

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF HOMELAND TOWERS, LLC AND
NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE, AND OPERATION
OF A TELECOMMUNICATIONS FACILITY AT
183 SOUNDVIEW LANE,
TOWN OF NEW CANAAN, CONNECTICUT

DOCKET NO. 487

August 27, 2020

HOMELAND TOWERS, LLC AND NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T

POST-HEARING BRIEF

Respectfully Submitted,



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PRELIMINARY STATEMENT

Homeland Towers, LLC (“Homeland”) and New Cingular Wireless PCS, LLC d/b/a AT&T (“AT&T”) (together the “Applicants”), by their attorneys, Cuddy & Feder LLP, respectfully submit this post-hearing brief in support of their application (“Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 487. The Application addresses the demonstrated public need for a new tower facility in the northern portion of the Town of New Canaan so that FCC licensed wireless carriers and the Town’s emergency services may provide reliable commercial and emergency communication services for the benefits of residents and visitors at homes, at St. Luke’s School, along roads in the area and in the general vicinity. As set forth in detail in the Application, Homeland secured a lease with the owners of 183 Soundview Lane, a 4.05 acre parcel, for a location for the proposed facility (the “Site”). Throughout the proceedings in this Docket, AT&T and Town of New Canaan officials provided data, testimony and otherwise responded to questions from the Siting Council, Staff and intervenors that address the public need for reliable wireless services and new tower infrastructure in this part of the state. The Applicants respectfully submit that the Site is uniquely situated for a tower facility needed to serve the public, there are no known practical or feasible alternatives and that there are no significant adverse environmental impacts associated with the project which outweigh the public need for improved wireless services in northern New Canaan. As such, the Applicants submit that the project meets the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes (“C.G.S.”) for approval and are requesting a Certificate for the proposed tower facility to meet the public need for wireless services in this area of the state.

STATEMENT OF FACTS

I. AT&T's Need

AT&T's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to reliably access its wireless network. In this case, AT&T experiences gaps in coverage in New Canaan along Soundview Lane, Colonial Road, Laurel Road, North Wilton Road and other local roads and areas in northeastern New Canaan. Applicants' Ex.1, Attachment 1. AT&T's need for a facility to address this documented gap in coverage dates back approximately twenty years. Applicants' Ex. 1, Attachment 10. The Proposed Facility will provide reliable services in AT&T's network to an area that includes over 1,000 residents and several miles of local roads, as well as the campus of St. Luke's School. Applicants' Ex. 1, Attachment 1. Town emergency communication networks also lack reliable wireless services in this area of New Canaan. Tr. 7/9/20, 2pm, pp. 22-23. The lack of service is fundamentally due to the absence of any existing tower infrastructure or other wireless facility siting opportunities in this part of New Canaan, which is characterized by significant changes in terrain elevation. Applicants' Ex. 1, pp.14-15, Attachment 1. This lack of reliable wireless services is confirmed by the Town's 2014 independent wireless market study ("independent wireless market study"). Applicants' Ex. 2, Bulk Filing, Attachment 6.

II. Site Search

For several years, wireless carriers and tower companies have explored siting options in northeastern New Canaan, none of which resulted in an application to the Siting Council until now. Applicants' Ex. 1, pp. 14-15. AT&T's historical search dates back approximately twenty years and included the investigation of several sites, including town-owned property. Applicants' Ex. 1, Attachment 10. Homeland's search was conducted over a two and one-half year period and included the review of twenty-three (23) locations. Applicants' Ex. 1, pp.14-15, Attachment 2. The lack of reliable wireless service in this area of Town and the suitability of the proposed Site, which

abuts St. Luke's school and is located at a high elevation, are supported in the Town's independent wireless market study, which concluded that St. Luke's school was the "most likely" location of a cell tower facility for the wireless carriers to provide service to northeastern New Canaan. Applicants' Ex. 2, Bulk Filing, Ex. 6.

III. Technical Consultation with the Town of New Canaan

Homeland's consultation with New Canaan began when Homeland was awarded the Town's request for proposal for a tower developer to work with the Town to locate facilities in areas where there is a documented need for wireless infrastructure. Tr. 7/9/20, 2pm, p.26. As part of the search for sites in northeastern New Canaan, Homeland investigated the town-owned Clark Property on Smith Ridge Road. Homeland and the Town of New Canaan determined that the deed restrictions encumbering this property precluded siting of a tower facility. Applicants Ex. 1, Attachment 2; Tr. 7/28/20, 1pm, p.76. A Technical Report for the proposed Facility at 183 Soundview Lane was provided to the Town as part of the C.G.S. 16-50l consultation process. Applicants' Ex. 2, Bulk Filing, Attachment 5. On November 20, 2019, the Town of New Canaan Planning & Zoning Commission and Board of Selectmen held a joint duly noticed public information meeting at the Town of New Canaan Town Hall which included an opening statement by First Selectman Moynihan, a presentation by the Applicants, and comments and questions from the Board of Selectman, Planning & Zoning Commission and the public. After the public information meeting, the Planning & Zoning Commission provided recommendations in correspondence dated January 2, 2020, which were addressed in the Application. Applicants' Ex.1, pp.26-27, Attachment 10.

IV. Certificate Application, Parties & Intervenors & Pre-Hearing Filings

On February 7, 2020, the Applicants submitted an Application to the Siting Council for a Certificate to construct, maintain and operate a wireless facility at 183 Soundview Lane. The

proposed Facility consists of a new self-supporting monopole designed to resemble a pine tree (“monopine”) that is 85’ in height with faux branches extending an additional 5’ above the top of the pole, bringing the total height to approximately 90’. The monopine tower will be located within a 1,763 square-foot (s.f.) fenced equipment compound located within the 2,310 s.f. lease area in the northwestern portion of the Site. AT&T’s antennas would be installed at an antenna centerline height of 81’ on the monopine tower, with a walk-in equipment cabinet and emergency back-up generator located within the fenced equipment compound. The equipment compound will be enclosed with an 8’ tall shadowbox fence. Landscaping around the Facility is also proposed. Applicants’ Ex. 1, Attachments 3 & 4; Applicants’ Ex. 6. The monopine tower and fenced equipment compound are designed to support the antennas and equipment of other FCC licensed wireless carriers as well as the Town fire, police, and EMS services communications equipment. Vehicle access to the Facility would be provided from the northeast portion of the Soundview Lane cul-de-sac by way of an approximately 140’ long and 12’ wide proposed gravel access drive along the existing drainage easement. Utility connections would be routed underground from the existing electrical vault located on Soundview Lane. Applicants’ Ex. 1, Attachments 3 & 4; Applicants’ Ex. 6.

The Siting Council granted party status to Hugh C. and Judith R. Wiley, Joseph E. and Kathleen A. Sweeney, Steven and Miriam A. Sosnick and grouped them as the “Soundview Neighbors”. St. Luke’s School and St. Luke’s Foundation, Inc. were also granted party status in this proceeding. The Applicants submitted responses to Siting Council interrogatories on March 27, 2020 and July 2, 2020. The Applicants responded to intervenor Wiley interrogatories on April 24, 2020 and July 2, 2020. The Applicants submitted Supplementary Information on May 27, 2020 that included a noise analysis and details on AT&T’s updated emergency back-up generator.

V. Public Hearings and Supplemental Submissions

A public hearing was scheduled by the Siting Council for April 21, 2020. In response to the pandemic, the April 21st hearing was cancelled and rescheduled to July 9, 2020 as a remote public hearing via Zoom Conferencing in accordance with Governor Lamont's March 14, 2020 Executive Order No. 7B. At the July 9, 2020 public evidentiary hearing, the Siting Council heard comprehensive testimony from the Applicants' panel of witnesses on the need for the Facility, the investigation of sites and any environmental effects associated with construction of the Facility. A public hearing session was conducted via Zoom Conferencing on the evening of July 9, 2020.

The evidentiary hearing was adjourned to July 28, 2020. On July 20, 2020, the Applicants submitted responses to the Siting Council's request for late-filed exhibits. Applicants' Ex. 11. At the July 28, 2020 continued evidentiary hearing, the Applicants' panel of witnesses provided additional testimony and responded to questions regarding the need, lack of feasible alternatives, and Facility design.

The hearing was closed on July 28, 2020 after all parties were given a full and fair opportunity to present evidence and cross-exam witnesses.

POINT I

A PUBLIC NEED CLEARLY EXISTS

FOR A NEW TOWER FACILITY IN NORTHEASTERN NEW CANAAN

Pursuant to C.G.S. Section 16-50p, the Siting Council is required to find and determine as part of any Certificate application, "a public need for the proposed facility and the basis for that need." C.G.S. §16-50p(a)(1). In this Docket, AT&T provided coverage analyses, data and expert testimony that clearly demonstrate the need for a new tower facility to provide reliable wireless services in northeastern New Canaan to homes, retail areas, the traveling public and St. Luke's School. Applicants' Ex. 1, Attachment 1; Applicants' Ex. 4; Applicants' Ex. 7. The Town's 2014

independent wireless market study confirms that a coverage gap exists in this area of New Canaan. Applicants' Ex. 2, Bulk Filing, Attachment 6.

The record in Docket 487 also demonstrates that this Site, adjacent to St. Luke's School, is uniquely situated at an elevation and location that would provide reliable wireless service to remedy this identified gap in coverage. Applicants' Ex. 1, Attachment 1. Indeed, the Town's 2014 independent wireless market study concluded that St. Luke's School was the "most likely" location of a cell tower facility for the wireless carriers to provide service to northeastern New Canaan. Applicants' Ex. 2, Bulk Filing, Attachment 6. The public need for a tower facility in this area is further supported by Verizon, which indicated its interest in collocating on the proposed Facility. In addition, the proposed Facility will be used by the Town to provide emergency communication services. Applicants' Ex.1, p. 5; Tr. 7/9/20, 2pm, pp. 22-23.

Importantly, no empirical data was offered by other parties to rebut the evidence demonstrating the public need for a new tower facility in this part of the state. While the parties alleged that a feasible alternative site exists at 1160 Smith Ridge Road, the Applicants' clearly demonstrated through coverage maps, data and expert testimony that a tower facility, at a significantly higher antenna centerline than the proposed Facility, at 1160 Smith Ridge Road would not provide the needed coverage to this area. Applicants' Ex.7, A41; Tr. 7/9/20, 2pm, pp. 39-40; p.103. AT&T also confirmed through expert testimony that wifi networks are not a technical alternative to the proposed Facility for remedying AT&T's coverage gap. Indeed, the testimony by AT&T's experts revealed that not only is wifi not a feasible alternative, wifi networks cannot be relied on for emergency communications. Tr. 7/28/20 1pm, pp. 43, 45, 90-91, 95. AT&T's evidence also established that small cells or distributed antenna systems ("DAS") are not technical alternatives to the proposed Facility for providing reliable wireless service. Applicants' Ex. 1, pp. 14; Tr. 7/9/20, 2pm, p. 104.

Based on the Applicants' evidence and lack of any credible evidence to the contrary, the Applicants' submit that the public need for a new tower facility in the northeastern portion of New

Canaan to provide coverage where adequate and reliable coverage does not exist today is simply not an issue in this Docket.

POINT II

THERE ARE NO EXISTING STRUCTURES OR OTHER VIABLE ALTERNATIVE SITES FOR SITING THE PROPOSED WIRELESS FACILITY

The Applicants submitted significant evidence that there are no existing structures or viable alternative tower sites for providing reliable wireless service to this area of New Canaan. The Applicants identified and investigated six (6) communication towers; three (3) facilities mounted on existing electrical infrastructure and four (4) rooftop facility sites located within four (4) miles of the proposed Facility. Applicants' Ex. 1, Attachment 2. None of these existing facility sites are feasible alternatives. Indeed, AT&T is currently located on most of these facility sites to provide wireless service outside of northeastern New Canaan. Applicants' Ex. 1, Attachment 2.

AT&T and Homeland independently investigated a number of different parcels of land within northeastern New Canaan for construction of a new tower facility. AT&T's site search efforts date back several years. Homeland's search was conducted over a two and one-half year period and included a comprehensive investigation of twenty-three (23) locations. Applicants Ex. 1, pp. 14-15, Attachments 2 & 10. Subsequent to the Application filing, the owner of 1160 Smith Ridge Road, one of the alternatives investigated by Homeland, expressed interest in leasing space for a tower facility. As demonstrated in the record, in response to this interest, Homeland contacted this property owner, Mr. Garret Camporine, and coordinated review of his property with AT&T. Applicants' Ex. 5, A29. Based on AT&T's RF engineer's analysis, a 150' tall tower at this location would not provide service to the area targeted for coverage by the proposed Facility. Indeed, the propagation maps, data and expert RF testimony clearly establish that 1160 Smith Ridge Road is not a viable alternative. Applicants' Ex.7, A.41, Tr. 7/9/20 2pm, pp. 39-40; p.103. While Mr. Camporine appeared as a witness for the Soundview Neighbors' party to

support his property as an alternative site, he did not submit any empirical evidence or expert RF testimony to support his assertion.

No other viable alternative sites were offered by other parties or intervenors and no party or intervenor presented any credible evidence to rebut the Applicants' evidence that there are no viable alternative sites. Based on the comprehensive investigation of alternative sites, as well as the Town's 2014 independent wireless market study, the Applicants submit that there is no better known site for a tower to serve this area of New Canaan.

POINT III

THE PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

Pursuant to C.G.S. Section 16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impacts of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity, fish and wildlife, distance to schools and commercial child daycare centers¹ and facility design. The Applicants respectfully submit that while some impacts are associated with the proposed Facility, such impacts will have no significant environmental effects on the resources listed in C.G.S. Section 16-50p and clearly do not outweigh the public need for the Facility as proposed in this Docket.

I. Potential Visual Effects

The Applicants respectfully submit that the evidence and testimony in this proceeding, as summarized below, demonstrates that the visibility of the proposed Facility will not result in an overall significant adverse visual impact. The Applicants comprehensive Visibility Analysis

¹ Distance to schools and commercial day care facilities are evaluated in the context of significant visual impacts.

demonstrates that areas from where the Facility would be visible are comprised of 35+/- acres of year-round visibility and 10+/- acres of seasonal visibility. Together, this represents approximately 0.55%, or less than 1%, of the 2-mile radius study area. Applicants' Ex. 1, pp. 17-18, Attachment 8. Topography, vegetation and the relative height of the tower will obscure, partially or totally, views of the tower from most locations in the study area during leaf-on conditions. The visual assessment concludes that the majority of the views beyond the Site would be limited to locations at the northern terminus of the Soundview Lane cul-de-sac, portions of St. Luke's School campus, and John D. Milne Lake. Applicants' Ex. 1, Attachment 8. Year round views from John D. Milne Lake, which is not accessible to the public, comprise of 25+/- acres (55%+/- of the total year round predicted visibility) which would be primarily over open water. Applicants' Ex. 1, Attachment 8; Tr. 7/9/20, 2pm, p. 38. The presence of mature trees, both in the immediate area of the Site and throughout much of the study area, as well as the monopine design minimize the extent of visibility. Applicants' Ex.1, pp. 17-18, Attachment 8.

With respect to distance of the proposed Facility from St. Luke's School, C.G.S. Section 16-50p(a)3(F) states (emphasis added):

(ii) proposed to be installed on land near a **building** containing a **school**, as defined in section 10-154a, or a commercial child care center, as described in subdivision (1) of subsection (a) of section 19a-77, that the facility will not be less than two hundred fifty feet from such school or commercial child care center **unless** the location is acceptable to the chief elected official of the municipality or the council finds that the facility will not have a **substantial adverse** effect on the aesthetics or scenic quality of the neighborhood in which such school or commercial child care center is located,

This setback distance is clearly from a school *building* and not the property line or boundary of the school property as the parties incorrectly allege in this proceeding. As shown in the record, the

proposed monopine is located 250' from the nearest St. Luke's School building. Applicants' Ex. 6. Moreover, Section 16-50p(a)3(F) clearly allows a distance of less than 250' if the location is acceptable to the chief elected official, or, if the Siting Council finds that the facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood where the school is located. Here, the New Canaan First Selectman expressed support for the proposed Facility. Tr. 7/28/20, 6:30pm, pp. 176-180. In addition, the record shows that the proposed Facility will not have a *substantial* adverse aesthetic effect on the neighborhood. While views of the proposed Facility are anticipated from the St. Luke's School campus, these views are not substantial due to the monopine design, low height and existing mature vegetation. Applicants' Ex. 1, Attachment 8. Moreover, any potential views of the proposed monopine Facility will be less impactful than the existing radio tower on the school campus. Tr. 7/9/20, 2pm, p.94.

As demonstrated in the record, the location of the proposed Facility on the Site was carefully selected to minimize views from adjoining properties to the greatest extent practicable. Tr. 7/9/20, 2pm, pp. 20-21. Shifting the proposed Facility south or east would shift it closer to the Wiley and Sweeny properties, where only limited seasonal visibility is anticipated. Tr. 7/9/20, 2pm, pp.35-36, 46-48; Applicants, Ex. 11. Indeed, the photos submitted by the Soundview Neighbors demonstrate that any potential views of the monopine will be views through existing trees and mature vegetation. Tr. 7/28/20, 1pm. pp. 113, 115-116, 119-120. The photo of the crane submitted by Mr. Wiley clearly shows screening by vegetation. Moreover, there is no evidence in the record of the height of the crane shown in this photo, the distance of the photo location to the crane or camera zoom lens level for the photo. Thus, this photo is not representative of potential views of the proposed Facility. It should be noted that no views are anticipated from the Sosnick property. Applicants' Ex. 11.

The proposed equipment compound will be enclosed by an 8' tall shadowbox decorative fence and robust landscaping is proposed to further screen the equipment compound. Applicants' Ex. 1, Attachments 3 & 4; Tr. 7/9/20, 2pm, pp. 19, 48-50; Tr. 7/28/20, 1pm, p. 107. While the

parties' insisted that compliance with the Town's wireless regulations regarding the design of the equipment shelters to resemble sheds or other building types found in New Canaan is required, the Town's regulations are guidance and not controlling². Moreover, the intent of this Town regulation is met by the proposed fencing and landscaping which will effectively screen the equipment and generator within the compound. Applicants' Ex.1, pp.25-16; Tr. 7/9/20, 2pm, pp. 48-50. As Mr. Vergati testified, additional landscaping along the western property boundary is not feasible due to the existing underground drainage pipe, which Homeland agreed to maintain. Applicants' Ex. 11; Tr. 7/9/20, 2pm, pp. 20-21, 70-71; Tr. 7/28/20, 1 pm pp. 99-100.

The Applicants also demonstrated that the preference for internally mounted antennas in the Town's regulations is not practical or feasible given the significant space limitations of these structures to accommodate wireless facility antennas, radio head units, cables and other required appurtenances. As AT&T's expert testimony revealed, structures with internally mounted antennas do not allow the flexibility of positioning antennas required for optimal propagation. Applicants' Ex. 4, A30; Applicants' Ex. 5, A6; Tr. 7/9/20, 2pm, pp. 51-53. As Mr. Vergati testified and as shown in the Application materials, the proposed monopine design includes dense branching, which will extend down to approximately 20' above grade level to completely screen the interior pole.³ Applicants' Ex.1, pp.25-27; Tr. 7/9/20, 1pm, pp. 51-52, 81.

With respect to compliance with the Town's wireless guidelines/regulations, it is noteworthy that none of the existing wireless facilities in New Canaan would fully comply with the Town's standards.

² Pursuant to C.G.S Section 16-50x, the Siting Council has exclusive jurisdiction over telecommunications matters in the State. Based on judicial decisions of the United States Second Circuit Court of Appeals and the Supreme Court of the State of Connecticut, no local zoning approvals or compliance with local zoning regulations are required for such telecommunication tower facilities. See Sprint Spectrum LP v. Connecticut Siting Council, 274 F.3d 674, 677 (Dec. 17, 2011); Town of Westport v. Connecticut Siting Council, 47 Conn. Supp. 382 (Super. Ct. 2001), aff'd, 260 Conn. 266, 274 (2002).

³ It is interesting that the Town's wireless regulations, which were adopted in June 2018 after information about the proposed facility was released by the property owner, do not recommend faux trees with "three branches per foot", which is the exact density of the faux branching proposed for this Facility.

The evidence demonstrates that the proposed Facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood or community.

II. Potential Impacts to the Natural Environment

As clearly established in this Docket, impacts to the natural environment from the proposed Facility are not significant.

a. Wetlands, Watercourses and Floodplains

As set forth in the Wetland Investigation Report in the Application, the proposed Facility is located approximately 420' west of the nearest wetland resource located along the northeastern boundary of the Parcel. As such, the proposed Facility is not anticipated to result in an adverse impact to wetlands due to the distance separating the proposed work activities from the nearest wetland or watercourse. Applicants' Ex. 1, pp. 19, Attachment 6. Further, all appropriate sediment and erosion control measures will be designed and employed in accordance with the Connecticut Soil Erosion Control Guidelines, as established by the Connecticut Council of Soil and Water Conservation and DEP (2002). Soil erosion control measures and other best management practices will be established and maintained throughout the construction of the proposed Facility. Applicants, Ex.1, pp. 19, Attachment 6.

b. Habitat Assessment and Wildlife

As demonstrated in the record, the Applicants' consultants conducted thorough evaluations of the Site. The facility site is not located within 0.25 mile of any locations identified on the DEEP Natural Diversity Data Base ("NDDB") maps as areas that represent approximate locations of endangered, threatened and special concern species and significant natural communities in Connecticut. Thus, consultation with the DEEP is not required. Applicants Ex. 1, pp. 18-19; Attachment 5. As the evidence in the record demonstrates, no migratory bird species are anticipated to be impacted by the proposed development. The Site is not near an Important Bird Area and the proposed Facility would comply with the U.S. Fish & Wildlife Service guidelines for

minimizing the potential impacts to bird species. Applicants' Ex.1, Attachment 6. Therefore, the proposed Facility will not have any adverse impacts on wildlife or critical habitat.

c. Clearing, Grading and Drainage Assessment

The access area which is currently a vegetated area will be graded and improved with a new gravel access drive running from Soundview Lane along the existing drainage easement a distance of approximately 140' to the proposed tower compound. Applicants' Ex. 1, Attachment 4. The total area of disturbance, including grading and clearing required for the Facility, is 8,700 s.f. and approximately 24 trees will need to be removed, 9 of which are 14" or greater dbh. Seven replacement trees will be installed along the southern boundary of the fenced equipment compound. Applicants' Ex. 1, Attachment 3. The Site shall require approximately 60 cubic yards of cut for utility trenching and approximately 130 cubic yards of fill for the compound and driveway construction. Applicants' Ex.1, Attachment 3. Approximately 60 cubic yards of broken stone is required for the compound and driveway construction. Applicants' Ex.1, Attachment 3.

As noted in Section II(a) above, the proposed Facility design will incorporate all appropriate sediment and erosion control measures. Moreover, as noted above, Homeland does not anticipate any impacts to the underground drainage pipe within the drainage easement area and in the unlikely event of any damage to the pipe by the wireless facility, Homeland has agreed to repair it. Applicants' Ex. 11; Tr. 7/9/20, 2pm, pp. 70-71. The Applicants respectfully submit that the proposed improvements at the Site, along with drainage detention and other engineering features incorporated into the design, will not result in any significant adverse environmental impact on the surrounding area and will allow for safe access to and development of the Facility.

III. Other Environmental & Neighborhood Considerations

A tower facility at the location proposed will comply with all public health and safety requirements. Applicants' Ex.1, Attachment 7, Applicants' Ex. 4, A11. Additionally, since the

proposed Facility will be unmanned, there will be no substantial impacts from traffic on area roadways, sanitary waste or material impact on air emissions.

Consultation with the SHPO confirmed that while there are 4 properties listed or eligible for listing within 0.5 miles of the project area, those sites will not be adversely impacted by the proposed Facility due to distance and intervening foliage. Applicants' Ex.1, Attachment 9. Upon review of the Applicants' Phase IB professional cultural resources assessment and reconnaissance survey, the SHPO also concurred that no additional investigations are warranted. Applicants' Ex. 4, A33. As such, the Council should find and determine that the Facility as proposed will not have any historic, cultural or adverse visual impacts on the neighborhood.

In addition, no adverse impacts to Connecticut Prime Farmland and/or Important Agricultural Soils are anticipated. Applicants Ex. 4, A12.

As demonstrated in the record and by Mr. Robert Burn's expert testimony, the proposed Facility will be designed with a hinge point at an elevation of 52' so that in the unlikely event of a catastrophic failure, the tower fall zone will be contained within the Site boundaries. Applicants' Ex. 1, Attachment 3; Tr. 7/9/20, 2pm, pp. 17-18; 101-102; Tr. 7/28/20, 1pm, pp. 87-89. As Mr. Burns testified, in the unlikely event of a catastrophic failure, the tower will remain physically connected. Tr. 7/28/20; 1pm, p. 89. The parties and intervenors alleged that the tower's location, approximately 38' from the northern property boundary, does not comply with the Town's wireless guidelines for setbacks. However, with respect to setbacks, the Town's wireless guidelines clearly state that a "yield point" or hinge point can be provided to ensure that any catastrophic failure results in the tower collapsing within the Site boundaries⁴. Thus, the proposed Facility complies with this provision of the Town's wireless regulations.

⁴ Section 7.8.G.7: New towers shall be located away from property lines and habitable buildings at least as far as the height of the tower, including any antennas or other appurtenances **unless** adequate information has been provided to demonstrate that a "yield point" or other approach has been designed into the tower to avoid a tower falling on adjacent properties or habitable buildings. (emphasis added)

As the Applicants' expert testimony clearly established, the location of the proposed Facility at the Site was carefully and thoughtfully selected to minimize visibility, avoid slopes and wetlands and maximize existing mature vegetation for screening. Tr. 7/9/20, 2pm, pp. 20-21; 47, 90-92, Tr. 7/28/20, 1 pm, pp. 46-47, 53.

The Applicants' Environmental Sound Assessment concluded that the noise associated with the operation of the proposed Facility, which includes sound attenuation blankets, will remain well below the DEEP and New Canaan nighttime standards. The sound assessment demonstrated that under worst-case conditions, which include the operation of the cooling equipment and the emergency back-up generator simultaneously, the noise level will also comply with the nighttime standards at the closest receptors. Applicants' Ex. 6.

Given the foregoing facts, the Applicants submit that the tower will not result in any adverse impacts to the adjacent property.

POINT IV

PROPERTY VALUES ARE NOT RELEVANT TO THE SITING COUNCIL'S

CONSIDERATION IN THIS PROCEEDING

Section 16-50g of the Connecticut General Statutes sets forth the specific purpose of the Public Utility Environmental Standards Act ("PUESA") as a State statute intended to regulate public utility infrastructure and provide for a balance between the public need for such infrastructure with any environmental effects associated therewith. As such, in enacting PUESA, the General Assembly established the Siting Council and authorized it to grant a "Certificate of Environmental Compatibility and Public Need" to applicants seeking to build such utility infrastructure. The name of the Statute itself, the legislative purpose behind it and even the name of an approval issued by the Siting Council all specifically use the term "environmental" not "economic". As such, PUESA is at its core an environmental siting statute and the Siting Council's authority as an administrative agency is related only to such purposes.

Indeed, Section 16-50p of PUESA, as noted above, specifically lists the Council's obligation to consider potential significant adverse effects from a tower facility on "the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife." Property values or other off-site economic factors are not even mentioned in the Statute. In fact, PUESA's reference to the term "values" in Section 16-50p omits any mention of property or real estate. Had the General Assembly intended for the Siting Council to consider such values, it would have inserted the word "property" as a term modifying "values" as language directly within the ambit of Section 16-50p, something it did not do in enacting PUESA. As such, the Siting Council has no legal authority to consider real estate values as part of any specific application for a certificate. This is evident by the dozens of Opinions issued by the Siting Council in which the statutory criteria are cited to support its decision and none of the Opinions include consideration of property values.

Moreover, this exact issue was addressed by the State Supreme Court in Town of Westport v. Conn. Siting Council, 47 Conn. Supp. 382 (2001), affirmed 260 Conn. 266 (2002). In Westport, the town argued that the Siting Council was required to consider surrounding property values as part of a tower application on a residential lot. The Supreme Court held that "under section 16-50p . . . the council is not obliged to take into account the status of property values directly." Westport at 407. As such, the Court reiterated that the Council's obligation as part of a tower proceeding was to consider "environmental, scenic, historical and recreational values" and not property values. Given all the foregoing, there simply is no authority for the Siting Council to take into consideration property values in this proceeding.

CONCLUSION

The Applicants demonstrated a public need for the proposed tower Facility presented in this Docket. The public need for the tower Facility is not controverted by any party to the proceeding and is confirmed by the Town's independent wireless market study. Indeed, several public

comments, as well as the Town's own wireless survey, indicate the critical need for reliable wireless services in this part of New Canaan. The record in this proceeding reveals that there are no known practical or feasible alternatives to a tower at the Site in question. The Applicants' evidence demonstrates the importance of this proposed tower Facility needed to serve the public which has experienced gaps in reliable services since the advent of modern day wireless communications.

While there are some limited visual effects associated with the proposed Facility, principally on immediately adjacent properties, the Applicants respectfully submit that such effects are unavoidable in meeting the public's need for reliable commercial and public safety emergency communications services. Moreover, the Applicants have from the outset designed the tower facility on the Site to avoid to the greatest extent practicable any visual impacts and impacts on the natural environment.

Based on all of the foregoing, and upon balancing of the probable environmental effects associated with the proposed facility as required by statute, the Applicants respectfully submit the public need for the tower facility for reliable communications far outweighs any adverse environmental effects associated with the project the Council might deem significant. For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, the Applicants submit that the standards and criteria set forth in C.G.S. Section 16-50p for approval of tower facilities by the Council have been met and fully warrant issuance of a Certificate for the facility as proposed in Docket 487.

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing was sent electronically to the Connecticut Siting Council and the service list below with one hard copy sent to the Connecticut Siting Council, in accordance with Connecticut Siting Council directives.

August 27, 2020



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