STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

In Re:

APPLICATION OF NEW CINGULAR WIRELESS PSC, LLC FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF A TELECOMMUNICATIONS FACILITY AT 8 BARNES ROAD, FALLS VILLAGE, CONNECTICUT

DOCKET: 409A

April 18, 2013

FALLS VILLAGE INLAND WETLANDS AND CONSERVATION COMMISSION ("IWCC") PRE-HEARING BRIEF

This proceeding is not a "reopening" but "a second bite at the apple" for AT&T, and violates state and federal law and is expressly barred under principles of *res judicata,* since the site could have been included in the original application. In addition, AT&T's appeal from the Siting Council's decision remains pending before the Second Circuit Court. (See AT&T Motion to Reverse at p. 3)

On March 7, 2013 the Connecticut Siting Council took the unprecedented step of reopening a docket that the Council closed on August 25, 2011 upon denying the application of Cingular Wireless PSC, LLC for a cell tower site at 8 Barnes Road in Falls Village (Town of Canaan), Connecticut.

The Council's action is described:

> Mr. Ashton moved to reopen this docket to hear evidence on changed conditions and a new site location to determine if the Council's original decision should be reversed or modified, pursuant to Connecticut General Statutes 4-181a(b); seconded by Mr. Hannon. The motion passed with Mr. Tait voting no and Mr. Caron abstaining.
>
> [IW87] (Emphasis added.)

SUMMARY OF ARGUMENT

The Falls Village Inland Wetlands and Conservation Commission ("IWCC"), a party in the original Docket 409 proceeding, objected to the reopening (see "Opposition of Falls Village Inland Wetlands and Conservation Commission ("IWCC") to AT&T's Motion to Reverse the Siting Council's Final Decision in Docket No. 409 and to Issue a Certificate Approving a Modified Tower Facility" filed on February 27, 2013[1]) on grounds of lack of jurisdiction; *res judicata*; violation of state law; and violation of state and federal constitutional guarantees to due process. These arguments are repeated and incorporated here by reference, and the IWCC participates under protest. The Siting Council does not have jurisdiction over this "new site," and the parcel at 8 Barnes Road in Falls Village has already been considered and denied, a denial affirmed by the U.S. District Court giving *res judicata* effect.

There are no "changed conditions" as AT&T asserts, and this pre-hearing brief states the conditions that remain unchanged and are now 'law of the case,' binding on both AT&T and the Council. This brief also summarizes the material defects of the purported application for a "new site," for which AT&T has failed to provide appropriate and sufficient detail to allow state and local review as required by law.

This brief also demonstrates that the "changed conditions" claimed by AT&T are not material, and were available to AT&T during the pendency of Docket 409. A failure of proof is not sufficient grounds for reopening or for embroiling stakeholders -- including abutting property owners who are entitled to actual certified notice under C.G.S. §16-50l -- in a transparent and illegal attempt by AT&T to violate every principle of due process and law of the land.

---

[1] IWCC notes that while AT&T's motion to reopen appears on the Council's electronic docket, neither IWCC's Opposition document nor AT&T's reply does. Both are material to the proceeding and AT&T's reply contains its concession that this is a "new site." (http://www.ct.gov/csc/cwp/view.asp?a=962&Q=521372&PM=1) (Last viewed 4/13/13)

This pre-hearing brief of the IWCC addresses:

I. No Jurisdiction

II. Failure to Comply With State Law

III. No Application

IV. No Changed Conditions

V. Environmental Impact

VI. Intrusive Means: Visibility

VII. No Significant Gap: Local Rural Users Have Adequate Signal

VIII. FCC USF Policy is Advisory Only

IX. DOT Figures Insufficient for AT&T's Purpose

ARGUMENT

I. No Jurisdiction

It is the Inland Wetlands Commission's position that since Cingular Wireless submitted to expedited judicial review of the Siting Council's decision on August 25, 2011 in the U.S. District Court for the District of Connecticut pursuant to 47 U.S.C. §332(c)(7)(B)(v), and that Court affirmed the Siting Council's decision [Exhibit IW88], both the Siting Council and Applicant New Cingular Wireless (AT&T) are bound by that final decision of the Federal Court under principles of *res judicata* and *stare decisis*. When AT&T then appealed that decision to the U.S. Court of Appeals for the Second Circuit, it submitted to Federal Appeals Court jurisdiction under Article III to the U.S. Constitution and the Telecom Act. That appeal remains pending, despite a stipulation filed by both parties to the appeal to withdraw the appeal under Second Circuit Rule Local Rule 42.1.

Local Rule 42.1. Dismissal Without Prejudice

> If the parties file an original or supplemental signed agreement for dismissal without prejudice to reinstatement, the agreement must specify the terms of reinstatement, including a date by which reinstatement must occur. The dismissal is not effective unless the court "so orders." Reinstatement occurs only upon written request by the date specified in the agreement.
>
> (Emphasis added.)

That Rule requires inclusion of the express "terms" under which adverse parties will reinstate the appeal, which remains pending before the Circuit Court. Such agreement and terms were omitted from the stipulation (a copy of which is submitted by the IW/CC in its pre-filed exhibits as Exhibit IW89 rendering the stipulation incomplete and in violation of appeals court rules.

The Clerk's acceptance of the stipulation states that the matter is not dismissed under FRAP Rule 42(b) which would end Court jurisdiction. AT&T acknowledges in its motion to reopen dated February 15, 2013 (at p. 2) that the appeal is "pending."

In the pending appeal -- filed by the Applicant here -- AT&T submitted to the jurisdiction of the Second Circuit Court under 47 U.S.C. §332. Any formal action by the CSC on the current attempt to undermine the Council's original decision here would violate not just state law defining the jurisdiction of the Council and the State Constitution, but Federal statutes, Federal Court Rules, and Article III and Amendments 5 and 14 of the Constitution.

II. Failure to Comply With State Law

There has been no actual notice by the Applicant of the new site on abutting property owners in compliance with state law and with constitutional requirements of due process.

No "Application" as required by the General Statutes, nor any service of such detailed specifications and compliance with C.G.S. §16-50l has been certified, and this proceeding is therefore unconstitutional under the Fourteenth and Fifth Amendments and should be closed without further proceedings.

The facts established during the evidentiary hearing on Docket 409 remain the same. There is no basis for alteration of the Council's denial. FCC policy has not changed since the denial. The effort here by AT&T is now to present an entirely "new site," as conceded by AT&T in its letter reply, not a modified site. A new site proposal cannot "modify" a prior decision by the Siting Council.

Sec. 4-181a. Contested cases. Reconsideration. Modification. * * *

> (b) On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion. The procedure set forth in this chapter for contested cases shall be applicable to any proceeding in which such reversal or modification of any final decision is to be considered. The party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the original contested case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision.
> * * *
>
> (Conn. Gen. Stat. Sec. 4-181a(b)) (Emphasis added.)

The provision for reopening a docket under CGS 4-181a is for modification or reversal, not for consideration of an entirely new site. The proceeding is illegal and should be halted. A new site requires compliance with state laws for certification including a full application, municipal consultation and notice.

According to the Council's Regulations, the definition of a modification (of the type sought here by AT&T in its motion):

Sec. 16-50j-2a. Definitions

(l) "Modification" means a significant change or alteration in the general physical characteristics of a facility, except where a modification involves a temporary facility as approved by the council. * * *

(Emphasis added.)

There is no "facility" at issue here: the Council denied the facility under Docket 409. A decision to reverse a final decision by the CSC requires material changed conditions that AT&T has failed to produce.

More significantly, AT&T's site proposal is a settlement offer in exchange for withdrawal of an appeal pending in the U.S. Court of Appeals for the Second Circuit:

AT&T states (at Motion to Reopen, p. 5):

The enclosed materials incorporate AT&T's settlement proposal and coupled with the existing record in Docket 409 frame the scope of AT&T's request for the Siting Council to consider reversing and modifying its Decision & Order dated August 25, 2011.

(Emphasis added.)

The Council's regulations provide only for "a significant change or alteration in the general physical characteristics of a facility" (Sec. 16-50j-2a(1)). A "settlement" offer between one party and another, both of whom have submitted to federal court jurisdiction, may not violate the rights of others or violate state and federal law. (See, e.g., Public Utility Environmental Standards Act, Inland Wetlands and Watercourses, Connecticut Environmental Protection Act, Federal Clean Water Act, State Constitution, Federal Constitution.)

In the same motion, AT&T states (at Motion, p. 5):

Enclosed in Exhibit 4 for consideration by the Siting Council as part of this motion and in furtherance of a potential settlement of the pending litigation are copies of:

1) A revised exhibit....which roughly identifies the modified facility location...("Modified Tower Site").

2) Coverage plots prepared by C Squared of AT&T's existing and planned network along with potential service from the denied tower site at 150' AGL and from the Modified

Tower Site at a height of 120' AGL ("Modified Tower"). These plots show a reduced coverage footprint from the Modifed Tower....

(Emphasis added.)

AT&T has converted the express provision of Sec. 4-181a for modification of a facility or reversal of a Council decision upon demonstration of changed conditions and transformed it into a license to completely revamp its unsuccessful application into an entirely new location at a new site under the pretense of "modification." It is not permitted under every principle of due process and *res judicata.*

"New Site"

AT&T conceded upon its motion to reopen that this was an entirely new site. Any new site requires fulfillment of all requirements of the Siting Council's mandates under state law, including especially provisions of notice and consultation in C.G.S. §16-50l, none of which has been met.

To date, the IW/CC has not received technical plans, knows of no municipal consultation or opportunity for town informational meeting, knows of no state agency consultation as required by state law for a new site, and has received nothing demonstrating due diligence relating to environmental review of the proposed "new site."

Consultation with Local Officials

CGS Section 16-50l(e) requires an applicant to consult with the municipality in which a proposed facility may be located and with any adjoining municipality having a boundary of 2,500 feet from the proposed facility concerning the proposed facility. A Technical Report was filed with Falls Village on October 29, 2009. Representatives of AT&T coordinated the scheduling of a public information session with the First Selectwoman that was held on December 9, 2009 in Falls Village. Representatives of the Falls Village Board of Selectmen, Planning & Zoning Commission; Inland Wetlands and Conservation Commission as well as members of the public attended the public information session. Representatives of AT&T conducted a power point presentation that included information provided in the Technical Report and answered various questions from Town officials and public.

Subsequent to the public information session, AT&T conducted a balloon float at the site to gather additional visual data in conjunction with its continued due diligence. Representatives of AT&T notified the Town in advance of balloon float. No specific comments or recommendations from the Town itself came out of the sixty day consultation process held in the Fall of 2009[2].

The municipal consultation did result in a few suggested alternative sites that were thoroughly investigated by AT&T. Through the Chairman of the Inland Wetlands/Conservation Commissions, a few members of the public provided information regarding their property for evaluation as alternative sites. * * * In correspondence dated March 24, 2010, AT&T's [sic] provided its findings regarding the suggested alternatives to the Town. This information was also shared with the Attorney General whose office had corresponded with AT&T during its municipal consultation with Falls Village.

As part of its continued due diligence before Application filing, AT&T and its consultants developed and gathered more data in response to comments from the information session held as part of the technical consultation and critically evaluated the proposed tower location with respect thereto. AT&T determined that a relocation of the proposed Facility approximately 1,200 feet to the west and slightly north of the tower site location identified in the Technical Report would provide significant reduction in the length of the access drive which was an area of concern by various Town officials (a reduction of approximately 1,040'). Additionally, the revised location coupled with an increase in the proposed height of the tower from 120' to 150' AGL would provide improved AT&T service in the area and minimize the need for additional sites in the future. AT&T shared the details of the proposed Facility location and design updates, including drawings, with the Town in correspondence dated September 10, 2010. Copies of all correspondence with Falls Village are included in Attachment 10.

(AT&T Application, pp. 23-24, footnote omitted.) (Emphasis added.)[3]

AT&T's 2009 Technical Report, which it acknowledged constituted the basis for municipal consultation, consisted of a site at the peak of Cobble Hill, almost exactly where the current "modified site" is proposed.

If taken, as it is, to be the same as the site described in the statutory municipal consultation technical report performed in 2009 -- almost four years ago -- that site was rejected by town officials, rejection upon which AT&T concededly formulated the site proposal in its

[2] This assertion by AT&T in its application omits reference to the letter from IWCC dated September 21, 2009, bound into the AT&T Technical Report, and part of the record on Docket 409.

[3] It is to be noted that the original move from the peak location (Technical Report location) to the Docket 409 proposed location was made to "minimize the need for additional sites." Accordingly, a move back to the peak would increase the need for additional tower sites.

Docket 409 application -- denied by the Siting Council. AT&T has already proposed this site, has not presented any material "changed conditions," and therefore it may not revisit the site.

This is a transparent effort to propose a location on the same parcel of land with the same environmental and visual conditions found objectionable under Docket 409. AT&T's effort here is to remedy its omission of traffic statistics in an effort to alter, *ex post facto*, the District Court's binding decision. Such revisionist application violates administrative procedure and due process since the figures were always available to AT&T, and the District Court's decision -- now law of the case, upholding the CSC denial -- indicated that the stretch of road on Route 7 was minimal. (See Decision, IW88, at p. 12.)

III. No Application

Not a Modified Site, A New Site

The site being proposed must be considered by the Council as a new and unique site, as AT&T maintains it is. Yet in defiance of the most fundamental requirements for land use affecting the environment (as required by statutory mandates on both the CSC and IWCC), no topographical map to indicate actual watershed has been produced. The exact location of this site is not even specified.

No Redesign of Drainage

In its complaint to the U.S. District Court AT&T acknowledged submitting a revised road design, limiting all activity to within the 30 foot right of way, but along with this there was no redesign of the proposed drainage. (See AT&T Cmplt, Docket 3:11-cv-01502(WWE), par. 85) This is not just a material omission from the purported application here, but a material defect that voids any application, rendering this proceeding futile for lack of the substantial evidence necessary for a written record under the Telecom Act, Administrative procedures law and the state laws binding on the Council and the IWCC.

85. AT&T's May 20, 2011 submission also included a detailed redesign of the access drive to correct an existing condition and confine all improvements within the right-of-way benefitting the Site.

(AT&T Cmplt, Docket 3:11-cv-01502(WWE), par. 85)

Where is this detail now on an application for a "new site" but for substantially the same access road, now extended some 1600 feet? AT&T's admission that all activities for improvements for the access drive will be limited to the right-of-way (i.e. 30 feet wide) means that the majority of plans submitted in the original application regarding cut and fill, drainage swales and water impoundment areas are no longer feasible as much of these plans were designed in areas outside the 30-foot right of way.

When the scant materials presented to the Siting Council in the form of a settlement offer on an appeal still pending in the Circuit Court were presented without any such detail, that omission of revised drainage calculations or designs violated state and federal law. Not only has AT&T failed to bear its burden under C.G.S.§16-50l, it has also not shown that the "redesign" is even feasible.

No Reconnaissance

AT&T has done no reconnaissance of the property right below the proposed new tower site, that is, any watercourse or wetland that would be affected by alterations in drainage -- from both the access drive and the compound area.

Access Drive

AT&T plans to extend the drive some 1800 feet (1600 feet to the NE of the cabin). The site under Docket 409 is at least 200 feet to the east of the cabin on the property. The site under Docket 409A is presumably very close to the ridgeline. However, the aerial photo showing the

proposed new site does not allow determination of the contours of where the access drive is proposed.

Wherever a new road is cut there will be drainage issues -- even in flat areas, if a road is not properly crowned, drainage can be an issue. Here, AT&T has not even disclosed the grade or accompanying drainage system plans for this additional portion of the road. AT&T's material omissions here void the purported "application" -- where state and local agencies have a statutory right of review -- municipal review of plans provides for 60 days.

IV. No Changed Conditions

None of the purported "Changed Conditions" has any relevance to the legal and factual bases of the Council's decision. The environment surrounding the subject property has not changed, and AT&T's pretextual "changed conditions" are factually and legally not relevant.

The Siting Council's final decision in Docket 409 rests, in large part, on the

> "nature of the probable cumulative environmental impacts associated with the construction, operation, and maintenance [of the proposed 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 significant; are in conflict with the policies of the State concerning such effects; are not adequately balanced by the site-specific need for the proposed facility; and therefore are sufficient reason to deny certification of the proposed facility."
>
> (CSC Docket 409, Decision and Order, August 25, 2011, Ex 1 to AT&T Motion) (Emphasis added.)

The Connecticut Siting Council denial of the Application under Docket 409 was based on critical environmental conditions, which have not changed in any material way since the time of AT&T's original application. Among these cited as grounds for denial of the original site are its prominent visibility and recognition of the importance of the surrounding wetlands including Robbins Swamp, Wangum Lake Brook and the Hollenbeck River: "The swamp contains a

variety of habitats and supports a large number of State-listed endangered, threatened or special concern species." (Docket 409 FOF #80).

None of these grounds has changed, and the Siting Council's decision is therefore binding here -- in addition to having been affirmed and upheld by the U.S. District Court. Defiance of that Court's affirmation violate due process and could constitute contempt while a federal appeal remains pending.

V. Environmental Impact

The AT&T complaint filed in the District Court represented that its application on Docket 409 included

> [D]etails and results of consultation with the Department of Environmental Protection ("DEP"), including the DEP's determination that no extant populations of Federal or State endangered, threatened or special concern species occur at the proposed Site,...
>
> (AT&T Cmplt, Docket 3:11-cv-01502(WWE), par. Par. 66) (Emphasis added.)

The statement is patently untrue, as the DEP letter written by Nancy Murray of the Natural Diversity Data Base Program and incorporated as a legal requirement in the Application on Docket 409 dated October 20, 2010 stated: "...there are no known extant populations ..." (Docket 409 Application, Tab 8, page 1) (Emphasis added.)

The disparity in these two statements is significant here, where the Siting Council is being asked to consider a "new site" on the same parcel of land upon which the Council has already rendered a decision.

DEP's letter in no way implies that these species do not exist at the site. The language is a term of art in field biology indicating that the current records of the State DEP do not show any evidence of their existence – possibly only because there has been no on-the-ground-inventory and therefore is a hole in the database. Murray's letter goes on to say that "Current research

projects and new contributors continue to identify additional populations or species and locations of habitats of concern, as well as, enhance existing data." AT&T failed (and continues to fail) to provide reliable on-the-ground inventory of species in a special region with a unique habitat, supporting a myriad of protected species and species of special concern. The IWCC here incorporates its case in Docket 409 including all exhibits and testimony on this and all other issues relating to the specific site proposed under Docket 409 and the new site (and extended access road and drainage) under Docket 409A.

Paragraph 97 of the AT&T complaint in the District Court continues this misleading tone where the Applicant deliberately omits the term "known" upon AT&T 's effort to demonstrate due diligence in the consideration of the potential impact of the site (Docket 409) and related activity would have on the flora and fauna of the area. (See also Cmplt Par. 97.)

VI. Intrusive Means: Visibility

Law of the Case. The CSC denial of the AT&T tower application was affirmed by the United States District Court based on those same environmental conditions along with the applicant's failure to meet the mandatory "least intrusive" *Sprint Spectrum v. Willoth* standard for towers. The District Court ruling is now the law of the case and can only be modified by a timely application to the District Court, on a proper showing, or by proceeding with the appeal before the Second Circuit. The CSC itself cannot reverse or override the United States District Court -- the power to do that rests solely with the Second Circuit Court of Appeals.

In upholding the Siting Council's denial of the ATT application, Judge Eginton wrote:

> Nevertheless, the CSC found that "the proposed tower would substantially and adversely affect the scenic quality of its location on Cobble Hill, and no public safety concerns require that the proposed facility be constructed in such a location."

The CSC stated:

> Located as proposed at the top of Cobble Hill, a tower would be visible yearround from approximately 513 acres within two miles of the site. It would be visible from portions of two nationally-recognized historic properties, portions of Robbins Swamp, significant portions of Route 7, and sections of Under Mountain Road, Music Mountain Road, Route 126, and Route 63. Considered from a near distance, the tower would be obtrusive because the lowlands surrounding Cobble Hill are generally open, consisting of swampy areas interspersed with open fields, with little intervening mature vegetation to screen views of the tower. A tower located on the side of a hill or among numerous ridges can blend into such backdrops; a tower backgrounded against the open sky becomes prominent, especially when it is significantly taller than the tree canopy. Considered on a wider landscape scale, the tower would be even more obtrusive. . . . As the tallest and most noticeable feature on top of Cobble Hill, the tower would become the focal point of any landscape view.
> The CSC also expressed concern that design features to protect against soil erosion, sedimentation and storm water runoff would represent "additional engineered features ... [that] would be increasingly anomalous with the character of the area."

The CSC noted that it had requested that AT&T explore alternative options, including multiple towers to serve its coverage objectives and, in denying the application, the CSC "encourage[d] the applicant to explore other alternative sites and technologies."

> (*New Cingular Wireless PCS LLC d/b/a/ AT&T v. State of Connecticut Siting Council, et al.*, 3:11-cv-01502-WWE) (Doc 55) at p. 4) (Emphasis added.)

Judge Eginton noted that AT&T had failed to do due diligence in considering alternative options. (Dec. at pp. 11-12)

Additionally, Judge Eginton recounted:

As its main concern in rejecting the proposed facility, the CSC focused upon the location of the tower on top of Cobble Hill and the extent of its year-round visibility. As noted by the CSC, the proposed tower will represent "the tallest and most noticeable feature on top of Cobble Hill," and "would become the focal point of any landscape view." However, the CSC recognized AT&T's diligence in examining alternatives to the proposed tower facility and the problems posed by the severe terrain. In its Findings of Fact dated August 25, 2011, the CSC outlined AT&T's efforts to identify suitable sites and reasons that such sites proved unsuitable. After it established a search ring, AT&T investigated several sites and the feasibility of using multiple towers, microcells, repeaters, and distributed antenna systems. AT&T did not investigate several proposed alternatives that were determined to provide inadequate wireless service as indicated by propagation maps and drive tests.

(Doc 55) (3:11-cv-01502-WWE) at p. 9, 11-12, (Emphasis added.)

However, in its motion for summary judgment, (Local Rule 56(a)1 Statement), the CSC indicated that:

> 26. AT&T witness David Vivian testified before the CSC that AT&T did not check the availability of most of the sites listed as alternatives in AT&T's application, saying that they were rejected for radio frequency coverage purposes, but AT&T offered no evidence to demonstrate whether or not all of these sites could cover part of the search area. *COR, Item XVIII. 1., Transcript of February 17, 2011 (3:00 p.m. session), pages 40-42.*

The issue of alternate sites is now law of the case, and the record binds AT&T to its own failure of proof on the issue of least intrusive means, because of its own lack of a good faith effort to do due diligence and to present evidence to support its burden of proof under *Willoth.* This evidence has not been refuted, and it is *res judicata* in both the Council proceeding and the District Court. (See also CSC Local Rule 56(a)2 Statement pars. 16, 20, 21, 22, 36, which also document AT&T's failure to consider multiple facility options).

The District Court then engaged in the significant gap versus least intrusive means analysis of *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999) (Dec. at 9 ff., *Willoth*, 176 F.3d at 643) The District Court found no significant gap in service (Dec. at 8, 12). Such a finding renders this purported "docket" for a "new site" moot, for failure of AT&T to support its burden of proof under *Willoth.*

The attempt to alter a federal District Court's finding on this issue with last minute, *ex post facto* traffic counts previously available to AT&T that do not affect the Court's finding of a "minimal amount of roadway without coverage" (Dec. at 12) benefits AT&T not at all. *Res Judicata* now binds AT&T on the issue.

Visibility

Now a new site moved some 1600 feet to the NE of the cabin from the original site under Docket 409, places the new site close to, if not right on, the ridgeline.

In 1986, the Council addressed this problem:

> Tower visibility is the other environmental issue of major concern here. The placement of towers on exposed ridgelines renders such towers more visible to the valleys below the ridgelines. The Council is concerned about the incremental effects of placing more and more towers on ridgelines, which as a group represent one of the last undeveloped portions of Connecticut and which serve as important migration corridors and habitat for a variety of wildlife. Historically, the Council has encouraged the siting of towers which it found to be of public need within already developed areas, such as commercial and industrial zones where people work, rather than recreational or residential areas where people tend to spend their leisure time.....Given the prominence of ridgelines and the clear intent of both local and state government to protect Connecticut ridgelines....[t]he Council would prefer the....potential for sharing one or more existing towers....
>
> (Connecticut Siting Council Docket 58, July 11, 1986, Opinion, pp. 3-4) (http://www.ct.gov/csc/lib/csc/doc58opn.pdf) (Last viewed 4/13/13)

The new site places the tower on a ridgeline, on a prominent hill, in a vast flat swamp next to a river valley. The site under Docket 409 could not have been any more of an eyesore -- unless it was moved higher -- as this site is. In its Local Rule 56(a)2 Statement in the District Court (Doc 33 at 31), the CSC stated: "The CSC disputes that the visual impact is minimal, and instead asserts that it is extensive." (Par. 8) It also stated that "Any reduction in the tower height to 130 feet would not appreciably improve the visual impairment of the scenic landscape." (Ibid, par. 15) And in its memorandum in support of the Council's motion for summary judgment in the District Court, the Council asserted (Doc 31-1 at 29): "The evidence that the proposed tower would have an adverse visual impact on a scenic area is more than substantial; it is overwhelming."

This is as true for the cutting of an additional 1600 feet of new road across the breast of Cobble Hill as it is for a tower at the ridgeline.

Observations about this eyesore are now law of the case from both the Council and the District Court. District Court Local Rule 56(a)(1) provides that the statements in such documents shall be:

> * * * a concise statement of each material fact as to which the moving party contends there is no genuine issue to be tried. All material facts set forth in said statement and supported by the evidence will be deemed admitted unless controverted by the statement required to be filed and served by the opposing party in accordance with Local Rule 56(a)2.
>
> (D. Conn. L. Civ. R. 56(a)(1)) (Emphasis added.)

Statements made by the parties to AT&T's expedited Federal appeal are binding on this Docket, and include statements made by the agency hearing this matter. From Defendants' (Siting Council) Local Rule 56(a)1 Statement:

> 3. AT&T's proposed tower site is located in the northwestern portion of an approximately 25-acre parcel....near the summit of Cobble Hill, a prominent hill that ranges from 650 feet above mean sea level (amsl) along Barnes Road, to a height of 1,268 feet at the summit. *COR Item XXIV. 6, FOF 39-41.*
>
> 4. Cobble Hill is located immediately east of Route 63 and south of Barnes Road, and is characterized by steep grades from the base of the hill to several plateaus around the summit area. *Id., FOF 41.....* * *
>
> 6. The proposed 150-foot tower would be visible year-round from approximately 513 acres within a two mile radius of the proposed tower site. *Id., FOF 99.*
>
> 7. Approximately 369 acres of the total year-round visibility would be from swampland north and west of the proposed facility, but the remaining areas of year-round visibility are generally located along and adjacent to portions of Route 63, Route 7 (a State Scenic Road), Route 126, Page Road, Music Mountain Road, and Under Mountain Road. *Id., FOF 100.* * *
>
> 11. Shortening the proposed tower to 130 feet agl would reduce the total acreage of visibility from non-wetland areas by 10 acres, and the tower would still be above the tree-line for a majority of viewpoints. *Id., FOF 107.*
>
> 12. AT&T's witness on visibility issues, Michael Libertine, testified that the proposed AT&T tower would be more visible than the typical telecommunications tower, saying, "[I]t's clear from our analysis that there is more visibility on this site than we normally see. And I would agree with you, I think it's because of just the nature of the surrounding landscape and Cobble Hill being a very prominent high point in the area." *Testimony of*

Michael Libertine, COR, Item XVIII. 1., Transcript of February 17, 2011 (3:00 p.m. session), page 68.

13. Mr. Libertine also acknowledged that Route 7 in Falls Village is a State Scenic Road. He also stated that, "[I]t's clear that within that corridor [Route 7] if you're heading in a southerly direction, again Cobble Hill is a prominent peak. So there are portions of that road where this is going to be visible well above the tree line." *Testimony of Michael Libertine, COR, Item XVIII. 1., Transcript of February 17, 2011 (3:00 p.m. session), page 67.* * * *

15. Any reduction in the tower height to 130 feet would not appreciably improve the visual impairment of the scenic landscape. *Testimony of Michael Libertine, COR, Item XVIII. 1., Transcript of February 17, 2011 (3:00 p.m. session), pages 54-55; 66-68; COR Item XXIV 6, Finding of Fact (FOF) portion of CSC Decision, FOFs 104 & 107; COR, Item X. 8; COR, Item XXIV 6, Opinion portion of CSC Decision, p. 3.*

> (*New Cingular Wireless PCS LLC d/b/a/ AT&T v. State of Connecticut Siting Council, et al.*, 3:11-cv-01502-WWE) Defendant's (Siting Council) Local Rule 56(a)1 Statement (Doc 31-2) (pp. 1-4, Emphasis added.)

With the move up the hill of this "new" site, the prominence is increased, despite the proposed lower height:

Paragraph 78 of the Council's Local Rule 56(a)2 Statement (at p. 24) establishes that:

78. Paragraph 78 of Plaintiff's [AT&T's] Statement is admitted in that the CSC agrees that any reduction in the tower height to 130 feet would not appreciably improve the visual impairment of the scenic landscape. Testimony of Michael Libertine, COR, Item XVIII., Transcript of February 17, 2011 (3:00 p.m. session), pages 54-55; 66-68; COR, Item XXIV 6, Finding of Fact (FOF) portion of CSC Decision, FOFs 104 & 107; COR, Item X. 8; COR, Item XXIV 6, Opinion portion of CSC Decision, page 3.

79. * * * the visual impact is not minimal, but extensive. * * *]

86. * * * While there would be some areas of intermittent visibility, there would also be significant, year-long visibility from a State Scenic Road and many other areas. * * *

These facts are set in stone, are not "changed conditions" and are fully applicable to the current "new site," defeating AT&T's proposal under the second "least intrusive means" test.

Proliferation of Towers and Increased Visibility

Conn. Gen. Stat. 16-50g mandates the sharing of towers in order to avoid proliferation:

> * * * to promote the sharing of towers for fair consideration wherever technically, legally, environmentally and economically feasible to avoid the unnecessary proliferation of towers in the state particularly where installation of such towers would adversely impact class I and II watershed lands, and aquifers; * * *

Ironically, AT&T has wandered into its own quandary of former testimony: in its original Application on Docket 409, AT&T stated that it would require additional towers if it were to reduce the height of the proposed tower. (Docket 409 Application at pg. 24)

If after-built modifications to the proposed tower were made to accommodate other carriers in fulfillment of the Council's statutory mandate to prevent proliferation of towers, the tower would have to be made even more prominent:

> 16. AT&T's radio frequency engineer, Anthony Wells, testified that AT&T could be satisfied with a 130 foot tower for its own use, assuming that full arms and antenna platforms were on the tower (with 150 feet proposed to give room for additional carriers). *Testimony of Anthony Wells, COR, Item XVIII. 3., Transcript of June 16, 2011, page 64.* When asked, however, if AT&T were to use flush mount antennas, he responded that AT&T would need 150 feet. *Id., pages 63-64.* Of course, if additional carriers were to be accommodated, an even higher tower would be needed. Thus, one method of reducing visual impact would then be contradicted by increased height.
>
> (*New Cingular Wireless PCS LLC d/b/a/ AT&T v. State of Connecticut Siting Council, et al.*, 3:11-cv-01502-WWE) Defendant's (Siting Council) Local Rule 56(a)1 Statement (Doc 31-2) (p. 4, Emphasis added.)

This reality has not changed. The proposal of a 120 foot tower at increased altitude remains prominent, and any after-built co-location contradicts the pretense of lessened visual impact of a 120 foot tower height.

These conditions that formed the foundation for the Siting Council's decision remain unchanged, and apply to the current "new" site proposal as much, if not more, to a site now 1600 feet up the summit and on the ridgeline of Cobble Hill. Both AT&T and this Council are bound by the findings of the District Court and the assertions by the Council in its Local Rule 56(a)(1) Statement (3:11-cv-01502-WWE) (Doc 31-2) and Motion for Summary Judgment (Doc 31-1).

VII. No Significant Gap: Local Rural Users Have Adequate Signal

The testimony of two residents of the Town of Canaan provided irrefutable proof of an absence of a gap in service (CSC Local Rule 56(a)1 Statement, pars. 27-28), especially in light of the testimony of AT&T's own engineer:

> 29. AT&T witness Anthony Wells testified under oath that he did not dispute the coverage testimony of those two residents. *Testimony of Anthony Wells, COR, Item XVIII. 3., Transcript of June16, 2011, page 76.*
>
> (*Ibid.*)

The effort to remedy this sworn testimony from the applicant's own witness here with new submissions of traffic counts is in vain: traffic counts do not equate to dropped calls; AT&T has refused to provide necessary evidence in its own cause; and testimony from local residents is now law of the case. AT&T is equitably estopped and estopped by record from challenging the fact of adequate coverage here[4]. See also CSC Local Rule 56(a)2 Statement, par. 22 and 36 also substantiating this failure of proof particularly of insufficient road coverage.

A Rural Location, With Minimal Amount of Roadway Without Coverage

It is now *res judicata* and *stare decisis* obtained through AT&T's expedited appeal to the District Court that the northern portion of the Town of Canaan "does not retain a high population density" (Dec. at 12) and has minimal roadway without coverage -- "the 2.45 miles of other roads noted in AT&T's Wells's affidavit do not represent a significant period of travel time without in-vehicle coverage." (*Ibid.*)

> Thus, the evidence does not substantiate that a significant gap in coverage would remain if AT&T used towers in the southern portion that did not service the northern portion at the level AT&T considers adequate. It appears that the lack of coverage in the northern portion will be *de minimus* rather than a significant gap. AT&T has failed to sustain its burden of proof that the proposed 150 foot single tower at the Site is the least intrusive means to close the coverage gap. See *Willoth*, 176 F.3d at

[4] The Council may take administrative notice from its own record during the public portion of the Docket 409 hearing that Charles Staats lives on Barnes Road, and Bonnie Burdick lives on Johnson Road. Their testimony of adequate service is undisputed.

643.

(*Ibid.*)

This is now a fact binding on AT&T and law of the case and *res judicata.* AT&T, having sought this decision from the District Court is bound by the finding of fact that the roadway without coverage is *de minimus* from the perspective of its demand for filling a "significant gap."

Now comes AT&T with an attempt to undermine this judicial decree through evidence it failed to present on Docket 409 -- but here in the guise of "changed conditions" to plump up the traffic counts on this tiny stretch of road.

> There are no magic numbers or percentages that constitute a significant gap. Neither the TCA, the FCC, nor the courts have established the "significant gap" threshold. Hence, each case must be viewed on its own. * * *
>
> District courts examine a number of factors when determining whether a significant gap exists, *Ho-Ho-Kus*, 197 F.3d at 70, n. 2, including call drop or failure rates and the number of people affected by the gap. Am Cellular Network Co., 203 F. Supp. 2d at 389.
>
> *Liberty Towers, LLC v. Zoning Hearing Board of Falls Township, Bucks County, Pennsylvania*, 2011 U.S. Dist. LEXIS 140371, *26-27 (Dec. 6, 2011)

If AT&T failed to present substantial and appropriate evidence of a gap, and where it is "not possible to determine the size of....[that] gap or where the gaps are located." (*Ibid.* at *30), this result alone defeats the application:

> Because it did not provide any data quantifying the rate of dropped calls or call failures for the four carriers or any other carrier, Liberty has not established that the quality of service is sufficiently poor to constitute a significant gap.
>
> (*Ibid.*)

This is AT&T's burden of proof. It failed to carry this burden on Docket 409, and its effort to manufacture a significant gap here is futile.

This is the situation here. AT&T has a burden of proof and has failed -- refused -- to meet it: From Defendants' (Siting Council) Local Rule 56(a)1 Statement, par. 22:

22. AT&T refused to disclose to the CSC dropped call data and blocked cell and "ineffective attempt to call" data as proprietary and AT&T called such data irrelevant, *COR, Item XIX. 3., AT&T's Response to Siting Council Interrogatories.*

This situation parallels *Liberty* in that the Applicant has also failed to bear its burden of proof on the second prong of the *Willoth* test:

> Neither has Liberty met its burden to show that the proposed facility is the least intrusive. Proving that there is a significant gap is not enough. The applicant must also show that the proposed facility is "the least intrusive on the values that the denial sought to serve." *Omnipoint Commc'ns Enters.*, 331 F.3d at 398. The applicant must make a good faith effort to find less intrusive alternatives, such as less sensitive sites, alternative system designs, alternative tower designs, and placement of antennas on existing structures. *Id.*
>
> (*Ibid.* at *31)

The obvious conclusion must be, after one proceeding before the Siting Council, after expedited appeal to the District Court including an evidentiary hearing, and now a superficial attempt to generate "changed conditions" -- all without presentation of evidence of any good faith effort to find less intrusive alternatives -- is that AT&T is not able to do so. The first denial must therefore be the final denial in the absence of all evidence and any showing of good faith effort to meet its burden of proof, in addition to which, it may not keep returning to the administrative agency in an effort to remedy its own fault, especially in the face of a 'refusal' to produce data and by calling it "irrelevant" and in the face of a Federal Court ruling. (See also CSC Local Rule 56(a)2 statement pars. 64-65.)

The CSC has also established as law of the case here that

> 37. * * * Defendants also deny that Mr. Wells' analysis supports the particular site that is the subject of the AT&T Application before the CSC as the only alternative to close a significant gap. *COR, Item XIX. 3., AT&T's Response to Siting Council Interrogatories, Exhibit A (coverage map). See also answer to ¶16.*
>
> (*Ibid.* Repeated in par. 38)

A gap may not exist in a wetlands, and this is underscored by the Council's Local Rule 56(a)1 Statement in the District Court:

> 17. AT&T witness David Vivian testified that the "vast majority" of the northern portion of the search ring "is encompassed by . . . the Nature Conservancy and wetlands." *Testimony of David Vivian, Item XVIII. 3., Transcript of June 16, 2011, page 45.*
>
> > (*New Cingular Wireless PCS LLC d/b/a/ AT&T v. State of Connecticut Siting Council, et al.*, 3:11-cv-01502-WWE) Defendant's (Siting Council) Local Rule 56(a)1 Statement (Doc 31-2, p. 5.)

The Council's Local Rule 56(a)2 Statement elaborated:

> 70. As to Paragraph 70 of Plaintiff's Statement, the CSC admits that it acknowledged the limitations of finding areas to lease in the northern portion of the search area, due to the area being mainly wetlands and Nature Conservancy land/dedicated open space. * * *
>
> > (*New Cingular Wireless PCS LLC d/b/a/ AT&T v. State of Connecticut Siting Council, et al.*, 3:11-cv-01502-WWE) Defendant's (Siting Council) Local Rule 56(a)2 Statement (Doc 33, p. 22.) (Emphasis added.)

"It appears," opined Judge Eginton,

> that the lack of coverage in the northern portion will be *de minimus* rather than a significant gap. AT&T has failed to sustain its burden of proof that the proposed 150 foot single tower at the Site is the least intrusive means to close the coverage gap. See *Willoth*, 176 F.3d at 643.
>
> > (*New Cingular Wireless PCS LLC d/b/a/ AT&T v. State of Connecticut Siting Council, et al.*, 3:11-cv-01502-WWE) Decision, Doc 55, at p. 12.

This is now law of the case, and AT&T is saddled with its own failure of proof on grounds of *res judicata* and law of the case and the reality adopted by the Council and the District Court, and out of the mouth of AT&T's own witness that the "vast majority" of the northern portion is preserved open space and wetland that cannot possibly constitute a significant gap within the meaning of the law. (*Vivian testimony, COR, Item XVIII. 3., Transcript of June 16, 2011, page 45)* See also CSC Memorandum in support of Motion for Summary Judgment, (*New Cingular*

Wireless PCS LLC d/b/a/ AT&T v. State of Connecticut Siting Council, et al., 3:11-cv-01502-WWE) (Doc 33-1 at 19, 23)

VIII. FCC USF Policy is Advisory Only

The attempt to utilize FCC policy on the Universal Services Fund as purported "changed circumstances here" is also vain. As the Council asserted in its "Supplemental Response (Reply to Document 51) and Further Citation of Supplemental Authorities" (3:11-cv-01502-WWE) (Doc 53 at 2), "[t]he emphasis is on achieving universal service goals through a funding mechanism, not by preemption." (*Ibid.*) and citing FCC 11-161 text describing "goals." Goals are neither binding legal authority nor "changed conditions," and any effort by AT&T to convert agency goals into fact "changed conditions" long after AT&T put forward its direct case on Docket 409 constitutes failure of proof and violates principles of *res judicata* at both the state agency and federal District Court levels, all in defiance of the Second Circuit Court's jurisdiction.

The Siting Council affirms that "[a]ny suggestion that 47 U.S.C. 332(c)(7)(B)(i)(II) mandates that every person must have wireless coverage is directly contradicted by the case law." (Citing *Green Mountain Realty Corp. v. Leonard*, 688 F.3d 40 (2012)) (3:11-cv-01502-WWE) (Doc 53 at 4) Even if FCC 11-161 had any binding authority -- which it does not -- the policy stated makes it clear, as interpreted by the First Circuit, that "the presence of dead spots does not mean that service is *per se* inadequate." (*Green Mountain Realty Corp. v. Leonard*, 688 F.3d 40, 57-58 (2012))

IX. DOT Figures Insufficient for AT&T's Purpose

Adequate Existing Coverage

This Council asserted in the District Court that "users in areas with weaker than -82 dBm may still be able to receive and make cell phone calls." (Eginton Dec. at 11)

Traffic Count

The effort to remedy its failure to bear its burden of proof by providing traffic volume figures for Route 7 now, *ex post facto*, fails AT&T because road traffic numbers do not defeat the *res judicata* of a District Court decision finding adequate coverage and a road expanse gap that is "minimal."

From Defendants' (Siting Council) Local Rule 56(a)1 Statement:

> 19. AT&T failed to introduce any evidence of traffic volume before the CSC to indicate the significance of any of the roadways sought to be covered by the proposed tower. Record, generally.
>
> 20. AT&T failed to introduce any evidence of traffic volume before the CSC or the Court for Under mountain Road. Record, generally.
>
> 21. None of AT&T's witnesses, including, but not limited to, Anthony Wells, advised the CSC that they were traffic engineers and none are traffic engineers. Record, generally.

Yet even this effort to alter the fact base on its direct case in Docket 409 at this late date is in vain. The District Court noted "AT&T has provided no evidence relevant to whether individuals traveling on the roads can actually make, receive or maintain calls at some levels lower than AT&T's desired -82 dBm." (Dec. at 12) AT&T did refused to provide data on dropped calls, a major basis for establishing the requisite proof for a significant gap in service. (Defendants' (Siting Council) Local Rule 56(a)1 Statement, par. 22, p. 5)

The evidence produced during the District Court proceeding is now law of the case. Wrote Judge Eginton:

> The evidence adduced demonstrates that the northern portion, which is described as largely wetland and dedicated open space, does not retain a high population density and

> has a minimal amount of roadway without coverage. A Route 7 traveler would traverse less than one mile in the northern area in a short amount of time. Similarly, the 2.45 miles of other roads noted in AT&T's Wells's affidavit do not represent a significant period of travel time without in-vehicle coverage....It appears that the lack of coverage in the northern portion will be *de minimus* rather than a significant gap. AT&T has failed to sustain its burden of proof that the proposed 150 foot tower at the Site is the least intrusive means to close the coverage gap. See *Willoth*, 176 F.3d at 643.
>
> (Decision at 12)

Thus, even if the DOT statistics now brought forward by AT&T were not previously available (which they were), the statistics are not relevant where the Court's analysis focused on the amount of roadway without coverage. AT&T has produced no new evidence to refute this finding -- and it is therefore bound by it under judicial estoppel and law of the case.

Principles of estoppel require that a party (here, the applicant AT&T) act in good faith, and adduce its evidence in a timely fashion, and to make material assertions available to all parties for meaningful vetting and hearing in a deliberative and reasonable fashion.

AT&T fails to address the legal ground for the Siting Council's denial of certification on Docket 409 -- the test of *Sprint Spectrum, L.P. v. Willoth*, requiring proof that the proposed facility is the "least intrusive" -- a burden of proof AT&T failed to carry on its application, affirmed by the U.S. District Court. (*Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999))

The original application was void *ab initio* because of the applicant's failure to comply with the Clean Water Act by failing to submit a permit application to the Falls Village IWCC which has jurisdiction over permitting for all construction projects within the bounds of the Town of Canaan.

During the pendency of the hearing on Docket 409, the Council demanded, was promised, but still has never (to IWCC's knowledge) received a legal opinion from AT&T's

counsel that the applicant would have clear title to construct the project if it had been approved. For the Council to have entertained an application -- and now a "new site" on the same parcel after denial of the first -- in view of the material evidence of a *bona fide* property dispute regarding access to the subject property violates fundamental due process rights.

AT&T has had a full and fair hearing on the application that was its own product. It may not now seek another hearing without full compliance with the requirement of "changed conditions." The time for reconsideration has passed.

CONCLUSION

The Council made a reasoned and considered denial in Docket 409 consistent with its state mandate:

> **Sec. 16-50g. Legislative finding and purpose.**
>
> The legislature finds that power generating plants and transmission lines for electricity and fuels, community antenna television towers and telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, scenic, historic and recreational values of the state. The purposes of this chapter are: To provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state; to encourage research to develop new and improved methods of generating, storing and transmitting electricity and fuel and of transmitting and receiving television and telecommunications with minimal damage to the environment and other values described above; to promote energy security; to promote the sharing of towers for fair consideration wherever technically, legally, environmentally and economically feasible to avoid the unnecessary proliferation of towers in the state particularly where installation of such towers would adversely impact class I and II watershed lands, and aquifers; * * *

The Council upheld this legislative mandate in its denial on Docket 409. AT&T has produced no "changed conditions" sufficient for reversal of the Docket 409 denial, nor has AT&T produced any evidence altering the District Court's ruling on the Willoth test. An appeal remains pending in the Second Circuit. This proceeding usurps the jurisdiction of the Second Circuit, unnecessarily and illegally embroils others in the need to defend substantive rights and statutory duties, and violates principles of *res judicata*:

> [A] final judgment, when rendered on the merits, is an absolute bar to a subsequent action, between the same parties or those in privity with them upon the same claim.
>
> (*Dontigney v. Roberts*, 73 Conn. App. 709, 710 (2002)) (See also *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 n. 5 (1979))

For the foregoing reasons, the proposal under Docket 409A, AT&T's effort to substitute a purportedly "modified" site for the site the Siting Council roundly denied on August 25, 2011 should not be entertained by the Council;

if the Council should open a hearing on Docket 409A both the Council and AT&T are bound by the law of the case and the District Court's affirmance of the Council decision on Docket 409, including a finding of a "minimal amount of roadway without coverage" on Route 7, and that the FCC's policy is merely that: policy, and the proposal should be rejected;

the matter purportedly a "settlement offer" (but in fact and concededly a "new site") should be rejected as violating state and federal law, defying federal jurisdiction and violating good faith submission to the Federal Courts under the Telecom Act and Article III;

and Docket 409A should be closed as a violation of the requirements of C.G.S. §16-501 and the statutes under which the Council is authorized to act.

Respectfully submitted,

Ellery W. Sinclair, Chairman
Inland Wetlands/Conservation Commission
Town of Canaan (Falls Village)
201 Under Mountain Road
Falls Village, CT 06031
(860) 824-7454
WML61@comcast.net

April 18, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and twenty copies of the foregoing was served on the Connecticut Siting Council by hand and copy of same was sent postage prepaid to:

Christopher B Fisher, Esq.
Lucia Chiocchio, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601

Michele Briggs
AT&T
500 Enterprise Drive
Rocky Hill, CT 06067-3900

A copy was also delivered by hand to:

Patty and Guy Rovezzi
36 Barnes Road
Falls Village, CT 06031

Town of Canaan Planning & Zoning Commission
Town Hall, Main Street
Falls Village, CT 06031

Ellery W. Sinclair

Dated: April 18, 2013