

**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	:	

Post-Hearing Brief of
Bronson Mountain Farm Homeowners' Association

I. Introduction

This Post-Hearing Brief is submitted pursuant to Regulations of Connecticut State Agencies (“RCSA”) § 16-50j-31. 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. The property of the Bronson Mountain Farm Homeowners’ Association (“Bronson Road”) directly abuts the Candidate A property.

Should the Siting Council determine that the Applicant has satisfied its burden under Conn. Gen. Stat. § 16-50p of the Public Utility Environmental Standards Act, the Record before

the Siting Council clearly establishes that Candidate B is superior to Candidate A: (1) Candidate B provides superior radio frequency coverage as compared to Candidate A, and (2) Candidate B will have less environmental impact than Candidate A.

In assessing the environmental impacts of the two candidates, the Council should not countenance the Applicant's attempt to shield the entirety of the impacts from the construction of the Candidate A access road from the Council's scrutiny. There is no evidence in the Record to support the Applicant's claim that the Candidate A access road would serve any use other than a cell tower, and indeed, there is specific evidence that the property owner has no other plans for the property, including correspondence from the property owner's attorney. See Bronson Proposed Findings of Fact 25.

A failure to consider the Candidate A access road as part of the "facility" would (1) ignore the sole purpose of the road as explicitly stated before the Roxbury Inland Wetland Commission; (2) run counter to long-established Council precedent and practice; (3) be inconsistent with applicable regulations; and (4) create an inducement to future applicants to allege another purpose for a lengthy road despite all evidence to the contrary.

II. A facility located at Candidate B more fully satisfies the public need than will a facility located at Candidate A.

Bronson Mountain's Proposed Findings of Fact, and the Record itself, clearly and unequivocally support the conclusion that a facility located at Candidate B will provide superior radio frequency coverage as compared to a facility located at Candidate A. See Bronson Mountain Proposed Findings of Fact 2-12, of even date. A facility at Candidate B will provide more comprehensive coverage to Route 67, will provide new coverage to a larger percentage of the land mass of the Town of Roxbury, and will provide coverage to a greater number of Roxbury residents, while providing less redundant coverage with existing and proposed facilities. Id.

III. The probable environmental impact of a facility at Candidate B will be less than that of a facility located at Candidate B.

A. The Siting Council has jurisdiction over the entirety of the proposed Candidate A access drive.

The Council should reject the Applicant's wholly unsupported claim that the purpose of the Candidate A access road is for the purpose of a subdivision. As noted, the only evidence in the Record supports the conclusion that the sole purpose of the road is for a cell tower. Moreover, just as important as what is in the Record is what is not. First, there was no testimony by the landowner about any intent other than the cell tower. If the landowner truly has an

intention to subdivide its property, the Applicant easily could have offered the testimony of a representative of the landowner to that effect. Second, the access road approved by the Wetland Commission has only one destination – the cell tower. If the road truly were for a subdivision, it would not simply dead-end as depicted on the plans approved by the Wetland Commission. The subdivision claim simply defies common sense.

Interestingly, the Applicant does not contend that the Council does not have jurisdiction over the Candidate B access road. Tr. III, p. 29. The Applicant, however, can point to no functional distinction between the two access roads. Neither road is constructed, neither road has any express or demonstrated purpose other than to access a cell tower, and in both cases the Applicant will reimburse some other party for construction of the road. Tr. III, p. 31.

Consideration by the Council of the entirety of the Candidate A access road is mandated by the applicable regulations. The very definition of “site” specifically includes “the leased area, right-of-way, access and easements on which a facility and associated equipment . . . are proposed to be located.” RCSA 16-50j-2a (22). Further, applicants are required to provide (1) a description of any required access roads; RCSA § 16-50j-74 (1); (2) a description of natural characteristics of the site, which by definition includes the access road; RCSA § 16-50j-74 (8); and (3) a statement containing justification for the site selected, which again by definition must include a statement justifying the access road; RCSA § 16-50j-74 (10).

The Development and Management Plan Regulations are even more precise regarding the Council's jurisdiction over access roads. The D&M Plan Regulations require plans depicting "the edges of existing and proposed clearing areas, the type of proposed clearing at the site, and the location and species identification of vegetation to be cleared" and "[s]ensitive areas and conditions within and adjoining the tower site, including . . . wetland and watercourse areas" RCSA 16-50j-76 (b) (6) and (7).

In support of its contention that the Council does not have jurisdiction over the Candidate A access road, the Applicant offers the tepid reply that "[t]his is not the first time the Siting Council has addressed approval for a facility access drive to be connected to a locally approved, but unbuilt road. See for example Siting Council Docket 314, Finding of Fact 33." Applicant response to Bronson Set II, p. 2. In fact, the circumstances surrounding Docket 314 are inapposite to this Docket. First, as noted in Finding of Fact 27, the property at question in Docket 314 was actually "undergoing subdivision development." Second, the facility at issue in Docket 314 was originally approved under Docket 251. Docket 314, Findings of Fact 1-5. During the pendency of Docket 251, no subdivision was under development, and thus the Council asserted jurisdiction over the entire length of the access road and directed its relocation to avoid wetland areas and to minimize tree cutting; Docket 251, Opinion, and Finding of Fact 34. Thus, contrary to the Applicant's assertion, the Council took jurisdiction over the entirety of

the access road until the subdivision was under active construction. In stark contrast, the Candidate A landowner has not even submitted a subdivision application to the Town of Roxbury. The only similarity between the subject Docket and Dockets 251/314 is that the Council should take that action that avoids wetland impacts and excessive tree-cutting.

Finally, the Applicant's contention that the Council does not have jurisdiction over the Candidate A access road is contrary to the Council's decision in Docket 409, in which the Council denied the application for several reasons, including the environmental impacts of the proposed access road. Docker 409, Opinion, p. 3.

B. Comparison of Candidates A and B.

Bronson Road's Proposed Findings of Fact 29 - 36 set forth the manner in which a facility located at Candidate B will have less environmental impact than will a facility located at Candidate A. Notably, a Candidate A facility will require stream and wetland crossings, the removal of approximately 197 trees, and a road two and half times longer than a facility at Candidate B.

IV. Conclusion

Should the Council determine that the Applicant has satisfied its burden under Conn. Gen. Stat. § 16-50p, it is respectfully suggested that it should approve the facility at the

Candidate B location because a Candidate B facility will provide superior radio frequency coverage with less probable environmental impact than a Candidate A facility.

Respectfully submitted,

Bronson Mountain Farm
Homeowners Association,
Intervenors

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Certification

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