STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:	:	
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APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A TELECOMMUNICATIONS FACILITY AT 95 BALANCE ROCK ROAD, HARTLAND, CONNECTICUT	:	DOCKET NO. 408
	:	
	:	AUGUST 31, 2011

PARTY THOMAS H. SIRMAN'S STATEMENT IN OPPOSITION TO APPLICANT'S PETITION FOR RECONSIDERATION OF THE SITING COUNCIL DECISION

This statement is submitted on behalf of party Thomas H. Sirman to set forth his objections to the "Applicant, New Cingular Wireless PCS, LLC ("AT&T") Petition for Reconsideration of The Siting Council Decision," dated August 16, 2011, and to state the grounds why the petition should be denied.

The applicant gives but a single reason why it believes the Siting Council should reconsider its July 28, 2011 decision. According to the applicant, at an earlier meeting of the Siting Council, held on July 14, 2011, five members of the nine-member Council stated that they would vote in favor of the application, and one of those members was absent from the meeting of July 28, 2011, at which the vote was taken.[1] By asking for "reconsideration" of the July 28, 2011 decision, the applicant hopes that all members will attend the meeting when the decision is to be reconsidered, and that the Siting Council will approve the application by a five-to-four vote. While such an outcome would certainly please the applicant, it would seriously erode public confidence in the fairness and good faith of the Siting Council

[1] The applicant places great weight on the fact that the "Draft Findings of Fact prepared by staff concluded that there was a need for AT&T's Facility and did not identify any significant adverse environmental effects from the Facility at Site B." Even if that characterization were accurate, it would not be surprising that the Siting Council staff anticipated that Docket No. 408 would be approved and so prepared draft findings which, if accepted, might support an approval. According to statistics provided by the Siting Council, only five of the previous 193 applications have been denied.

and damage the reputation of the agency beyond repair.

General Statutes § 4-181a (a) (1), part of the Uniform Administrative Procedure Act, does allow parties to a proceeding to petition the administrative agency to reconsider an agency decision on certain specified grounds, namely, an error of fact or law which should be corrected, newly discovered evidence, or for other "good cause" shown.[2] The term "good cause" is not defined in the statute or in the Siting Council regulations. "Good cause" has been defined by the courts as "a sound basis or legitimate need to take judicial action . . . Good cause must be based upon a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements . . . ." (Citations omitted; internal quotation marks omitted.) Welch v. Welch, 48 Conn. Sup. 19, 20 (2003).

Petitions for reconsideration are typically filed in administrative proceedings where the petitioner seeks to present new evidence, Crandlemire v. Commissioner of Motor Vehicles, 117 Conn. App. 832 (2009), Robinson v. State Department of Mental Health and Addiction Services, Superior Court, judicial district of New Britain, Docket No. HHBCV095014038S (November 5, 2010) 2010 WL 4886186; where the agency has failed to consider a party's legal argument, Hartford Board of Education v. State Board of Labor Relations, Superior Court, judicial district of New Britain, Docket No. HHBCV044007697S (October 2, 2006) 2006 WL 2949003; where the agency has failed to consider a prior final decision on the same topic, Office of Consumer Counsel v. Department of Public Utility, 279 Conn. 584 (2006); where a factual error should be corrected, Corcoran v. Department of Social Services, 271 Conn. 679 (2004), Intertown Realty v. Connecticut Department of Public Utility Control, Superior Court, judicial district of New Britain, Docket No. CV030523408S (November 8, 2004) 2004 WL 2898755; or because of

[2] General Statutes § 4-181a (a) (1) provides: "Unless otherwise provided by law, a party in a contested case may, within fifteen days after the personal delivery or mailing of the final decision, file with the agency a petition for reconsideration of the decision on the ground that: (A) An error of fact or law should be corrected; (B) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or (C) other good cause for reconsideration has been shown. Within twenty-five days of the filing of the petition, the agency shall decide whether to reconsider the final decision. The failure of the agency to make that determination within twenty-five days of such filing shall constitute a denial of the petition."

changed conditions, Sielman v. Connecticut Siting Council, Superior Court, judicial district of New Britain, Docket No. CV020517272S (January 15, 2004) 2004 WL 203046.

Not surprisingly, there are no reported cases where a petition for reconsideration has been granted because the petitioner wants the opportunity to "pack" the panel and thus supposedly ensure a favorable decision for itself on reconsideration.[3] The applicant does not cite to any such cases, nor does it provide any other reason why the decision should be reconsidered.

Application of the rules of statutory construction requires that the meaning of "good cause" in § 4-181a (a) (1) be limited by the words which precede it. In construing the meaning of a statute, "[t]he principle of ejusdem generis applies when (1) the [clause] contains an enumeration by specific words; (2) the members of the enumeration suggest a specific class; (3) the class is not exhausted by the enumeration; (4) a general reference [supplements] the enumeration ... and (5) there is [no] clearly manifested intent that the general term be given a broader meaning than the doctrine requires." (Internal quotation marks omitted.) State v. Grant, 294 Conn. 151, 159 n. 12 (2009).

In short, "words ... are known by their companions." Gutierrez v. Ada, 528 U. S. 250, 255, 120 S. Ct. 740, 145 L. Ed.2d 747 (2000). There is nothing in General Statutes § 4-181a (a) (1) or the regulations or practice of Connecticut state agencies to remotely suggest that an applicant is entitled to reconsideration of a decision on the chance that more members in favor of the application might show up at the meeting to vote. Such a construction of "good cause" would make a mockery of these proceedings.

The petition for reconsideration should be denied.

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[3] One is reminded of the ill-fated Judicial Procedures Reform Bill of 1937, sometimes called the "court-packing plan," a legislative initiative proposed by President Roosevelt to add more justices to the U.S. Supreme Court and thus presumably create a pro-New Deal majority on the bench. Shortly after it was proposed, the Supreme Court decided West Coast Hotel Co. v. Parrish, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (1937),upholding a Washington state minimum wage law by a 5--4 ruling. The deciding vote was that of Associate Justice Owen Roberts, who had previously ruled against most New Deal legislation. His vote was widely viewed as an effort to maintain the Supreme Court's independence by alleviating the political pressure to create a court more receptive to New Deal legislation, and came to be known as "the switch in time that saved nine."

Respectfully submitted,
THOMAS H. SIRMAN

By 

David F. Sherwood
Moriarty, Paetzold & Sherwood
2230 Main Street, P.O. Box 1420
Glastonbury, CT 06033-6620
Tel. (860) 657-1010
Fax (860) 657-1011
dfsherwood@gmail.com
Juris No. 412152
His Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August, 2011, a copy of the foregoing document was sent, first class U.S. mail, postage prepaid, to:

Attorney Lucia Chiocchio
Attorney Christopher B. Fisher
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601
lchiocchio@cuddyfeder.com
cfisher@cuddyfeder.com

Michele Briggs
AT&T
500 Enterprise Drive
Rocky Hill, CT 06067
Michele.g.briggs@cingular.com

Margaret F. Rattigan
Murphy, Laudati, Kiel, Buttler &
Rattigan, LLC
10 Talcott Notch, Suite 210
Farmington, CT 06032

Heike Krauland
64 Balance Rock Road
East Hartland, CT 06027

David F. Sherwood
Commissioner of the Superior Court