

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

North Atlantic Towers, LLC and New Cingular : DOCKET NO. 427
Wireless PCS, LLC Application for a Certificate :
of Environmental Compatibility and Public Need :
for a Telecommunications Facility Located at :
171 Short Beach Road, Branford or 82 Short :
Road, East Haven, Connecticut. : September 6, 2012

TESTIMONY OF NIKI WHITEHEAD

A. Introduction

My name is Niki Whitehead and I am an intervenor in Docket Number 427 which includes a proposal to build a cell tower at 82 Short Beach Road in East Haven. At the last evidentiary hearing, the applicant characterized the site as “a parking lot in the midst of no other parking lots”, which is accurate but woefully incomplete. I have one concern in my testimony and that is to describe to the Siting Council the natural places and protected environmental resources that surround this small parking lot and have so far been largely ignored in the applicant’s investigations.

I am going to focus on birds and scenic qualities – not because these two elements are more important than any other facts about the area, but because the Siting Council is required to consider them in its analysis of alternative cell tower sites and they are protected under the Connecticut Environmental Protection Act (Connecticut General Statutes Sections 22a-14 to 22a-20 (“CEPA”)).

In the CEPA Notice of Intervention and Filing of Verified Pleading, I touched on my involvement with the surroundings of 82 Short Beach Road. I have twenty-five or more years of experience with conservation efforts in this area which has been my home since 1985. I am not a credentialed scientific expert and I have no expert witnesses, so I will augment my personal knowledge with existing, publicly available, documents from reliable sources and ask that the Siting Council take administrative notice of them. I think it is important to recognize that these documents are instances where others have taken the care to commit themselves to paper and to action completely free from any motivations related to the erection of a cell tower.

B. Farm River Estuary Complex

The small and isolated parking lot at 82 Short Beach Road is in the geographical center of the Farm River estuary complex; a fact which merits special consideration in the siting of a cell tower. (Niki Whitehead Administrative Notice (“NWAN”) Item 1¹.)

¹ The proposed cell tower site is located just east of the northern tip of Farm River State Park as shown in NWAN Item 1.

The Farm River estuary complex is a natural area encompassing the tidal portion of the Farm River, an estuary of regional significance, and much of the adjoining uplands. It is known for the quality and diversity of its coastal features and wildlife habitat, and as a rare natural corridor for bird migration inland from Long Island Sound.

The Farm River estuary complex is the focus of a successful ongoing land protection strategy backed by federal, state and local funding. The strategy has included outright acquisition of key properties such as Farm River State Park and Beacon Hill, conservation easements, and various restoration and enhancement initiatives. Public involvement, interagency cooperation, and the advancement of state and national goals for protecting coastal ecosystems are the hallmarks of this conservation effort. Clearly the area surrounding 82 Short Beach Road has far more environmental significance than the applicant's label of non-parking lot would imply.

C. Farm River State Park: Scenic Value and Role in Migratory Flyway

Farm River State Park, sixty-two acres of prized open space, is directly west and south of 82 Short Beach Road. (NWAN Items 1 and 2.) Based on several decades of field research, the late Professor Charles Remington, Ph.D., of Yale University famously called the Lippincott portion of the park "*one of the finest seaside ecosystems for research, conservation, and teaching that I have seen in the entire Northeast*". (NWAN Item 3, Remington letter of support.) Yet the park has been given short shrift in the cell tower application. Two signature elements of the park necessitate careful consideration by the Siting Council because of their vulnerability to negative effects of a cell tower: its scenic value, and its role as a stepping stone in an important migratory flyway.

Both the State of Connecticut and the U.S. Fish and Wildlife Service ("USFWS") recognized the value of the park's unique scenic qualities and its position in a critical migration corridor when they funded the acquisition in 1998, the first year of the state's Open Space Initiative mandated by the Connecticut General Assembly. (NWAN Items 4, 5 and 3.) The two parcels that make up Farm River State Park² were purchased with a National Coastal Wetlands Conservation Grant of \$250,000 from USFWS and \$1.5 million dollars from the Recreation and Natural Heritage Trust Program. The purchase was the 2nd highest open space expenditure that year. (NWAN Item 5, table p.5, rows 2 and 8.)

The Recreation and Natural Heritage Trust Program is the State of Connecticut's primary program for the acquisition of lands for the beneficial use and enjoyment of the public through additions to the State's system of parks, forests, and wildlife, fisheries and natural resource management areas. (NWAN Item 5.) The stated intent of the program is "*to acquire land that represents the ecological diversity of Connecticut, including natural features such as rivers, mountainous areas, coastal systems and other natural areas, in*

² The two properties of the Farm River State Park are known separately as Lippincott Property and Mansfield Landing/Farm River Property. They are sometimes referred to using these names in the supporting documents for this testimony.

order to ensure the preservation and conservation of such land for recreational, scientific, educational, cultural and aesthetic purposes.” (NWAN Item 5, p.3.) The purpose of this particular acquisition can be simply reported as “significant frontage on the Farm River/Long Island Sound. Coastal resources at site are abundant, pristine, and unique.” (NWAN Item 5, table p.5, rows 2 and 8.) Arthur J. Rocque, Jr., then Commissioner of the Connecticut DEP, was more expansive when he called the 1998 acquisitions “*some of the most beautiful land in the state, which will be preserved for future generations*” and shared his vision that “*the ecological integrity and natural beauty of Connecticut’s landscape will remain protected for generations.*” (NWAN Item 4, p.4. See also p.8 for details of Farm River State Park.)

The USFWS National Coastal Wetlands Conservation Grant Program has a rigorous selection process and the successful application from the Department of Environmental Protection documents in detail the value of the place that would become Farm River State Park. (NWAN Item 3; see footnote for specific references³.)

Our two signature elements of scenic value and critical location in a migratory flyway are a recurring theme in the USFWS grant application. Notably, the way the park appears to the human eye is recognized as more than a matter of aesthetics. It is also a means to foster environmental consciousness. Located within easy distance of New Haven and downtown East Haven, the park increases the equity of access to pristine natural areas and creates a unique opportunity for environmental education. From the avian perspective, the park appears as a critical link in the only true coastal migratory corridor anywhere between the Housatonic and Connecticut Rivers. Noble Proctor, Ph.D., a renowned biologist from this area, traces its route from Kelsey Island, a protected barrier island at the mouth of the Farm River, through Farm River State Park to Beacon Hill and ridgelines north through Connecticut into Massachusetts. (NWAN Item 3.)

It is because of environmental values like the two signature elements of this testimony that Noble Proctor warns on behalf of Farm River State Park, “keeping such habitats intact is as important as the preservation of an endangered species.” (NWAN Item 3, Proctor letter of support.)

D. Bird Strikes

In response to the potentially significant negative impact of the construction of new cell towers on migratory birds, the USFWS developed guidelines for the siting, construction, operation and decommissioning of communications towers. The September 2000 guidance document has been administratively noticed by the Siting Council for this docket (Federal Item 12). The online version of the document states that the guidelines “are based on the best information available at this time, and are the most prudent and effective measures for avoiding bird strikes at towers.”

³ See particularly (1) Narrative section: Items 1 and 2, and Item 8 Concise statement of 13 numeric criteria (criteria 1 through 6, 11, and 13), and Item 12 the Statement CZM Conformance from the Office of Long Island Sound Programs; (2) Supporting Letters/Notes section: beginning with the U.S. Environmental Protection Agency and ending with Noble S. Proctor PhD; and (3) Photos section.

There is no indication that the guidelines are prioritized, or that implementation of one or more guidelines obviates the need to implement another.

Guideline number 4 states:

If at all possible, new towers should be sited within existing “antenna farms” (clusters of towers). **Towers should not be sited in or near wetlands, other known bird concentration areas (e.g., state or Federal refuges, staging areas, rookeries), in known migratory or daily movement flyways, or in habitat of threatened or endangered species.** Towers should not be sited in areas with a high incidence of fog, mist, and low ceilings [emphasis added].

A cell tower erected at 82 Short Beach Road, in the heart of the Farm River estuary complex, would fail to abide by the bolded provisions of this guideline and would therefore fail to implement a recommended measure for the protection of migratory birds.

As shown on a survey map prepared for the DEP, the proposed site at 82 Short Beach Road is near the extensive freshwater and tidal wetland system of Farm River State Park. In fact, one finger of this system originates on the abutting Williams property. (Docket 427: Bruce Williams Administrative Notice, Item 14 and Bruce Williams Testimony.)

The site is within an area of Connecticut’s coast that is unusually important to migratory birds. The Focus Area Report of the Atlantic Coast Joint Venture reports that “*The open water areas and tidal flats in New Haven Harbor and the nearshore area south of Guilford, Branford and East Haven contain some of the largest and most important concentrations of wintering and migrating waterfowl along the Connecticut coast, especially American Black Duck, Canvasback, American Wigeon, Greater and Lesser Scaup, Common Goldeneye and three species of scoter*”. The shore near the East Haven site is within this Focus Area. (Docket 427: State Agency Comment by Council on Environmental Quality; also referenced by the applicant.)

As pointed out by the Council on Environmental Quality in their testimony on this docket, the proposed site would be “*about 2.5 miles up the coast from Lighthouse Point Park, a major birding area for observation of migratory species that has been designated by the National Audubon Society as an Important Bird Area (IBA). The importance of the area is founded to a large extent on the extraordinary number of migrating hawks, eagles and other birds that migrate just inland from the water’s edge. On average, more hawks and eagles migrate through that area than any location northeast of Cape May, New Jersey.*” (Docket 427: State Agency Comment by Council on Environmental Quality.)

Evidence of the position of the site in relation to a known migratory and daily movement flyway was presented in the previous sections of this testimony. Updated information on the local concentration of birds, and the presence of state and federally listed birds, is being gathered in anticipation of applying to the National Audubon Society for designation of the Farm River estuary complex as an Important Bird Area (IBA).

Examples include data from biannual walks conducted since 2007 by an experienced birder and current president of the New Haven Bird Club, Mike Horn; and both breeding and migratory bird survey data collected in Farm River State Park in 2011 and 2012 by the Audubon Society. (NWAN Items 6 and 7.)

E. Osprey Nesting: Impact to Tower Maintenance

The stretch of the Farm River estuary between Kelsey Island and the Branford Electric Railway museum is a location favored by the recovering population of Osprey in Connecticut. I personally know of twelve Osprey nesting platforms that are occupied every year, eight of which are depicted on a Farm River Access Guide developed by the Friends of the Farm River Estuary, Inc. (NWAN Item 8.) Of the two platforms that were erected most recently under the auspices of the DEP, one was occupied the following nesting season and the other was occupied the year after that. An average of two chicks are successfully fledged from most of these platforms annually, and many juveniles are expected to keep returning to the area.

Under these circumstances, it is highly likely that a cell tower at 82 Short Beach Road will attract nesting osprey. At the last evidentiary hearing, the applicant explained the maintenance challenges that accompany osprey nests, including placing the tower off-limits, except in emergency situations, for the three or more months before the chicks fledge and leave the nest. The possibility remains that breeding osprey and their chicks will be disturbed by necessary maintenance activities.

F. Conclusion

AT&T has gone on record as expressing concerns with the proposed cell tower site at 82 Short Beach Road for reasons not related to the environment. These concerns include whether they will be able to close the documented coverage gap and provide reliable service to their customers in Branford from this location; the difficulties associated with constructing a tower within ten feet of the edge of a slope; and the impossibility of containing all materials on-site in the event that the cell tower collapses. The East Haven site may not be a reasonable alternative to begin with.

If, however, 82 Short Beach Road remains under consideration, then the foregoing testimony shows that the construction of a cell tower facility as proposed involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the State of Connecticut and the Town of East Haven. Less environmentally damaging alternatives must be identified and considered pursuant to Section 22a-19 of the Connecticut General Statutes.

Respectfully submitted,

By: _____

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing document was sent to the Service List on September 6, 2012.

Niki Whitehead