

5/1/2012

FROM:

Robert and Cathleen Alex  
435 Bassett Road  
Watertown CT 06795

TO:

CT Siting Council  
Ten Franklin Square  
New Britain CT 06051

**RE: Docket 422**

Dear Chairman Stein and members of the Council,

At the Council's invitation Robert and Cathleen Alex respectfully submit identification of errors and inconsistencies between the CT Siting Council's Draft Findings of Fact and the record on Docket 422 (dated April 10<sup>th</sup> 2012, submitted April 26<sup>th</sup>, 2012). We also identify material omissions from the Council's findings relating to legal mandates for consideration of any application. These omissions include failure to make findings relating to applicant errors on the FCC mandatory application requirements, as well as failure to make findings referencing the applicants' responses to Alex Interrogatories.

**Identification of Errors and Inconsistencies between CT Siting Council Draft Findings of Fact and the Record:**  
**Municipal Consultation:**

Draft Findings of Fact 31: The applicants agreed to comply with the Town Engineers recommendations, with the exception that the applicants could not keep the slope of the access road from exceeding 7 percent *in four areas noted as sloped at 15-20%* (Applicants' Grading Plan Z5 December 23, 2011 Supplemental)

**Site Selection:**

Draft Findings of Fact 26, Draft 51, and Draft 54c: It was determined that the property (Crestbrook Park site) had a deed restriction that would not allow it to host a telecommunications facility *unless all practical alternatives to the conversion have been evaluated and rejected on a sound basis* (section 3a Prerequisites to the National Park Service consideration of conversions as submitted by Applicants Administrative Notice October 20<sup>th</sup> 2011 enclosure of Land and Water Conservation Fund State Assistance Program Federal Financial Assistance Manual; Also Oct27<sup>th</sup> 2011 Hearing Transcript page 16-17)

Draft Findings of Fact 57: The proposed site is on a 51.53 acre property located at 655 Bassett Rd. ...The property consists of agricultural and forested land *which is not vacant and encompasses a portion of "the Linkfield-Bassett Historic District that is eligible for listing on the National Register of Historic Places under Criterion C as an intact rural historic district consisting of Federal and Greek revival style residences and vernacular farmsteads. These farmsteads include residences, barns, and associated out buildings as well as stone walls, meadows, and pastures"* (SHPO Letter December 23<sup>rd</sup>, 2011)

Draft Findings of Fact 60: The *original* proposed tower was located at... *original Latitude / Longitude represents original balloon float coordinates dated January 19, 2009. Currently proposed coordinates of updated site are 41°39'25.48"N, 73°8'10.54" W* (Feb 27<sup>th</sup> 2012 Applicant Responses to Robert and Cathleen Alex Interrogatories A1)

Draft Findings of Fact 82: The proposed *monopine* tower at the updated location would be located at *41°39'25.48"North latitude, and 73°8'10.54"West longitude.* (Feb 27<sup>th</sup> 2012 Applicant Responses to Robert and Cathleen Alex Interrogatories A1)

**Environmental Considerations:**

Draft Findings of Fact 89: There are populations of the American Kestrel (a threatened species) the Bobolink (a Species of Special Concern) and the Eastern Meadowlark (a species of Special Concern) in the vicinity of the proposed tower location. These bird species inhabit grassland areas *and woodland edges* and *would* be impacted by the tower since it would be located at a *woodland edge just 50' from the hayfield fence line*. (Feb 27<sup>th</sup>, 2012 Applicants' Responses to Alex Interrogatories A29) (March 6<sup>th</sup>, 2012 Alex photographic evidence exhibit F depicting woodland edge location of tower center, in contrast to DEEP letter January 6<sup>th</sup> 2012 of "no adverse effect" that was issued utilizing false information provided by the applicants as noted in detail in the Alex Findings of Fact April 1<sup>st</sup>, 2012 sec. 17-22)

**Visibility:**

Draft Findings of Fact 78: NAT's relocation of its proposed facility was prompted by its desire to satisfy *Robert and Cathleen Alex's appeal on behalf of the patrons of Evergreen Berry Farm who petitioned to "preserve the scenic beauty and recreational value of Evergreen Berry Farm's pick-your-own farm and neighboring lands/farms"* (Alex Pre-filed Material Attachment 2, Oct 20, 2011)

Draft Findings of Fact 103: *At least 30* residential structures would be likely to have *leaf-off* views of the proposed tower *and at least 16 residences* would be likely to have year-round views of the proposed tower ... (Alex Visibility List January 12<sup>th</sup>, 2012)

Draft Findings of Fact 108: The tower at the updated location *would* be visible from the Mattatuck Trail (March 6<sup>th</sup> 2012 Public Hearing Transcript p. 96-97)

Draft Findings of Fact 111: The tower at the updated location *is easily visible without the aid of binoculars* from the dry dam at Black Rock Lake (Tr.3 p.137-139; CSC Draft Findings of Fact p. 20, Fig 7 Tower Visibility at Updated Location), *a federal recreation area utilized by approximately 3161 visitors in 2011*. (Alex Exhibit: March 15, 2012 letter from US Army Corps of Engineers) *Binoculars were utilized by Robert Alex only from Thomaston Elementary School*. (Tr.3 p. 139)

Omissions of Material Findings of Fact:**Environmental Considerations:**

The DEEP did not perform an on-site visit to verify the accuracy and completeness of the updated tower location application as stated by DEEP representative Elaine Hinch "this information is not the result of comprehensive or site-specific field investigations. Consultations with the Data Base should not be substituted for on-site surveys required for environmental assessments." (DEEP letter of January 6, 2012).

Consulting wildlife biologist for the applicants, Mark Kiburz, reported at the March 6, 2012 Hearing that he visited only the original site and only once on March 1, 2010 (February 27, 2012 Responses to Alex Interrogatory A89). He did not return to assess the updated tower location, did not assess the site changes for impact on the listed threatened and endangered species, did not provide the DEEP with a comprehensive report including environmental assessments of all new findings pertaining to the habitat characteristics of the updated tower site, and did not report that the 130' "monopine" location might be considered a "high perch" along a woodland edge with a potential impact on nesting or perching American Kestrels in close proximity to operating antennas (January 4, 2012 Alex Exhibit: Art Gingert Kestrel Letter confirming nesting Kestrel populations on Gustafson farmland).

The applicants failed to fully and accurately report the site changes to the DEEP and perform an updated comprehensive site review on the new tower location. The lack of any comprehensive on-site environmental assessment and review of the new tower location make the applicants in violation of NEPA t1.1307(a)(3) Listed, Threatened, or Endangered Species/Designated Critical Habitats which: "requires applicants, licensees, and tower owners (applicants) to consider the impact of proposed facilities under the Endangered Species Act (ESA), 16 U.S.C. s. 1531 et seq. Applicants must determine whether any proposed facilities may effect listed, threatened or endangered species or designated critical habitats, or are likely to jeopardize the continued existence of any proposed threatened or endangered species or designated critical habitats. Applicants are also required to notify the FCC and file an environmental assessment if any of these conditions exist".

**Impact when FCC Emissions guidelines exceeded:**

The Telecommunications Act of 1996 prohibits any state or local entity from regulating telecommunications towers on the basis of environmental effects of radio frequency emissions to the *extent that such towers and equipment comply with the FCC regulations concerning such emissions*. The 130' monopine branches permit bird abatement falcons utilized for berry crop protection and threatened American Kestrels to perch in proximity to operating antennas that *exceed* FCC guidelines for RF exposure. Applicants stated that the antennas must be powered down for workers in similar proximity to meet FCC guidelines (March 6, 2012 Hearing transcript page 55 Lines 14-15)

**Public Safety:**

As noted in the Alex Findings of Fact April 1, 2012 number 26, the applicants stated that they do not obtain lightning strike data for potential tower sites and do not track lightning activity increases once the tower is in place (Applicants' Responses to Q/A 49-50 Intervenor Interrogatories February 27, 2012). However the applicants do note in a letter to Dan Shriver on November 8, 2011 included in the applicants' December 23, 2011 Supplemental that "the design acknowledges the height of a tower and the extension above the tree line makes it prone to receiving occasional lightning strikes." This paucity of data collection on the part of the applicants does not provide any measure of confidence for the safety of visitors to Evergreen Berry Farm who may need to be evacuated sooner and more frequently from the berry fields when impending thunderstorms are in the area if a tower is constructed on an already lightning prone area. As established at the October 27, 2012 public hearing at Watertown High School by adjoining landowner Donna Membrino, the ridge is prone to lightning strikes and has resulted in loss of property in the way of a barn fire, garage door strikes, and well strikes on both her and her mother Pricilla Membrino's property both of whom are in close proximity and adjoining landowners to the proposed tower site (October 27, 2011 Public Hearing Transcript page 48 lines 6-10, 19-24).

**Site Selection:**

Dave Minnich, Watertown Planning and Zoning Chairman, stated that the "preference of the Park and Recreation Commission, and of the Planning and Zoning Commission, that the site be at Crestbrook Park...and that the issue with the deed restricted land...can be worked out" (October 27<sup>th</sup> 2011 Public Hearing Transcript page 22)

**Tower Sharing:**

The 130' monopine can accommodate only 4 of the 5 carriers discussed at the March 6<sup>th</sup> 2012 hearing (Tr. 3, p.12) and is in contradiction to Draft Finding 34 that charges the siting council via the Telecommunication Act of 1996 from prohibiting local and state bodies from discriminating among providers of functionally equivalent services (Council Administrative Notice Item No 4 -Telecommunications Act of 1996) as well as being in contradiction to minimizing tower proliferation as specified by CGS Chapter 277a Public Utility Environmental Standards Act Sec 16-50aa on Tower Sharing. The applicants were unable to confirm if other carriers would be interested in a 130' tower, knowing they would be co-located below the AT&T antenna array (Tr. 3, p.66-69)

Respectfully Submitted by,

Robert Alex

Cathleen Alex

CC:

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