

**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

JULY 2, 2020

**PRE-FILED TESTIMONY OF CHRISTOPHER ROSOW AND JULIA GABRIELE ON
BEHALF OF ST. LUKE'S SCHOOL REGARDING THE PROPOSED CELLULAR
TOWER AT 183 SOUNDVIEW LANE, NEW CANAAN, CT**

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Pursuant to the rules of the Connecticut Siting Council (the “Council”), St. Luke’s School/St. Luke’s Foundation, Inc. (“St. Luke’s”) hereby respectfully submits this pre-filed testimony of **CHRISTOPHER ROSOW**, a member of the St. Luke’s Board of Trustees, and **JULIA GABRIELE**, Associate Head of School and Chief Financial Officer of St. Luke’s. Mr. Rosow and Ms. Gabriele will appear and be available for cross-examination at the public hearing(s) in this matter.

I. Background

St. Luke’s is an abutting land owner directly to the north of 183 Soundview Lane (the “Subject Parcel”), the proposed location of the Wireless Telecommunications Tower Facility (“Facility”) proposed in the application (“Application”) submitted by Homeland Towers, LLC and New Cingular Wireless PCS, LLC (collectively, the “Applicant”). St. Luke’s has been granted Party Status by the Council on this application. St. Luke’s is a secular private day school for grades 5 through 12 located at 377 North Wilton Road, New Canaan. St. Luke’s has about 581 students currently enrolled and about 140 faculty, administrators, and staff on their over 40-acre campus.

St. Luke’s is opposed to the Facility in its current proposed form.

The proposed Facility violates Conn. Gen. Stat. § 16-50p(a)(3)(F) because it would be located within 250 feet of a school. The proposed Facility is located a mere 20 feet from the St. Luke’s property line, and the 90-foot-high cellular tower (the “Tower”) would be only 38 feet from the property line. (Application Executive Summary at 22.)

The Application provides no reason why the Facility as proposed fails to comply with the New Canaan Zoning Regulations (the “Zoning Regulations”). Specifically, the proposed Facility would violate the Zoning Regulations in numerous respects: (1) the fall zone of the Tower; (2)

the location and design of the equipment shelter; (3) fencing, (4) landscaping, (5) power density, and (6) noise.

Connecticut General Statutes § 16-50x provides:

When evaluating an application for a telecommunication tower within a particular municipality, *the council shall consider any location preferences or criteria* (1) provided to the council pursuant to section 16-50gg, or (2) *that may exist in the zoning regulations of said municipality* as of the submission date of the application to the council.

(Emphasis added.)

St. Luke's will reconsider its opposition to the Facility if the Applicant revises its proposal to be compliant with the Zoning Regulations and General Statutes, and resubmits it for consideration.

II. Argument

a. Distance of Facility from School

The proposed location of the Facility violates the statutory restrictions on the proximity of such telecommunication facilities to schools. Connecticut General Statutes § 16-50p(a)(3)(F) states:

In the case of a facility described in subdivision (6) of subsection (a) of section 16-50i that is . . . (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....

(Emphasis added.) Significantly, the definition of “facility” includes the “associated” equipment: “such telecommunication towers, including associated telecommunications equipment, owned or

operated by the state, a public service company or a certified telecommunications provider or used in a cellular system....” Conn. Gen. Stat. § 16-50i. Moreover, the relevant definition of “school”¹ is not limited to a school building, but also fairly includes school property with a regular student and faculty presence, such as athletic fields. Thus, the requirement that a wireless facility not be located less than 250 feet from a “school” does not permit the Applicant to locate its Facility within 250 feet of St. Luke’s adjacent athletic fields, let alone within 250 feet of a St. Luke’s school building.

The Facility is proposed to be located just 20 feet from the St. Luke’s property line and athletic fields. (Application Executive Summary at 22.) The Site Plan & Abutters Map SP-1 purports to show the Facility to be approximately 250’ from the main school building at St. Luke’s. (Application Attachment #4.) However, the Applicant’s May 27, 2020 Supplemental Submission acknowledges that the St. Luke’s school building is only 240 feet from the proposed equipment cabinet. (Applicant’s Supplemental Submission, 5/27/2020 at 6, 12.) Therefore, the proximity of the Facility to St. Luke’s school building and activities clearly violates the provisions of the General Statutes governing the siting of wireless facilities.

Nor is there evidence that the proposed Facility “will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood in which such school...is located,” so as to excuse the Applicant from the statutory prohibition on placing its Facility within 250 feet of a school. To the contrary, the Facility as proposed would have a significant negative impact on the aesthetics and scenic quality of St. Luke’s environs. The Applicant admits that “the majority of the views beyond the Parcel would be limited to . . . portions of St. Luke's School campus.” (Application Executive Summary at 17.) The Applicant further acknowledges that “[s]easonal

¹ “ ‘School’ means a public school as defined in section 10-183b or a private elementary or secondary school attendance at which meets the requirements of section 10-184.” Conn. Gen. Stat. § 10-154a.

views (“leaf-off”) increase the visibility of the tower site and will primarily occur along North Wilton Road near St. Luke’s School.” (Application Attachment #8 (Visibility Analysis) at 9.)

Moreover, “St. Luke’s School at 377 North Wilton Road in New Canaan, abuts the Host Property to the north. Year-round views are anticipated from the St. Luke’s School campus....”

Id. It is evident that St. Luke’s will bear the brunt of the visual impact of the Facility.

Furthermore, because the Council is not conducting its customary public field review or balloon fly at the site, the Council lacks the opportunity to judge for itself, based on personal observation, the aesthetic impact of the Facility on St. Luke’s. Accordingly, there is no basis to depart from the statutory 250-foot limit. As required by Conn. Gen. Stat. § 16-50p(a)(3)(F), the Council should require the Applicant to propose a location for the Facility that is more than 250 feet away from St. Luke’s.

b. Fall Zone of the Tower

The proposed location of the Facility also violates the Zoning Regulations, because the fall zone of the proposed Tower includes a large portion of St. Luke’s property. Section 7.8(g)(7) of the Zoning Regulations provides:

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.) According to the Application, the Tower is proposed to be 90 feet tall with a “yield point” (alternatively referred to as the “hinge point”) “at the 52’ above grade level [“AGL”] elevation so that in the unlikely event of a catastrophic failure, the tower radius will be contained within the parcel.” (Application Executive Summary at 22-23; *see also* Site Impact Statement.) The “Site Plan & Abutters Map SP-1,” dated August 29, 2019, illustrates that the fall

zone of the Tower includes a large portion of the St. Luke's property near athletic fields and recreational areas. (Application Attachment #4.) While a catastrophic failure of the upper section of the Tower might be contained on the Subject Parcel, the Application fails to provide evidence that, in the event of a catastrophic failure of the lower portion of the Tower, St. Luke's property and occupants would not be at risk. Specifically, such a failure of the lower portion of the Tower could cause the 52-foot portion of the Tower below the yield point to fall onto St. Luke's property. Furthermore, there is no evidence presented that the yield point would, in fact, "yield" in the event that the catastrophic event took place on a lower portion of the Tower.

The Applicant has failed to provide information demonstrating that having a yield point at 52' would provide adequate protection in the event of a catastrophic failure of the Tower in its lower portion. The application does not provide any information as to the design, construction, and engineering standards for Tower, or for the base of the Tower. No information is provided on soil and earth suitability for construction of this type of structure. No information is provided for the foundation of the Tower. No information is provided for a method of attachment for the Tower itself to the foundation. In the absence of comprehensive engineering data as well as third-party, independent review of such data, there is no evidence that the base or the lower section of the tower is immune from catastrophic failure (either by failure of design, or by use of materials that inadvertently fail, or by underlying ground conditions such as erosion that compromise the base of the tower).

Given that there is no guarantee against a catastrophic failure of the Tower injuring St. Luke's students, faculty, or visitors, or damaging St. Luke's property, the Tower must be set back from the St. Luke's property line by at least its full planned height of 90 feet, as required by the Zoning Regulations. Additionally, since Soundview Lane is an emergency access for St.

Luke's, the Tower should be set back 90 feet from the Soundview Lane property line as well. Indeed, the same catastrophe (such as a fire, storm, or earthquake) that causes a need for emergency access to St. Luke's could very well concomitantly cause the Tower to fall, blocking that very access.

St. Luke's students, faculty, administrators, and staff utilize the areas directly across the property line. The location of the Tower so close to school property violates not only the letter but also the spirit of the Zoning Regulations, which is to protect adjacent property owners from a falling cellular tower.

c. Location and Design of the Equipment Shelter

The proposed location and design of the equipment shelter also violates the Zoning Regulations. Section 7.8(g)(13) of the Zoning Regulations provides the following guidance for equipment shelters:

For equipment shelters associated with telecommunications facilities:

- the presence of wireless communication equipment shall be concealed within buildings that resemble sheds and other building types found in New Canaan.
- Such buildings shall not exceed one story in height and shall not exceed the maximum height in feet for an accessory building as specified in Section 3.5.F.2 of these Regulations.
- Such equipment and shelters shall be set back from property lines in accordance with the requirements in the zoning district for the minimum yard setbacks for principal buildings.
- such equipment shelters shall, in the opinion of the Commission, be appropriately scaled (floor area, height) and designed for the setting and the number of carriers provided.
- In unusual situations where the above is not practical or desirable, the Commission may allow the use of underground vaults or ground-mounted equipment shielded by extensive landscaping and/or fencing.

It is clear that the Applicant has again failed to make any attempt to meet the requirements of the Zoning Regulations. The proposed equipment shelter within the Facility is described as a "walk-in equipment cabinet" which "would be installed on a steel platform within

the 23' 6" x 75' fenced tower compound area at the base of the monopine.” (Application Attachment #3.) First, the location of the equipment cabinet fails to meet the setback requirements of the Zoning Regulations. The Subject Parcel is located in the Four Acre Residence Zone. Zoning Regulations § 3.5(E) provides that the minimum yard setbacks for accessory buildings or structures in the Four Acre Residence Zone is 50 feet for front, side, and rear yard setbacks both in front lots and rear lots. According to the Application, the equipment compound is proposed to be set back only 20 feet from the St. Luke’s property boundary. (Application Attachment #4, sheet CP-1.) Therefore, the equipment cabinet intrudes far into the 50’ required setback under Zoning Regulations § 3.5(E) and represents another infringement upon the standards set by the local community. Furthermore, the “walk-in cabinet” is in no way concealed within a building, and the Application shows no attempt to make it look like a shed or similar structure. Therefore, in compliance with the Zoning Regulations, the equipment cabinet should be enclosed within a building designed to resemble a shed typically found in New Canaan, and should be located at least 50 feet from the nearest property lines.

Zoning Regulations § 7.8(g)(13) provides further parameters for the shelter, which the Application violates: “[a]ny equipment cabinets or other appurtenances used in association with the tower or antenna shall be clearly shown as part of the application including how such equipment is designed to blend with the surrounding landscape or be obscured from adjacent properties and streets.” The Application states that the “proposed equipment cabinet will be concealed from behind an 8’ tall wood shadowbox fence as well as shielded from view by the natural buffer in the area as well as proposed landscaping.” (Application Executive Summary at 23.) However, the “Compound Plan & Tower Elevation” sheet denoting “Southeastern Elevation” shows that the equipment cabinet will be taller in height than the proposed 8’ tall

wood shadowbox fence. (Application Attachment #4.) Furthermore, there is no indication that the other equipment within the fenced area blends in with the surrounding landscape in any way. Therefore, landscaping and/or appropriate fencing should be provided around the equipment to screen these items from adjacent properties and the street, as required by the Zoning Regulations.

d. Fencing

The proposed fencing for the Facility also violates the Zoning Regulations. Section 7.8(g)(16) of the Zoning Regulations states that “[s]ecurity fencing, no more than six feet in height, may be required by the Commission around the antenna, tower, and equipment depending on the nature of the installation.” According to the Application and as mentioned above, “[t]he Applicant is proposing an 8’ tall wood shadowbox fence to completely enclose [sic] the Facility.” In accordance with the Zoning Regulations, the fencing surrounding the compound should be no more than 6 feet in height, with additional consideration to landscaped screening around the facility. This not only will make the proposed fencing comply with the applicable regulations, but will also provide further natural screening for equipment that is not within a shed-like structure and is over 6 feet in height.

e. Landscaping

The Applicant’s proposal for landscaping also fails to satisfy the Zoning Regulations. Zoning Regulations § 7.8(g)(17) states that “[l]andscaping, including buffering, may be required by the Commission around the antenna, tower, and equipment depending on the nature of the installation.” Significantly, no landscape screening or buffering is provided between the Facility and St. Luke’s property. Due to the fact that the 20 feet between the St. Luke’s property line and the compound is proposed to be used for a gravel access drive, no screening would be feasible

there. The Facility should be set further back from the St. Luke's property line to allow for adequate screening.

In addition, the site plan calls for the compound to be elevated at least five feet, from 496' to 501' at the northern end, closest to St. Luke's property line. (Application Attachment #4, sheet CP-1.) No landscape screening or buffering is provided whatsoever to compensate for the altered and heightened visual landscape that will be evident from the St. Luke's property and buildings. The Applicant should revise its proposal to include adequate landscaping and screening to the north.²

f. Power Density

The Applicant also has not demonstrated that the proposed Facility would satisfy Zoning Regulations § 7.8(g)(18), which provides that “[a]ll antennae and equipment shall be operated in a manner consistent with FCC guidelines for radio frequency emission and other requirements.” The Applicant's Environmental Assessment Analysis states that “[t]he cumulative worst-case calculation of power density from AT&T's operations at the facility would be 23.87% of the federal MPE standard.” (Application Attachment #5, Environmental Assessment Analysis.) However, the Application states under “Tower Sharing” that “[t]he proposed Facility is designed to accommodate the antennas and equipment of AT&T and up to three (3) additional wireless carriers for wireless services networks in the Town of New Canaan as well as Town EMS, fire, and police communications equipment.” (Application Executive Summary at 15.) According to the Compound Plan & Tower Elevation sheet, the proposed locations of future carrier antennae

² Notably, the Applicant's proposal to screen the southern portion of its Facility does not satisfy the Zoning Regulations either. Between the compound and Soundview Lane to the Southwest, the proposal calls for only three 8' Norway Spruce trees. *Id.* Scaling the Applicant's site plan indicates that an 8' tall Norway Spruce is approximately 9'-2" wide (diameter). Three spruce trees spread over approximately 30 feet are not adequate to screen the equipment within the Facility.

array centerline are proposed at 71' AGL, 61' AGL, and 51' AGL, all below the proposed AT&T antennas at 81' AGL. (Application Attachment #4.) Therefore, to be in compliance with the Zoning Regulations, and to provide transparent information to the Council and the community in which its Facility will be located, the Applicant must forecast what the potential power density would be if four carriers occupy the Tower.

g. Noise

The Applicant also has not shown that the Facility would meet the requirements of the Zoning Regulations with regard to noise. Zoning Regulations § 7.8(g)(19) provides that “[a]ll antennae and equipment shall, under normal operating conditions, be consistent with the noise standards as stated in the Town of New Canaan Noise Ordinance, Chapter 6B of the Town of New Canaan Code.” The Application fails to provide performance characteristics of the sound attenuation blankets to be installed with the fencing, or the extent to which the blankets will be installed within the Facility. Moreover, within the Application, no information is provided as to whether additional generators will be required if other carriers co-locate on the Tower. However, the Applicant’s March 27, 2020 responses to Set One of the Siting Council’s interrogatories states that additional carriers who co-locate at the Tower will be required to provide their own generators. (Responses to Siting Council Interrogatories Set One, A23.) No data is offered to ensure that the potential operation of four generators will not exceed the limits of the Noise Ordinance. To be in compliance with the Zoning Regulations and to provide complete information on which the Council can base a sound decision, the Applicant must forecast what the potential noise emission would be from the compound if four carriers occupy the Tower.

III. Conclusion

St. Luke's has conducted an analysis which indicates that if the Tower were located 90 feet (the height of the Tower) from the street and property lines, all requirements under the New Canaan Zoning Regulations regarding setbacks could be met, including allowing for substantial landscape screening to be installed between the equipment compound and the St. Luke's property line and between the equipment compound and Soundview Lane.

According to the St. Luke's analysis, if the Tower were located 90 feet from the street and side property lines as outlined above, the approximate ground elevation at the base of the Tower would be 502.5'. As currently proposed, the Tower is at an elevation of approximately 503.2'. Thus, there would be an insignificant (0.7') reduction in elevation of the Tower.

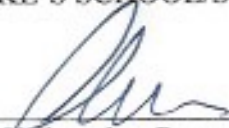
Relocating the Tower as described would therefore pose no meaningful change to the potential performance and service radius of the Facility.

Because it appears that the Tower has been proposed for the convenience of the host property landowner and the Applicant, with no regard to the New Canaan Zoning Regulations, and with no regard to the requirement of the General Statutes that cellular facilities be located at least 250 feet away from a school, St. Luke's asks the Connecticut Siting Council to deny the Application in its current form.


Dated: July 2, 2020
New Canaan, Connecticut

ST. LUKE'S SCHOOL/ST. LUKE'S FOUNDATION, INC.

By: _____


Christopher Rosow, Trustee

By: _____


Julia Gabriele, Associate Head of School
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