

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR WIRELESS
PCS, LLC (AT&T) FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND PUBLIC
NEED FOR THE CONSTRUCTION, MAINTENANCE
AND OPERATION OF A TELECOMMUNICATIONS
TOWER FACILITY ON PROPERTY LOCATED AT 560
WEST HILL ROAD IN THE CITY OF STAMFORD,
CONNECTICUT

DOCKET NO. 447

April 9, 2014

AFFIDAVIT OF DANIEL M. LAUB
IN OPPOSITION TO INTERVENOR WHET'S MOTION

DANIEL M. LAUB, being duly sworn, deposes and states that:

1. I am over eighteen years of age and understand the obligation of making a statement under oath.
2. I am an attorney with the firm of Cuddy & Feder LLP admitted to practice in the State of Connecticut and represent New Cingular Wireless PCS LLC ("AT&T") in Docket 447 along with Attorney Christopher B. Fisher.
3. I am familiar with AT&T's Application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications tower facility located at 560 West Hill Road in Stamford, Connecticut ("AT&T's Application").
4. I am familiar with the administrative Motion filed by Attorney Keith Ainsworth as counsel for and on behalf of the West Hill Environmental Trust ("WHET") on April 3, 2014 as well as WHET's Reply to AT&T's Response and Objection to Motion for Access dated April 8, 2014.

PRE-MOTION COMMUNICATIONS

5. Counsel for WHET filed a petition to intervene in Docket 447 on March 18, 2014.
6. Fifteen days later, Counsel for WHET left me a voicemail message at 10:12 a.m. of April 3, 2014 requesting a call back concerning Docket 447. I called Counsel for WHET at 10:21 a.m. that same day at which time Counsel for WHET requested access to the property so WHET's consultant could inspect and test for wetlands on the property which is the subject of Docket 447.
7. I indicated this was a "tall ask" but that the request would be passed on to AT&T for consideration. Counsel for WHET then indicated to me that if AT&T did not agree to grant access, he would elect to file a motion with the Siting Council seeking to compel such access.
8. Counsel for WHET further indicated that if AT&T later granted access before the motion was decided by the Siting Council, he would withdraw such motion.
9. Counsel for WHET did not make clear to me on our telephone call that he intended to submit a motion that day, nor did Counsel put a deadline on AT&T's time to respond to his request. As such, it was not my understanding that WHET intended to file a motion while we reasonably discussed the request with our client.
10. From my April 3, 2014 telephone conversation with Counsel for WHET, I understood that I was being given a courtesy "heads up" regarding the prospect of a motion filing as a tactic but accorded a reasonable period of time to consider the request with my client, presumably over the course of a few days. I did not anticipate nor expect a motion to be filed less than three hours later.

11. At 11:16 a.m. that same day, and after consultation with my colleague Attorney Christopher B. Fisher, I sent an email to Counsel for WHET requesting some information and clarification on the actual scope of the intended consultant's inspections and testing at the property so that we could help frame WHET's request further for AT&T's consideration.
12. At 11:28 a.m. that same day Counsel for WHET provided an email to me with some very basic parameters solely in terms of time (3 hours) and noted such investigation would be non-destructive, but he did not provide a further scope of the consultants intended on-site activities.
13. At 12:53 p.m. that same day I indicated in an email to Counsel for WHET that I passed the request on to AT&T and hoped to hear back soon regarding same.

NOTICE BY COUNSEL OF AND SERVICE OF WHET'S MOTION

14. At 1:08pm I received an email from Counsel for WHET indicating that he was "filing a motion for access as a precautionary measure" because I "seemed to indicate it might not be likely the request would be met with a positive response" and given the schedule the Siting Council required for considering motions. See e-mail chain included as Exhibit 1 to this Affidavit.
15. This was a surprise to me as I was in communication with AT&T and Counsel for WHET, and believed that we were being provided a realistic period of time to respond to the request and further that there was no intention by WHET to file such motion unless and until AT&T had further responded to the request for access in a reasonable period of time.

16. At 1:13 p.m. that same day I was copied on an email from Counsel for WHET with its Motion that was filed with the Siting Council. In reviewing the Motion, I was surprised that there was further no scope in it from WHET's consultant explaining the nature and extent of the entry, testing and other means of surveying sought by way of administrative order. Rather, the Motion simply noted the work would be of limited duration and non-destructive.

AT&T's RESPONSE & OBJECTION TO THE MOTION

17. AT&T's Response and Objection to the Motion filed on April 7, 2014 is a legal filing intended to document AT&T's ongoing consideration of the request by Counsel for WHET and simultaneously object to it for the reasons and law as more fully set forth therein.
18. The Reply provided to the Council by WHET's Counsel on April 8, 2014 contains inappropriate, untrue and inflammatory remarks.
19. I refute, reject and do not accept as accurate any and all accusations made in the Reply and other correspondence from Counsel for WHET containing unsupported allegations of lies, misrepresentations and/or slander (*sic* libel). I refrain from further comment out of respect for the Siting Council and my own professionalism.

WHET's ERRONEOUS REFERENCES TO A LEASE IN IT'S REPLY

20. In the April 8, 2014 Reply to AT&T's Objection to Motion for Access ("Reply"), Counsel for WHET purports to cite the lease between AT&T and the owner of the underlying property of the proposed site. The information provided in footnote one of the Reply is not a paragraph of the lease between AT&T and the owner of the underlying property in Docket 447. This instead appears to be a paragraph cut and pasted from the

lease agreement for the proposed facility that is the subject of Siting Council Docket 445 where AT&T is a party, but is not the tenant in direct privity with the underlying property owner.

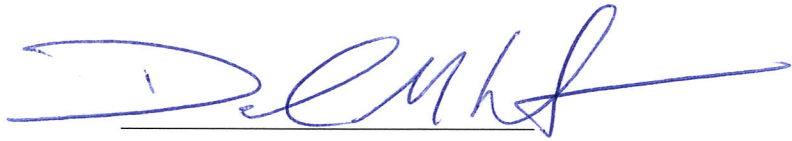
21. The Option and Lease Agreement for the facility proposed in Docket 447 is being provided to the Siting Council and WHET simultaneous with this Affidavit.

AT&T'S ALTERNATIVE OFFER

22. Despite AT&T's offer and authorization for WHET's consultant to speak with Mr. Gustafson directly as set forth in its Response and Objection to the Motion, I understand no such calls have been received by Mr. Gustafson. Additionally, the request on the Applicant's behalf for a full scope of WHET's proposed consultant inspection, testing, sampling and other protocols for the proposed three hour non-destructive visit have not been provided to Mr. Gustafson.
23. I can advise the Siting Council and Counsel for WHET that as of this morning, AT&T has advised that it does, as a courtesy and with no obligation to do so under law, invite WHET's consultant Mr. Danzer to visit the site as its guest with Mr. Gustafson for visual observation only at a time to be determined the week of April 14, 2014, when Mr. Gustafson will meet with WHET's consultant at the site. No other individual will be permitted access to the site, nor will AT&T provide Mr. Danzer with authority to conduct testing, sampling or other activities.
24. At this point in time, I respectfully submit that direct communication by the consultants is most appropriate and likely to be constructive.

RELIEF SOUGHT BY THE APPLICANT

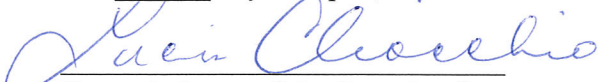
25. WHET's Motion should be denied for the reasons more fully set forth in the accompanying Supplemental Memorandum of Law in Response to Intervenor WHET's Reply and Motion Seeking an Administrative Order Compelling WHET's Site Access & Testing.
26. I respectfully submit that the Motion filed by Counsel for WHET contains a request that is not authorized by law and if granted would result in a violation of the Applicant's legal rights. Further, that the movant has failed to show any fundamental fairness it would be deprived of in this proceeding as a result of the Applicant invoking its rights as expressly preserved by law and the courts.



Daniel M. Laub
Attorney

WHET
c/o Keith R. Ainsworth, Esq.
Evans, Feldman & Ainsworth, LLC
261 Bradley Street
New Haven, CT 06507
krainsworth@efanda-law.com

Subscribed and sworn to before me
this 9th day of April, 2014



Commissioner of the Superior Court

Exhibit 1

Laub, Daniel M.

From: Keith R. Ainsworth [krainsworth@efanda-law.com]
Sent: Thursday, April 03, 2014 1:08 PM
To: Laub, Daniel M.
Cc: Fisher, Christopher
Subject: RE: Stamford DO 447
Attachments: AccessMTN04-03-14.pdf

Thank you for your efforts.

As I indicated, I am filing a motion for access (attached) as a precautionary measure (1) because you seemed to indicate it might not be likely the request would be met with a positive response and (2) the time schedule of the CSC process/motion consideration and the current state of vernal pool activity.

Regards,
Keith

From: Laub, Daniel M. [mailto:DLaub@CUDDYFEDER.COM]
Sent: Thursday, April 03, 2014 12:53 PM
To: Keith R. Ainsworth
Cc: Fisher, Christopher
Subject: RE: Stamford [C&F-iManage.FID379821]

Keith,

Just confirming that I've passed the request on and hope to hear back soon.

Best regards,
Dan

From: Keith R. Ainsworth [mailto:krainsworth@efanda-law.com]
Sent: Thursday, April 03, 2014 11:28 AM
To: Laub, Daniel M.
Cc: Fisher, Christopher
Subject: RE: Stamford

Dan,
Quite simply, we are looking for a one time access to the site by our proposed wetlands consultant (Dr. Steven Danzer) for no more than a couple of hours (for the sake of exactitude let's say less than 3 hours) at a mutually agreeable time, preferably in the next week or so given the likely timeframe on the proceedings. The expert would perform non-destructive wetlands assessment for the purpose of determining the extent of the wetlands and the functional values so that he can make comment on the potential impacts of the site plan. My clients are aware that the Stamford WEO was just present on the site and AT&T obviously has access. In our view it's a fundamental fairness issue to allow a CEPA party's expert to assess the site where the public trust in wetlands and water resources are implicated.

KRA

From: Laub, Daniel M. [mailto:DLaub@CUDDYFEDER.COM]
Sent: Thursday, April 03, 2014 11:16 AM
To: 'Keith Ainsworth Esq. (krainsworth@snet.net)'
Cc: Fisher, Christopher
Subject: Stamford

Keith,

I'm preparing an update to our client with your client's request. Could you please provide a scope of what type of access is being sought and what your clients' are looking for their consultant to do. Pragmatically that will help me best frame the request to our client.

Best regards,

Dan

Daniel M. Laub

CUDDY&

FEDER LLP

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