

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR : DOCKET NO. 408  
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 : September 1, 2011

**TOWN OF HARTLAND'S MEMORANDUM IN OPPOSITION TO  
APPLICANT'S MOTION FOR RECONSIDERATION**

The Town of Hartland ("Town") hereby objects to the Petition for Reconsideration dated August 16, 2011 filed by the applicant New Cingular Wireless, PCS, LLC ("AT&T") seeking a 're-vote' by the "full Siting Council" of its denial of the application for a telecommunications facility in Hartland, Connecticut.

For the reasons more fully set forth below, the applicant has failed to articulate any good cause for the relief it seeks.

**I. LEGAL STANDARD AND ARGUMENT**

The applicant has filed this motion under Conn.Gen.Stat. § 4-181a (a) (1) which states in relevant part:

(a)(1) 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.

Although the applicant has not specified which of the three limited circumstances applies to the pending motion, using the process of elimination it can be determined that it has failed to state any (A) error or law or fact; or (B) new evidence discovered, therefore it must be seeking relief under the catch all subsection (C) for "other good cause". The only 'good cause' articulated in the motion appears to be a belief that had the "full Siting Council" been seated the vote would have been to approve the application. In support of this 'good cause' the applicant noted that since "1 member who previously stated an opinion in favor of an approval [was] absent from the July 28 meeting" when the tie vote occurred, the council should allow a revote. The fact that one member was absent from a vote does not amount to 'good cause'. Moreover, the fact that the applicant anticipated a favorable vote from that absent member is completely irrelevant. All parties and Siting council members had notice of the date the application was to be decided, there was a valid vote on that date not to accept the proposed findings of fact and the results of that vote, a tie, should not be disturbed. This is especially true when the reason given for the revote is that one council member that may have voted in favor of the application was not present.

The circumstances under which the Siting Council may reconsider a final decision are limited and for good reason. As a general rule motions to reargue should "not to be used as an opportunity to have a second bite at the apple ..." *Northwestern Mutual Life Insurance*

*Company v. Greathouse*, Docket No. CV98-0164835S, Superior Court, Judicial District of Stamford/Norwalk at Stamford (June 27, 2000, D'Andrea, J.) (2000 Ct.Sup. 7680); or to "present additional cases or briefs....Rather reargument is proper when intended to demonstrate to the court that there is some...principle of law...which has been overlooked, or that there has been a misapprehension of facts...It also may be used to address alleged inconsistencies in the trial court's memorandum of decision". *CR. Klewin Northeast, LLC v. Bridgeport*, 282 Conn. 54, 101 n.39 (2007) and *Opuku v. Grant*, 63 Conn.App. 686, 692-93 (2001).

In addition, the relief sought by the applicant is thinly veiled attempt to "judge shop" by claiming that if a different council member had been seated, the outcome would have been different. "Judge shopping is not to be encouraged...". *Westbrook v. Savin Rock Condo. Assoc.*, 50 Conn.App. 236, 241 (1998). A do-over of the Siting Council vote in these circumstances would serve to undermine the integrity of the Siting Council proceedings. Discussions as to issue preclusion and collateral estoppel concerning this dangerous consequence are equally applicable here.

The judicial doctrines of res judicata and collateral estoppel are based on the public policy that a party should not be able to relitigate a matter which it already has had an opportunity to litigate... Stability in judgments grants to parties and others the certainty in the management of their affairs which results when a controversy is finally laid to rest. The purpose of, or policy underlying, issue preclusion, or collateral estoppel, is, as variously stated, to avoid repeated litigation of matters judicially determined. The doctrine is not intended to foreclose a party from putting forth contested factual issues before the court, but rather is intended to bar their submission twice The doctrine "is

intended to protect litigants from multiple lawsuits, and to promote judicial economy and efficiency... It is also meant to encourage reliance on adjudications, promote confidence in judgments, avoid inconsistent results, forward the policy of establishing certainty in legal relations, maintain stability of court decisions, and promote comity between state and federal courts.

*DiPietro v. Farmington Sports Arena, LLC*, 123 Conn.App. 583, 590 (Conn.App. 2010)(internal citations and quotations omitted)(emphasis added).

The applicant has failed to state any good cause for its petition for reconsideration and its request for a revote of the Siting Council decision. To disturb that decision after due notice, and full hearing would only serve to destroy the participant's as well as the public's confidence in the Siting Council proceedings.

## II. CONCLUSION

For all these reasons, AT&T's application for a revote of the Siting Council's July 28, 2011 decision should be denied.

RESPECTFULLY SUBMITTED,  
THE TOWN OF HARTLAND

By: 

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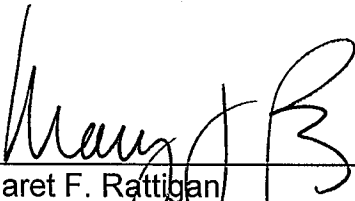
**CERTIFICATION**

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 1<sup>st</sup> day of September, 2011, to the following:

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By:   
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Commissioner of the Superior Court