town on matters, as directed by the Siting Council, relating to the equipment building and fence enclosure prior to the preparation of a D&M plan. AT&T representatives presented to Town Staff pictures of a concrete, pre-fabricated, box-like structure with a flat roof and a second drawing showing a chain-link fence with a green plastic woven material (photos enclosed). These options were reviewed by the Town Council at their January 7 meeting as well. It was determined by the Council that these decisions are unacceptable and do not meet the Council's objectives of lessening impacts to the surrounding residential neighborhood.

I am enclosing, along with this letter, photographs of 2 buildings which were constructed in Avon by the Avon Water Company, which the Town Council believes would be more appropriate and better replicate the single-family character of the adjoining residences. These include a wood-sided structure built as a booster pump station, as well as a second masonry structure which houses pumps in connection with an underground public water supply well. In these two instances, the structures present themselves in a very appealing manner such that a fence enclosure is not necessary. In order to accomplish a similar type of structure, the Town of Avon requests that AT&T immediately engage the services of a licensed architect to prepare plans which may be reviewed by Town Staff. This approach is preferred over a pre-fabricated building. With regard to fencing, AT&T should utilize a high-quality residential cedar fence. Finally, AT&T should engage the services of a licensed landscape architect to prepare a plan which will help in further reducing the impact of this facility. These matters should be addressed in the preparation of the D & M Plan.

As an alternative to the above, the Town Council suggests that the Siting Council give consideration to permitting the proposed new location in between Locations #2 and #3. However, due to the additional impacts this will have on certain properties located to the east, the Town Council requests that AT&T construct a flagpole antenna which we believe will be less obtrusive to nearby single-family residences. A review of the record will indicate that the Town Council presented to the Siting Council a list of ranked preferences regarding tower

Mr. S. Derek Phelps
January 13, 2010
Page 3

type. In this letter, a flagpole was ranked as a higher priority as compared to the approved monopole with flush-mount antennas. In addition, should the Siting Council approve the changed location, we request that consideration also be given to burying the equipment facility completely below grade. The revised location for the equipment shelter is directly to the rear of a single-family home to the north (in contrast to the approved location). This home will have a direct view of the equipment shelter area. I am enclosing a photograph of a facility which was completed approximately 6 months ago in Avon also by the Avon Water company at the intersection of Woodmont and West Avon Road. This is a large booster pump station, approximately 4 to 5 times as large as the proposed equipment building, which houses a substantial number of pumps used in the Avon Water Company's distribution system. This below-grade facility is immediately adjacent to a single-family residence. The only structure which projects above ground is an access hatch and an exhaust pipe used for a backup generator for this facility. You can see from the photographs that the site was also heavily landscaped.

Thank you for your consideration. We look forward to hearing from you.

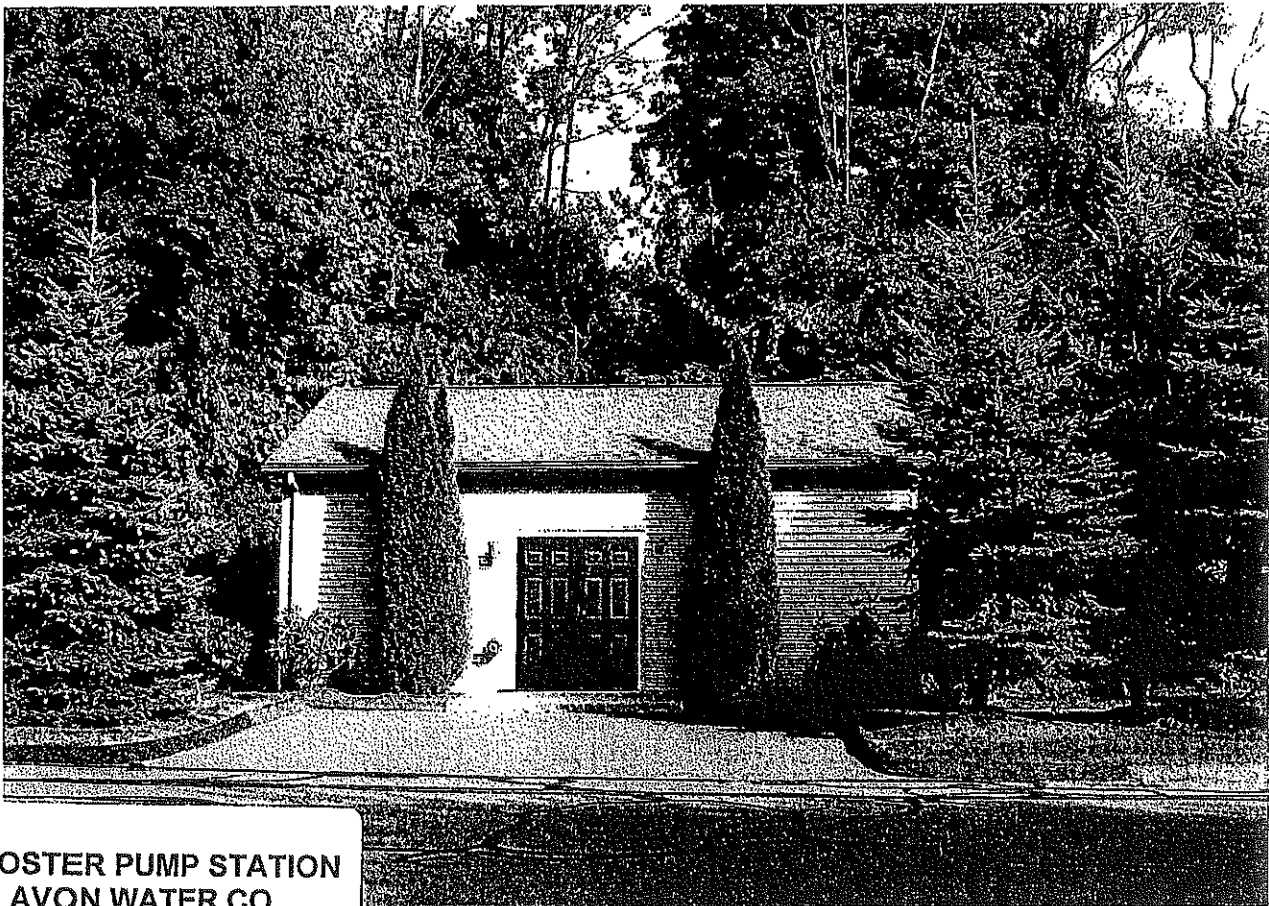
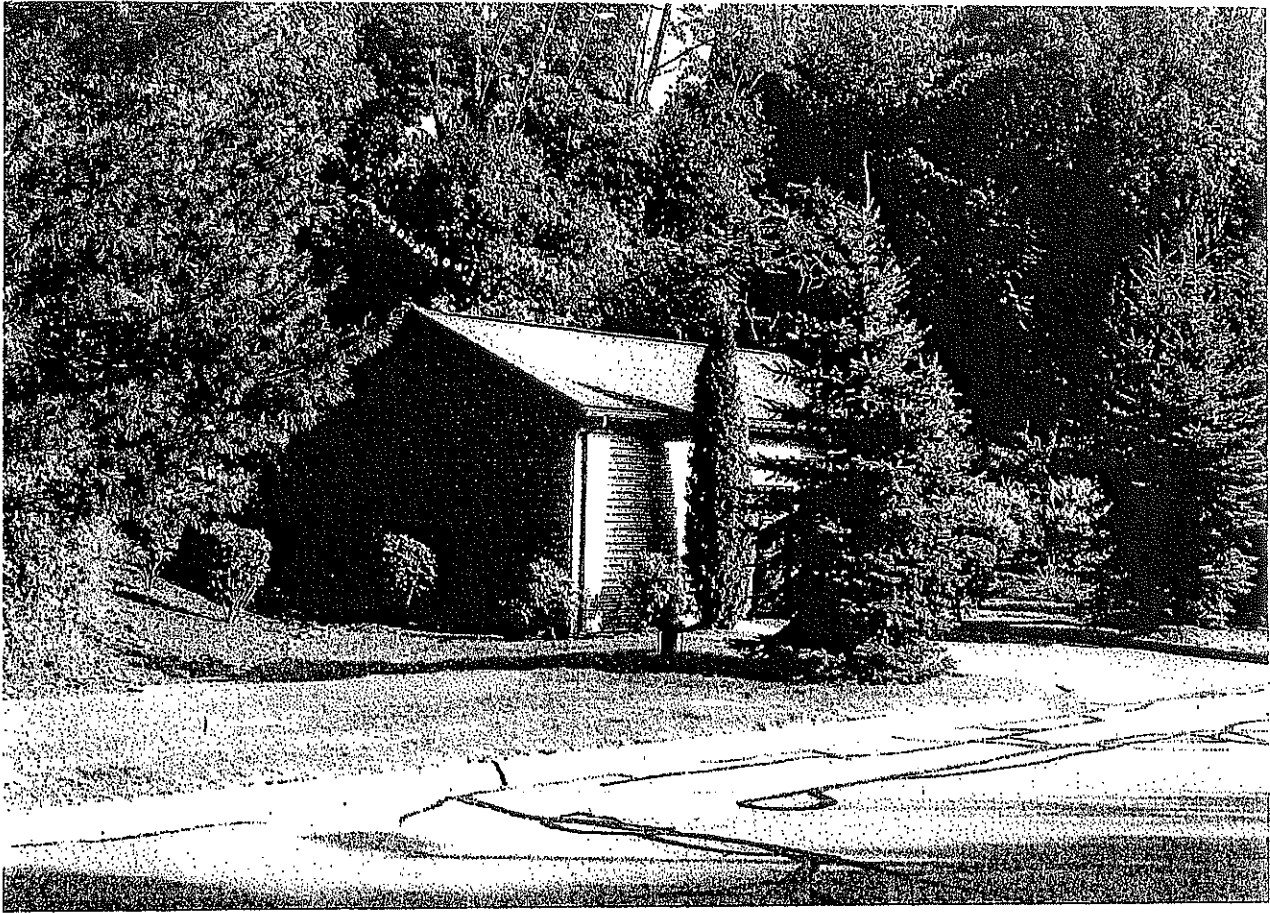
Sincerely,



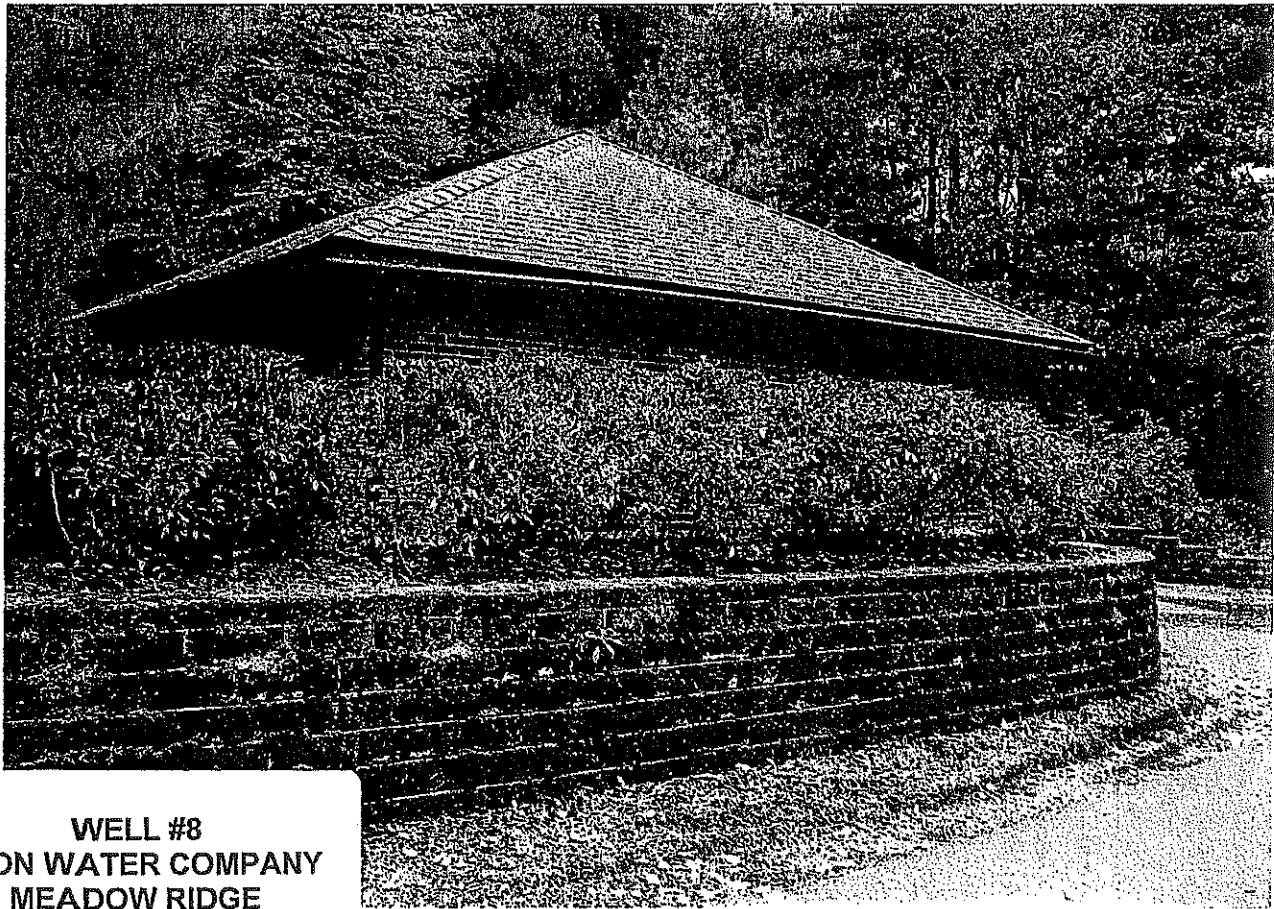
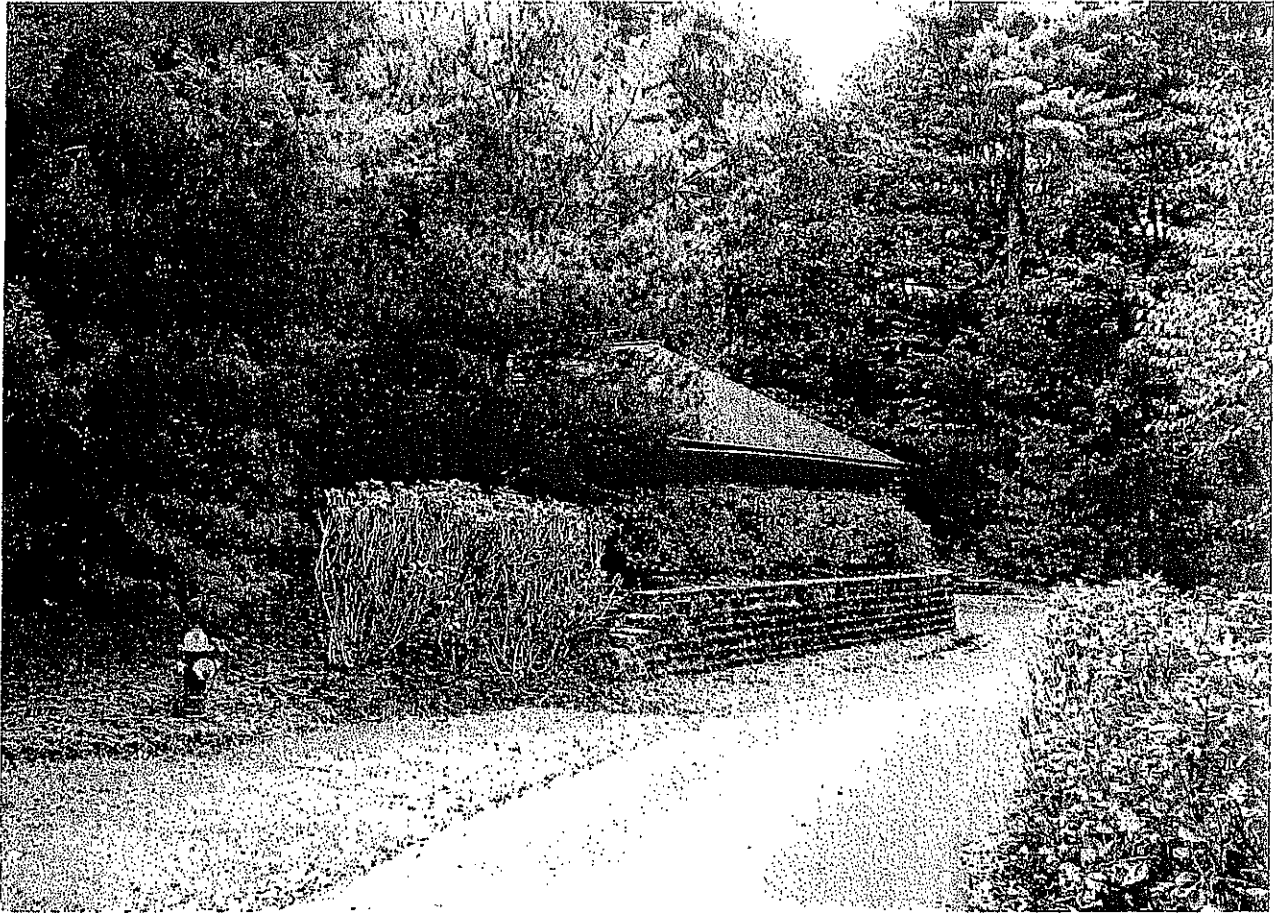
Brandon Robertson
Town Manager

Enclosures

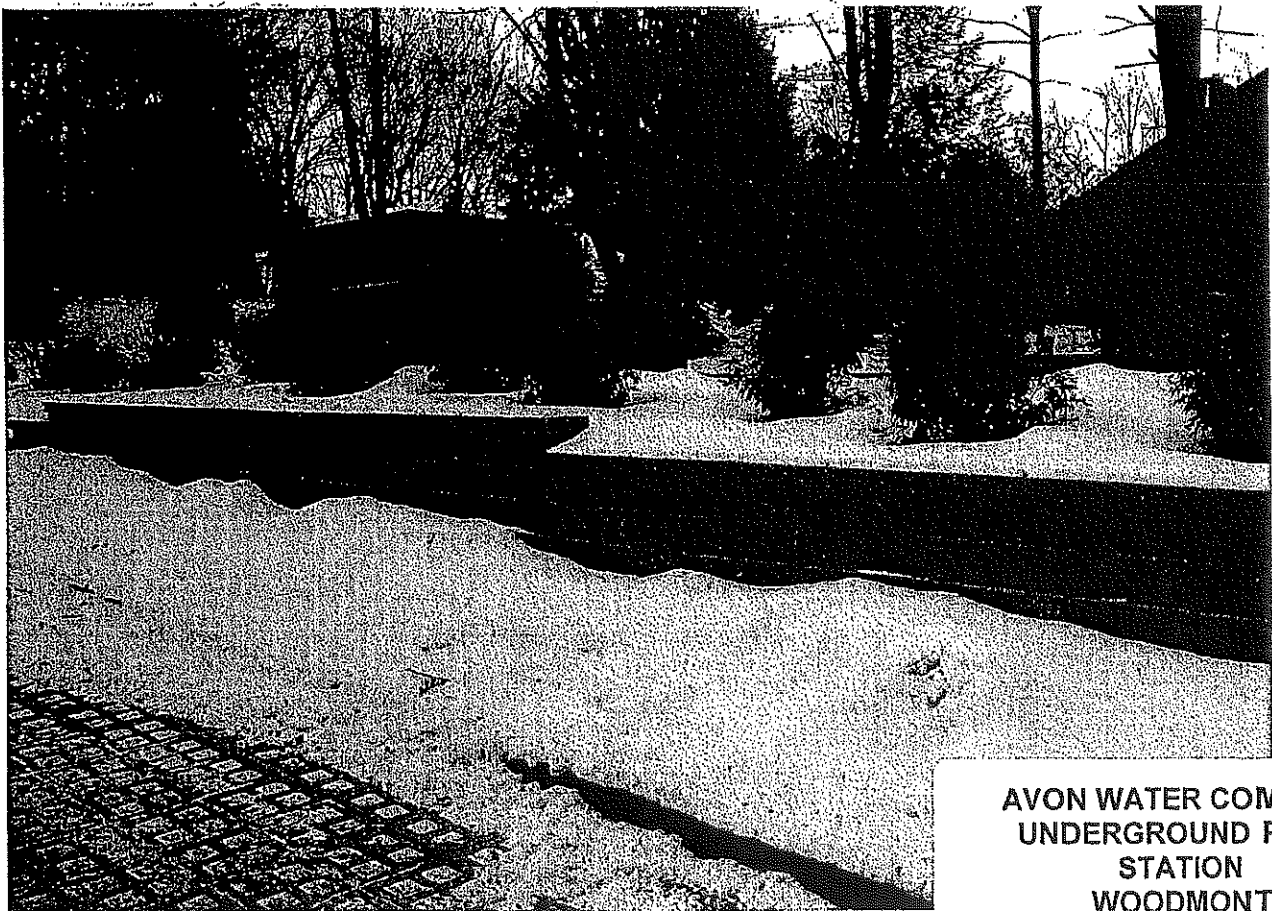
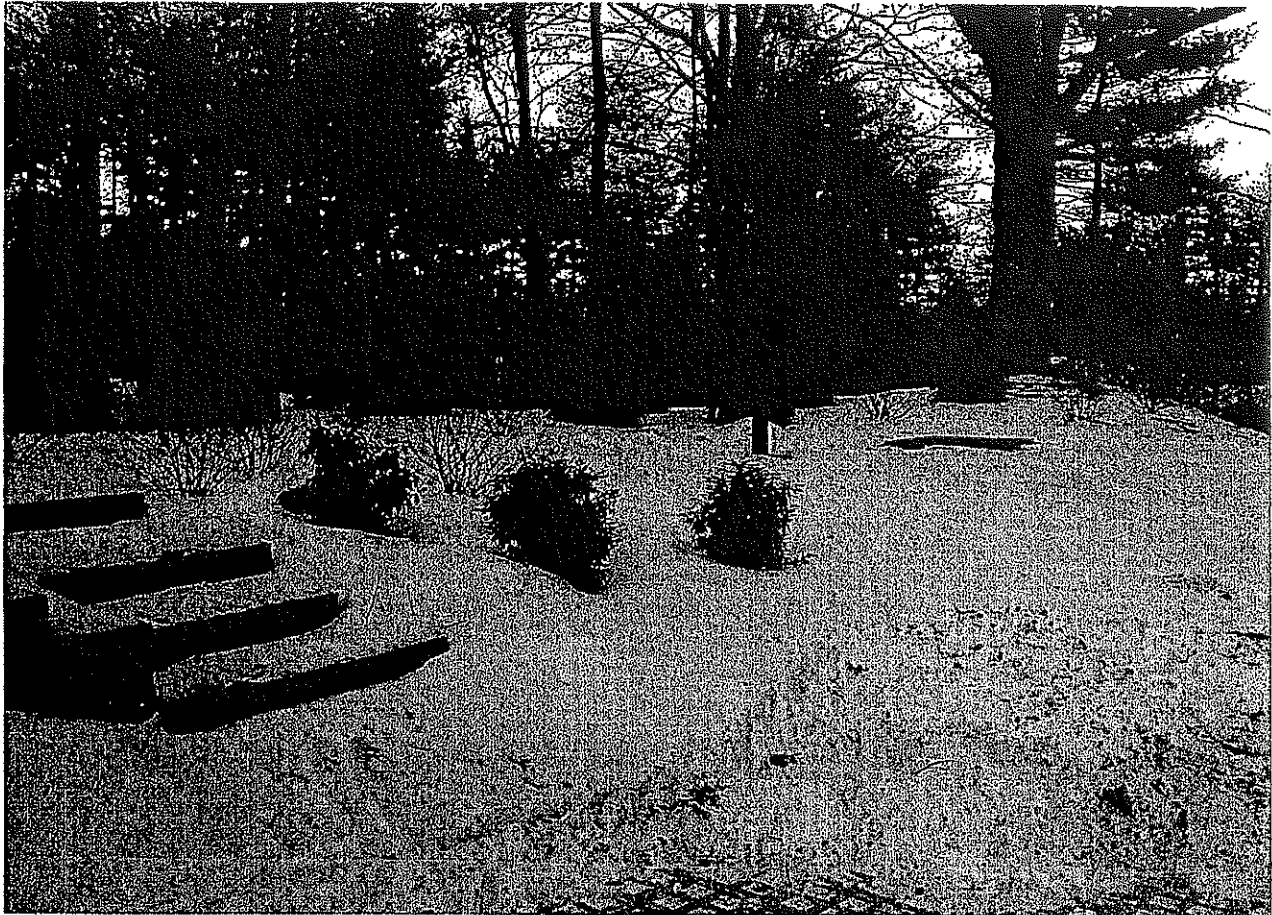
Cc: Robert Mercier, CT Siting Council
Steven Kushner, Director of Planning
Blythe Robinson, Assistant Town Manager
Avon Town Council
Avon Planning and Zoning Commission
Christopher Fisher, Cuddy & Feder LLP



**BOOSTER PUMP STATION
AVON WATER CO
HUNTERS RUN**



**WELL #8
AVON WATER COMPANY
MEADOW RIDGE**



AVON WATER COMPANY
UNDERGROUND PUMP
STATION
WOODMONT



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June 3, 2010

Mr. S. Derek Phelps
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

RE: Docket 373 - New Cingular Wireless (AT&T) at 224 Lovely Street, Avon

Dear Mr. Phelps:

The Town recently received a copy of a letter submitted by Attorney Christopher Fisher on behalf of AT&T relating to Docket 373 and the filing of a D & M Plan. This plan has been submitted in accordance with an earlier decision on October 9 by the Siting Council to approve this application with certain conditions. The Town of Avon has been an active participant as a result of concerns expressed by neighboring property owners to this site and, as such, sought and received status as an intervener. The plan proposes a change to the approved location. After reviewing the D & M Plan and the proposed location change, I would like to take this opportunity to note the Town's disappointment in AT&T's lack of communication with the Town; failure to comply with the Siting Council's decision; and discuss objections to several key aspects of the proposed site plan.

It is our opinion that AT&T has communicated very poorly with the Town of Avon since the decision in October. In fact, there has only been one instance where AT&T invited Town Staff to meet at the location on December 8, 2009. Since that time, AT&T has not communicated with the Town on any issues by way of a letter, email, phone call, or offers to again meet in the field. As a result, this is the first opportunity the Town has had to react to and comment on changes which now appear in this "final" D & M Plan. In particular, the Town of Avon objects to the following:

1. The proposed tower location is approximately 131 feet from the corner of the parsonage. Testimony presented during the public hearing phase of this application indicated that the approved Option #3 was 55 feet from the parsonage building. AT&T states that the new site is 50 feet north of

Location #3. In fact, the change is a move of 76 feet to the north of the approved location. The Town wrote to the Council and addressed this issue on January 13, 2010. This change results in impacts which are substantially different to property owners located to the east on Cold Spring Road. As a result, the Town asked the Siting Council to require that AT&T construct a tower utilizing a "flagpole" design. During the public hearing the Town made it clear that this design was preferred over the proposed monopole. In fact, the approved monopole was ranked lowest by the Avon Town Council.

The proposed monopole, as shown in the D & M Plan, is substantially wider at the base, as compared to drawings presented during the public hearing to the Siting Council leading up to the decision in October. Most importantly, the tower is now designed in a manner such that it can accommodate a 20-foot expansion in height over what was approved by the Siting Council to a height of 130 feet. Drawings proposed by AT&T show a total of 4 carriers whereas only 3 carriers were approved by the Siting Council. It was acknowledged by the Siting Council during the public hearing phase of this application that it was likely that one or more additional towers would need to be constructed to service the needs of all carriers in this area of Avon. The Town feels strongly that, at a minimum, AT&T should be required to construct the tower approved by the Siting Council in October. In addition, as expressed in our letter of January 13, as a result of the changed location and substantially different impacts to property owners on Cold Spring Road, the Town urges the Siting Council to require that AT&T construct a 110-foot-tall tower of a flagpole design with all antennas concealed within the tower.

2. The approval issued by the Siting Council in October required that AT&T install flush-mount antennas in an effort to improve the aesthetics of this tower. The Town does not have experts in the area of cell phone tower antenna design; as such, we would appreciate the Siting Council's review of these drawings to ensure that with respect to different flush-mount options that the one chosen by AT&T presents the least impact to adjoining properties. In addition, we would ask the Siting Council to ensure that with regard to the two future carriers that those carriers utilize the same type of installation, flush-mount installation.
3. The cover letter prepared by Cuddy & Feder makes reference to two landscaped drawings prepared by BL Companies. The Town has not received these drawings and, as such, we have no ability to comment on them.
4. The wood frame proposed equipment building is an improvement over the initial proposed concrete box. However, the October order made it clear that AT&T's D & M Plan was to also make provision for the other two future carriers. As stated earlier, we ask that AT&T construct a below-grade structure sufficient in size to accommodate their needs as well as two other carriers.

Siting Council/Phelps

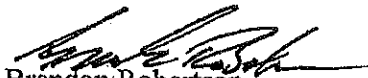
Page 3

June 3, 2010

In summary, the Town of Avon appreciates the need by AT&T and other cell phone carriers to enhance their network by placing additional antennas in weak spots, such as this area of Avon. We understand that these new installations have a benefit to customers and may also be of benefit in emergency situations. However, we believe that it is incumbent upon the CT Siting Council to balance these needs with the rights of other private property owners who may be adversely impacted from this installation. The proposed D & M Plan, in our opinion, does not achieve this balance equitably. The Town provided testimony during the public hearing concerning a ranked order of preferences concerning tower design; AT&T has opted for the least preferred. AT&T is now moving the tower location and, in the Town's opinion, this presents adverse impacts to adjoining property owners. In addition, AT&T is not in compliance with the approval granted by the Siting Council in that they are proposing a tower of 130 feet in height as opposed to the 110-foot limit set by the Siting Council.

Thank you for the opportunity to comment on this D & M Plan.

Sincerely,



Brandon Robertson

Town Manager

Cc: Avon Town Council
Steven Kushner, Director of Planning and Community Development
Avon Planning and Zoning Commission
Andrew Lord, Partner, Murtha Cullina LLP