

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

In re Application of New Cingular Wireless :
PCS, LLC (AT&T) Application for a : Docket No. 428
Certificate of Environmental Compatibility and :
Public Need for the Construction, Maintenance : January 7, 2013
and Operation of a telecommunications tower :
facility in Roxbury, Connecticut :

Proposed Findings of Fact of
Bronson Mountain Farm Homeowners Association

1. New Cingular Wireless PCS, LLC (AT&T) (the "Applicant") proposes to construct a wireless communications facility at either of two locations in the Town of Roxbury: (1) on property located on Route 67 owned by C.N. Builders, Inc. ("Candidate A"), or (2) on property located at 126 Transylvania Road owned by Rita L. Errico ("Candidate B"). Application, dated July 2, 2012 ("App.") pp. 1-2.

Radio Frequency Coverage

2. The coverage to be achieved from a facility located at Candidate B exceeds the amount of coverage to be achieved from a facility located at Candidate A. App., Attachment 1, Propagation Maps 1, 2, and 3.

3. A facility located at Candidate B will provide 3.4 square miles of additional wireless coverage for the Applicant, while a facility located at Candidate A will provide 2.13 square miles of additional wireless coverage for the Applicant. App., Attachment 1, p. 4.

4. A facility located at Candidate B will provide wireless coverage on the Applicant's network to an additional 370 residents in Roxbury, while a facility located at Candidate A will provide wireless coverage on the Applicant's network to an additional 232 residents in Roxbury. App., Attachment 1, p. 5.

5. A facility located at Candidate B will provide a total of 2.18 miles of new coverage to Route 67 (identified as Roxbury Road and Southbury Road). Applicant Responses to CSC Pre-Hearing Questions Set Three, dated October 22, 2012 (“Set Three Responses”), p. 2 (Response A7).

6. A facility located at Candidate A will provide a total of 1.40 miles of new coverage to Route 67. Id.; Applicant Responses to CSC Pre-Hearing Questions Set One, dated August 16, 2012, pp. 4 (Response A13).

7. It is generally preferable to construct a new facility in a location that is equidistant to immediately adjacent facilities operated by a particular wireless carrier. Set Three Responses, p. 3 (Response A7).

8. The distance from Candidate B to each of the two immediately adjacent Applicant facilities is nearly identical (.01 mile differential). Id., p. 2.

9. The distance from Candidate A to each of the two immediately adjacent Applicant facilities differs by .94 mile. Id.

10. Because Candidate B is more centrally located between the two immediately adjacent Applicant facilities than Candidate A, Candidate B provides better hand-off to those adjacent facilities and less redundant coverage. Transcript of Siting Council Public Hearing, Afternoon Session, September 18, 2012 (“Tr. I”), pp. 28-31; Transcript of Siting Council Public Hearing, December 6, 2012 (“Tr. III”), p. 26.

11. The Applicant prefers Candidate B to Candidate A from a radio frequency perspective because Candidate B would provide greater coverage than Candidate A. Tr. I, p. 25.

12. Redundant coverage in a wireless network “is a bad thing.” Candidate A would provide more redundant coverage than would Candidate B. Tr. III, p. 27.

Candidate A

13. The Candidate A property is currently undeveloped. App., Attachment 3; Field Review, September 18, 2012 (“Field Review”).

14. An application to subdivide the Candidate A property has not been submitted to or approved by the Town of Roxbury. Tr. III, pp. 35-36; Applicant Responses to Bronson Road Questions Set One, p. 2 (Response A5); Applicant Responses to Bronson Road Questions Set Three, p. 2 (Responses A4 and A5).

15. No access road or driveway of any kind is currently located on the Candidate A property. Field Review; App. Attachment 3, Tab A.

16. The Applicant has entered into an Option and Lease Agreement with C.N. Builders, Inc. (“CNB”), with an effective date of May 28, 2009 (the “Lease”). Attachment to Applicant’s Motion for Protective Order, dated October 23, 2012.

17. Pursuant to Paragraph 1(h) of the Lease, subject to those conditions as set forth in the Lease, the Applicant is obligated to make certain payments to CNB for construction of the access road to the tower and compound location on the Candidate A property. *Id.* at 2.

18. On September 2, 2010, the Roxbury Inland Wetlands & Watercourses Commission (“IWC”) granted the application of CNB to conduct certain regulated activities (the “Wetland Application”), including a stream crossing, to construct a road at the Candidate A property “to access a possible cell tower site.” The approval does not indicate any other purpose for the permit other than to create an access to a cell tower. App., Attachment 5.

19. The IWC minutes of the opening session of the public hearing to consider the Wetland Application provide that a member of the IWC, Mr. Dirienzo, opened the hearing by describing that the purpose of the application “is for a wetlands crossing to access a potential cell tower site. Mr. Dirienzo reported that an application has not yet been submitted to the Siting Council.” IWC Minutes, June 29, 2010, attached as Exhibit 2 to Bronson’s Request to File Added Exhibits, date October 15, 2012 (“Bronson Exhibits”).

20. The minutes of the two succeeding sessions of the public hearing also specifically reference that the purpose of the Wetland Application is a “Stream crossing to access possible cell tower site.” IWC Minutes, July 27, 2010, Bronson Exhibit 3; and IWC Minutes, August 24, 2010, Bronson Exhibit 4.

21. The Wetland Application, as submitted to the IWC, does not indicate that the purpose of the proposed stream crossing was for a subdivision, contrary to the assertion of the Applicant. Wetland Application, Bronson Exhibit 5; compare App., Attachment 3.

22. The first page of a report by Fuller Engineering & Land Surveying, LLC (“Fuller Report”) furnished to the IWC on behalf of the property owner provides that “Property owner [sic] proposes to construct a new 18’ wide gravel surfaced access roadway . . . for the purpose of constructing and maintaining a cell phone tower.” The same report states “[w]hile no further development is proposed at this time, it is proposed to construct the stream crossing sufficient to support a public road fully compliant with the standards of the Town of Roxbury.” Fuller Report, dated August 20, 2010, Bronson Exhibit 6.

23. A soils investigation report, drafted more than twelve years before the Wetland Application was submitted to the IWC, references a possible subdivision. On-Site Soils Investigation of Niewenhous Subdivision in Roxbury, Connecticut, dated March 9, 1998,

Bronson Exhibit 7. A 2010 follow-up to the 1998 soils investigation report does not reference a proposed subdivision. On-Site Review of Soils & Flagging of Wetland Crossings of Property for C. N. Builders in Roxbury, Connecticut, dated June 21, 2010, Bronson Exhibit 7.

24. The agendas and legal notice memos for each session of the public hearing for the Wetland Application provide that the proposed stream crossing is “for a driveway to access the upland portion of the site for possible cell tower location.” Agendas, June 29, July 27, and August 24, 2010, and Public Notices, dated June 11, and July 5, Bronson Exhibit 8.

25. A letter from the Wetland Applicant’s attorney to the IWC Chairman provides that the property owners “have no plans to convey or transfer any interest in the property except to lease a portion to the cell tower operator for the location of a cell tower.” Correspondence of Robert H. Rubin, Esq., August 10, 2010, Bronson Exhibit 9 (emphasis supplied).

26. The site plans as submitted by the applicant and approved by the IWC depict a “POSSIBLE CELL TOWER LOCATION.” Page 3 of portions of site plans entitled “Alternate ‘D’, Driveway Plan and Level Spreader”, prepared by Land Engineering & Surveying (“Wetland Plans”), Bronson Exhibit 10.

27. A memo to the local newspaper detailing the content of the legal notice of the approval of the Wetland Application provides that the permit was approved for a “Stream crossing to access possible cell tower site approved with conditions.” Memo, dated August 30, 2010, Bronson Exhibit 11.

28. There is no evidence that the owner of the Candidate A property would construct the proposed access road for any reason other than to access the proposed cell tower and compound. Tr. I, p. 45; Bronson Exhibit 9; Tr. III, p. 29.

Comparison of Candidate A and Candidate B

29. The proposed access road from Route 67 to the Candidate A proposed tower and compound is approximately 1,510 feet in length. App., Attachment 3, Tab A, CHA Memo; Tr. III, p. 14.

30. The length of the proposed access road for Candidate B is approximately 580 feet. Tr. III, p. 15.

31. The construction of the access road and utilities from Route 67 to the Candidate A proposed tower and compound location will require the removal of approximately 197 trees. App., Attachment 3, Correspondence of CHA, dated July 29, 2010 (identifying 122 trees to be removed); Tr. III, p. 39-40 (identifying approximately an additional 75 trees to be removed).

32. The construction of the Candidate A access road requires crossing a stream and associated wetlands adjacent to Route 67. App., Attachment 3, Site Evaluation Report; Wetland Plans, Bronson Exhibit 10.

33. The construction of the Candidate A access road also requires crossing a second wetland area and a defined watercourse adjacent to the proposed tower and compound. Wetland Plans, Bronson Exhibit 10.

34. Construction of the Candidate A access road would alter 2,800 square feet of wetlands. Wetland Application, Bronson Exhibit 5.

35. Construction of the Candidate B access road and compound is unlikely to create any adverse impacts to wetlands. Tr. III, p. 10 (Testimony of Dean Gustafson).

36. Construction of either the Candidate A access road or the Candidate B access road will require the Applicant to make monetary payments to another party. Tr. III, p. 31.

Respectfully submitted,

Bronson Mountain Farm
Homeowners Association,
Intervenors

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Certification

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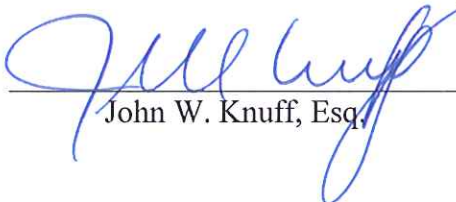
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