

CONNECTICUT SITING COUNCIL

PETITION OF NEW CINGULAR)	
WIRELESS PCS, LLC ("AT&T") TO THE)	
CONNECTICUT SITING COUNCIL FOR A)	PETITION NO. 1010
DECLARATORY RULING THAT NO)	
CERTIFICATE OF ENVIRONMENTAL)	JANUARY 30, 2012
COMPATIBILITY AND PUBLIC NEED IS)	
REQUIRED FOR THE PROPOSED)	
INSTALLATION OF A CONCEALED)	
TOWER ON A WATER TANK AND)	
RELATED FACILITIES LOCATED AT A)	
WATER TREATMENT PLANT AT)	
455 VALLEY ROAD)	
GREENWICH, CONNECTICUT)	

AT&T's OPPOSITION TO THE MOTION FOR A CONTINUANCE

Petitioner, New Cingular Wireless PCS, LLC ("AT&T"), opposes the January 25, 2012 motion for a continuance made by counsel for proposed intervenors in Petition 1010. AT&T requests that the February 9, 2012 public hearing proceed as scheduled for the reasons more fully set forth herein.

1. Petition 1010 And Notice To Abutting Property Owners In November 2011

On October 5, 2011, the Connecticut Siting Council ("Council") received AT&T's Petition to construct a concealed tower on a water tank and associated equipment at the Aquarion water treatment plant, with an address of 455 Valley Road, Greenwich, Connecticut ("Aquarion Plant"). In accordance with the Council's customary practice, a site visit was conducted on November 2, 2011 which included notice to Town of Greenwich officials. Subsequent to the site visit, the Council requested that AT&T notify abutting property owners of pending Petition 1010. A copy of the notice provided to the proposed intervenors Richard and Susan Kosinski and Peter and Elizabeth Janis dated November 10, 2011 and the signed certified mail return

receipts are annexed hereto as Exhibit A. Upon information and belief, proposed intervenors Lee and Kaori Higgins do not own property that abuts the Aquarion Plant.

2. The Proposed Intervenors Requested A Public Hearing Two Months Ago

On November 25, 2011, the proposed intervenors wrote to the Council opposing AT&T's proposed facility at the Aquarion Plant as set forth in correspondence, copies of which are included in Exhibit B. On November 27, 2011, proposed intervenor, Richard Kosinski wrote to the Council and requested a public hearing as set forth in correspondence, a copy of which is also included in Exhibit B. As noted in AT&T's December 8, 2011 Supplemental Submission II, part 2 which is on file with the Council, a public hearing on a petition for a declaratory ruling is not legally required and the majority of the grounds cited by the proposed intervenors for a public hearing are outside of the Council's jurisdiction in ruling on Petition 1010. On December 9, 2011, the Council scheduled a public hearing as requested by the proposed intervenors and provided public notice of the February 9, 2012 date on December 16, 2012.

3. Proposed Intervenors, Counsel & The Pre-Hearing Conference On January 18, 2012

Upon information and belief, the proposed intervenors have sought the assistance of counsel since November of 2011 and have been fully aware of the Council's schedule of proceedings as adopted on December 9, 2011 and posted on the Council's website. On January 18, 2012, counsel for the proposed intervenors attended the Council's pre-hearing conference. At that time, a procedural discussion ensued regarding the deadline for requesting intervenor status, motions for continuances and the deadline for a ruling on Petition 1010 by April 2, 2012.

4. The Proposed Intervenors' Motion For A Continuance

On January 25, 2012, one day prior to the deadline for requests for party or intervenor status, counsel for the proposed intervenors filed a "Request to Intervene" and a "Motion for

Continuance and Order”. AT&T will be responding to the Request to Intervene in a separate filing. The proposed intervenors’ Motion for Continuance and Order seeks a delay in the Council’s ruling on Petition 1010 for three distinct reasons, two of which are baseless as a matter of law and one of which lacks any equitable grounds upon which an adjournment of the public hearing should be granted.

5. State Law Specifically Permits AT&T’s Use Of Aquarion’s Water Treatment Plant

The Council cannot defer its statutory obligation to consider AT&T’s petition for a declaratory ruling on grounds unrelated to the Public Utility Environmental Standards Act, Section 16-50g et. seq (the “PUESA”). This includes matters related to another State agency’s primary jurisdiction or lack thereof under state law. Accordingly, the Council simply does not have the legal authority to defer ruling on AT&T’s Petition based on an allegation that an approval is required from another agency as it relates to a completely separate statute regulating water companies and agreements with wireless communications companies for the use of water tanks and related property.

Moreover, the proposed intervenors erroneously cite Connecticut General Statutes in asserting that AT&T cannot use Aquarion’s water tank and related water company land for a wireless communications facility. Upon information and belief, counsel for the proposed intervenors is referring to Section 25-32 of the Connecticut General Statutes. Yet, counsel fails to cite subsection 25-32(f) which specifically states that:

“(f) Nothing in this section shall prevent the lease or change in use of water company land to allow for recreational purposes that do not require intense development or improvements for water supply purposes, **for leases of existing structures, or for radio towers or telecommunications antennas on existing structures.** For purposes of this subsection, intense development includes golf courses, driving ranges, tennis courts, ballfields, swimming pools and uses by motorized vehicles, provided trails or pathways for pedestrians, motorized wheelchairs or nonmotorized vehicles shall not be considered intense development.” (emphasis supplied)

Thus, irrespective of the land classification for the Aquarion Plant, AT&T's use of the water tank and related area for a tank top communications tower and equipment is in fact permitted as a matter of state law.

Moreover, we are advised by Aquarion of their position that at most, the Aquarion Plant and area of the existing water tank is classified as Class II watershed lands. We are further advised, that, to the extent Connecticut State Department of Public Health ("DPH") regulations may require Aquarion to make any filings related to a specific lease with a wireless carrier, Aquarion would typically coordinate such filings post local zoning or Siting Council approvals. Thus, independent of the Council's jurisdiction over AT&T's proposed wireless facility at the Aquarion Plant, Aquarion would proceed with any DPH filings if required in this matter only after a Siting Council determination on AT&T's project.

6. Aquarion's Deed Does Not Have A Restrictive Covenant On Use

PUESA does not give the Council jurisdiction to consider or interpret a petitioner's real estate rights as set forth in a lease, deed, right-of-way, easement or other legal instruments. This includes matters related to the chain of title associated with an underlying property on which a wireless facility is proposed for construction. As such, the Council has no authority to adjourn these proceedings based on an allegation related to title and AT&T's real property interests.

More importantly, counsel for the proposed intervenors have grossly misstated the nature of Aquarion's title and the holding in Morgenbesser v. Aquarion Water Company of Connecticut, 276 Conn. 825 (2006). First and foremost, unlike the plaintiffs in Morgenbesser, we do not believe the proposed intervenors have standing to even bring a lawsuit against Aquarion as their properties do not appear to be part of the chain of title for the Aquarion Plant and they are not beneficiaries of any of the contents thereof. Secondly, to the extent the deed as presented to the

Council by the proposed intervenors is germane to Aquarion's title, it at best contains a right of reverter, not a restrictive covenant. Indeed, the language is decidedly different than that which was at issue in Morgenbesser and is not "substantially similar" legally or factually as alleged by counsel. As such, any lawsuit by the proposed intervenors will be vigorously defended and subject to a motion to dismiss.

7. The Proposed Intervenors Do Not Have A Due Process Right To A Continuance

As noted above, a petition for a declaratory ruling does not require a public hearing as a matter of law. See Uniform Administrative Procedure Act ("UAPA"), C.G.S. § 4-176(g), PUESA, R.C.S.A. § 16-50j-40(b). As such, the statement by counsel for the proposed intervenors that their due process rights would be impacted by the Council proceeding with a public hearing is wholly misplaced. Moreover, the request for a public hearing was made by the proposed intervenors themselves and when granted by the Council gave them a full two months to prepare. There simply is no equitable basis for counsel for the proposed intervenors to claim prejudice, due process or any other equitable basis upon which to postpone the public hearing. Indeed, and as more fully set forth in its response to the Request to Intervene, the proposed intervenors have no specific legal interests that would give rise to party status in this case.

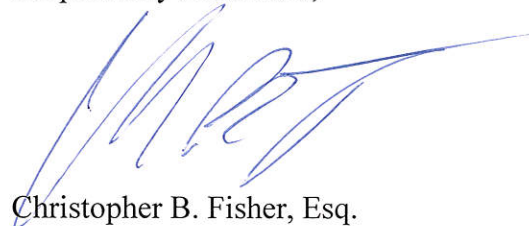
Furthermore, AT&T as the Petitioner is the party to these proceedings with a due process right. Specifically, federal law gives the Petitioner certain procedural rights to a timely decision in Petition 1010 as more fully set forth in the Communications Act, 47 U.S.C. § 332(c)(7). The Federal Communications Commission has further ruled that tower applications must be decided by state and local governmental agencies within 150 days. See *Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, 24 F.C.C.R. 13994, 14015-16, ¶ 56 (2009), upheld, City of Arlington v. FCC, No. 10-60039 (5th Cir. Jan. 23, 2012).

In this particular matter, the Council preliminarily considered AT&T's Petition and decided to render a ruling on the matter by April 2, 2012 pursuant to Section 4-176 of UAPA. AT&T has a right to have Petition 1010 decided by the Council by such date as both a matter of state and federal law. The proposed intervenors' motion for a thirty day continuance would not allow the Council to follow its schedule and rule on Petition 1010 timely. As such, AT&T will not consent to the intervenors' motion which effectively seeks an extension of time for a decision.

8. Conclusion

For all of the foregoing reasons, the Petitioner respectfully requests that the proposed intervenors' Motion for a Continuance and Order be denied and that the public hearing as initially requested by the proposed intervenors and scheduled for February 9, 2012 proceed.

Respectfully Submitted,



Christopher B. Fisher, Esq.
Cuddy & Feder, LLP
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
(914) 761-1300

Attorneys for and on behalf of
Petitioner AT&T

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing was sent electronically and the original and twenty one copies by overnight delivery to the Connecticut Siting Council with a copy by first class mail to:

Mario F. Coppola, Esq.
Bercham, Moses, and Devlin, P.C.
27 Imperial Avenue
Westport, Connecticut 06880

Dated: January 30, 2012



Christopher B. Fisher, Esq.

cc: Michele Briggs, AT&T
Liz Camerino-Schultz, Aquarion

EXHIBIT A

VIA CERTIFIED MAIL

Richard and Susan Kosinski
470 Valley Road
Cos Cob, CT 06807

Re: Notice of Pending Petition No. 1010
State of Connecticut Siting Council
AT&T Tank Mounted Communications Facility
Aquarion Water Company Filtration Plant
455 Valley Road, Greenwich, Connecticut

Dear Mr. and Mrs. Kosinski:

We are writing to you at the request of the State of Connecticut Siting Council to notify you of the above referenced matter and a New Cingular Wireless PCS, LLC ("AT&T") petition that is currently pending before the agency.

Our client AT&T has filed for approval to install a concealed structure on top of the existing water tank at the Aquarion water filtration plant located at 455 Valley Road in the Town of Greenwich. AT&T proposes to enclose wireless communications antennas and other equipment inside a cylindrical structure 15' in diameter extending approximately 17.5' above the top of the existing water tank to an overall height of 64' AGL to provide its services locally. The structure would be fully enclosed, painted to match the existing water tank and appear as part of the water tank itself as shown in the enclosed photo simulation. Additionally, a small AT&T equipment shed would be installed adjacent to the water tank with a brick like façade and pitched roof.

As an abutting property owner, the Siting Council has asked us to notify you of this matter in the event that you have any specific questions or comments we might answer about the project. You may also contact the Siting Council directly at 860-827-2935 or visit their website at www.ct.gov/csc. Please also be advised that the Siting Council will be considering AT&T's petition on an upcoming agenda and has asked that any written comments you may choose to provide be sent to them at their address, 10 Franklin Square, New Britain, Connecticut 06051 or by fax at 860-827-2950. Further, the Siting Council has requested that any such comments be provided to them no later than December 9, 2011.

Very truly yours,



Christopher B. Fisher
CBF/ag

VIA CERTIFIED MAIL

Peter B and Elizabeth D Janis
446 Valley Road
Cos Cob, CT 06807

Re: Notice of Pending Petition No. 1010
State of Connecticut Siting Council
AT&T Tank Mounted Communications Facility
Aquarion Water Company Filtration Plant
455 Valley Road, Greenwich, Connecticut


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Very truly yours,


Christopher B. Fisher
CBF/ag

2. Article Number



7196 9008 9040 0578 2292

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

08 2439 S
Peter B and Elizabeth D Janis
446 Valley Road
Cos Cob, CT 06807

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature X <i>[Signature]</i>	
<input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

Reference Information

7000016

PS Form 3811, January 2005

Domestic Return Receipt

2. Article Number



7196 9008 9040 0578 2285

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

08A 1411
Richard and Susan Kosinski
470 Valley Road
Cos Cob, CT 06807

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature X <i>[Signature]</i>	
<input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

Reference Information

7000015

PS Form 3811, January 2005

Domestic Return Receipt

EXHIBIT B

Richard & Susan Kosinski
470 Valley Road
Cos Cob, CT 06807

November 27, 2011

VIA CERTIFIED MAIL

Mr. Robert Stein
Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: Notice of Pending Petition No. 1010
State of Connecticut Siting Council
AT&T Tank Mounted Communications Facility
Acquarion Water Company Filtration Plant
455 Valley Road, Greenwich, Connecticut

ORIGINAL
RECEIVED
NOV 30 2011
CONNECTICUT
SITING COUNCIL

Dear Mr. Stein,

Last week, I wrote to you to express my opposition to the above referenced petition by AT&T to place a cell tower on the property next to my home.

I'm not alone in my opposition. Attached you'll find:

- 14 letters from my neighbors who also oppose the petition;
- A copy of a petition we created last week. We've received 150 signatures to the petition, the vast majority from residents. I expect we'll see 200 signatures by the end of this week;
- Copies of letters to federal, state and local officials.

On behalf of our neighborhood organization, "Neighbors for the Mianus River Gorge," we're requesting a public hearing so that the Council listens to concerns and suggestions prior to considering AT&T's petition.

I appreciate your consideration of granting us a public hearing.

Sincerely,


Richard Kosinski

(203) 661.0993

Encl.

Peter & Elizabeth Janis
450 Valley Road
Cos Cob, CT 06807

November 25, 2011

VIA CERTIFIED MAIL

Mr. Robert Stein
Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

RECEIVED
NOV 30 2011
CONNECTICUT
SITING COUNCIL

Re: Notice of Pending Petition No. 1010
State of Connecticut Siting Council
AT&T Tank Mounted Communications Facility
Acquarion Water Company Filtration Plant
455 Valley Road, Greenwich, Connecticut

Dear Mr. Stein,

We're writing you regarding the referenced matter of AT&T's petition before the Siting Council. As neighbors in the immediate vicinity, we're adamantly opposed to any such installation. We oppose the structure for several reasons including:

1. **Safety/Fall Zone** - The closest residential property is 62 feet from the site. The tower would be 65 feet;
2. **Availability of other suitable locations** - this is a densely populated neighborhood of family residences with a nursery school approximately 0.5 miles downriver. There are numerous alternative locations, both up and down river, better suited for the proposed tower;
3. **Environmental threat to river & wildlife** in the Mianus River Gorge and wetlands surrounding the site;
4. **Health risks posed to young children and families**, some of whom live and sleep less than 100 feet from the proposed site;
5. **Historical Value of this area:** Homes in this area are more than 100 years old;
6. **Negative unnatural aesthetics** resulting from a structure extending 65 feet above the ground;
7. **Increase in road traffic** resulting from improved reception in the area;
8. **Unnecessary need** for such a communications tower in the area due to alternative communications options;
9. **Decrease in property values.**

We do not want this Cell Tower in our neighborhood and neighbors in a densely populated area, will use any and all resources necessary to prevent construction of this structure in our neighborhood.

Sincerely,


Peter & Elizabeth Janis

203-625-5553

Cc:

Dannel P. Malloy, Governor, State of Connecticut
L. Scott Franz, State Senator, 36th District, State of Connecticut
Fred Camillo, State Representative, 151st District, State of Connecticut
Peter Tesei, First Selectman, Town of Greenwich, CT
David N. Theis, Selectman, Town of Greenwich, CT
Drew Marzullo, Selectman, Town of Greenwich, CT
James G. Boutelle, RTM, Chairman, District #8
Peter Berg, RTM, District #8

Susan Kosinski
470 Valley Road
Cos Cob, CT 06807

November 25, 2011

VIA CERTIFIED MAIL

Mr. Robert Stein
Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

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Sincerely,


Susan Kosinski

203-661-~~3814~~ 0993

Cc:

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480 Valley Road
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Sincerely,


Lee Higgins

203-661-~~1021~~ 1021

Cc:

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L. Scott Franz, State Senator, 36th District, State of Connecticut
Fred Camillo, State Representative, 151st District, State of Connecticut
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Kaori Higgins
480 Valley Road
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Sincerely,


Kaori Higgins

~~203-661-3814~~ 203-661-1021

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