CONNECTICUT SITING COUNCIL

PETITION OF NEW CINGULAR WIRELESS PCS, LLC ("AT&T") TO THE CONNECTICUT SITING COUNCIL FOR A DECLARATORY RULING THAT NO CERTIFICATE OF ENVIRONMENTAL 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 RD., GREENWICH, CT	)	**PETITION NO. 1010** **JANUARY 25, 2012**

MOTION FOR CONTINUANCE AND ORDER

The proposed intervenors, LEE HIGGINS, KAORI HIGGINS, PETER JANIS, ELIZABETH JANIS, RICHARD KOSINSKI and SUSAN KOSINSKI (hereinafter the "Proposed Intervenors"), hereby state the following in support of this Motion:

1. On October 4, 2011, New Cingular Wireless PCS, LLC (hereinafter "AT&T") filed the underlying Petition 1010 for a declaratory ruling that no certificate of environmental compatibility and public need is required for the proposed installation of a tower on a water tank and related facilities located at 455 Valley Road, Greenwich, CT (hereinafter "AT&T's Proposed Tower"). Petition 1010 has been scheduled for a public hearing on February 9, 2012 and the Connecticut Siting Council (hereinafter "Siting Council") has directed that "all testimony and exhibits be pre-filed with the Council and all parties and intervenors by February 2, 2012.

2. The Proposed Intervenors recently retained legal counsel and have filed their Application for Intervention simultaneously with the filing of this Motion.

3. The 455 Valley Road property is owned by the Aquarion Water Company of Connecticut (hereinafter "Aquarion") and it consists of 2.63 acres of watershed land, which is directly adjacent to and abuts the waters of the Mianus River and Mill Pond (hereinafter the "Aquarion Watershed Land"). Upon information and belief, the Mianus River is one of two water sources in the Town of Greenwich and it serves approximately 130,000 residents.

4. The Aquarion Watershed Land is "class I" protected land within the meaning of C.G.S. § 25-37c(b), which cannot be legally leased and/or used for any purpose other than water works purposes without a permit from the Commissioner of the Connecticut Department of Public Health. To date, AT&T has not presented evidence which demonstrates that it has obtained the necessary permit(s) from the Department of Public Health. The public hearing should be postponed to allow AT&T to present evidence that it has obtained the necessary permit(s) from the Department of Public Health and, if not, to allow AT&T to obtain the necessary permit(s) from the Department of Public Health. If AT&T argues that it is not required to obtain said permit(s) from the Department of Public Health, then AT&T should be required to present the Council with written verification from the Department of Public Health which would certify that AT&T is not required to obtain a permit(s). It would be improper for the Council to proceed in any way whatsoever with Petition 1010 without evidence that the permit(s) have been obtained by AT&T from the Department of Public Health, or written verification from the Department of Public Health which certifies that AT&T is not required to obtain a permit(s).

5. The deed transferring the Aquarion Watershed Land contains a restrictive covenant limiting the use of the Aquarion Watershed Land for water works purposes as follows "the premises hereby conveyed shall be used for water works purposes, and shall revert to the [Town]

herein, its successors and assigns, in the event the premises cease to be used for water works purposes." A copy of the deed is attached hereto as Exhibit 1. Said restrictive covenant will be violated by the construction and existence of AT&T's Proposed Tower on the Aquarion Watershed Land. The Proposed Intervenors are in the process of commencing a lawsuit against Aquarion, among other defendants, seeking, *inter alia*, injunctive and declaratory relief based upon said restrictive covenant. In Morgenbesser v. Aquarion Water Company of Connecticut, 276 Conn. 825 (2006) (attached hereto as Exhibit 2), the Connecticut Supreme Court held that a substantially similar restrictive covenant on land owned by Aquarion in Greenwich, Connecticut prohibited the installation of wireless telecommunication antenna panels and related improvements. The Council should also postpone the public hearing in order to permit the Superior Court to make a ruling regarding the Proposed Intervenors' request for injunctive and/or declaratory relief which will be filed shortly by the Proposed Intervenors.

6. The Proposed Intervenors also request a postponement of the public hearing in order to permit a reasonable period of time for them to retain experts who will provide evidence and testimony to the Council for the purpose of demonstrating that the activity proposed by AT&T for the Aquarion Watershed Land will unreasonably and illegally impact: "class I" protected land in violation of C.G.S. § 25-37c(b); public water sources such as the Mianus River and Mill Pond; inland wetlands; and scenic vistas in a residential area. The Proposed Intervenors also request a postponement of the public hearing in order to permit them a reasonable period of time to file interrogatories to be answered by AT&T and/or for the Proposed Intervenors to obtain expert evidence and testimony on the environmental issues which are to be considered by the Council.

7. It is impossible for the issues set forth above to be addressed unless there is a postponement of the February 9, 2012 public hearing. There is no reason why AT&T will be

substantially prejudiced by a thirty (30) day postponement. However, a denial of this Motion would be a clear violation of the guiding principles set forth in C.G.S. § 16-50g, which provide for a balancing of the need for adequate and reliable public utility services with the need to protect the environment and ecology of the State and to minimize damage to scenic, historic and recreational values. A denial of this Motion would also violate the due process rights of the Proposed Intervenors.

Wherefore, the Proposed Intervenors hereby request that:

1. the February 9, 2012 public hearing be postponed for at least thirty (30) days;

2. the February 2, 2012 deadline for filing all testimony and exhibits be postponed by at least thirty (30) days;

3. any deadlines for requesting interrogatories of the Petitioner be postponed for at least thirty (30) days; and

4. any other deadlines set forth by the Council be postponed for at least thirty (30) days.

RESPECTFULLY SUBMITTED BY:

LEE HIGGINS, KAORI HIGGINS,
PETER JANIS, ELIZABETH JANIS,
RICHARD KOSINSKI & SUSAN KOSINSKI

BY: 

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Their Attorneys

CERTIFICATE OF SERVICE

This is to certify that on the above date a true copy of the foregoing has been sent by U.S. Mail, first-class, postage pre-paid, to the following parties of record:

Ms. Linda Roberts, Executive Director, Connecticut Siting Council, 10 Franklin Sq., New Britain, CT 06051 (1 original, 15 copies, plus 1 electronic)

New Cingular Wireless, PCS, LLC (AKA – AT&T), Christopher Fisher, Esq. Cuddy & Feder, LLP, 445 Hamilton Avenue, 14th Fl., White Plains, NY 10601

Mario F. Coppola, Esq.

EXHIBIT 1

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, THAT TOWN OF GREENWICH, a municipal corporation of the State of Connecticut, acting herein by C. Carleton Gisborne, Frank R. Parker and John P. Sullivan, its Selectmen, hereunto duly authorized, by Resolution of the Representative Town Meeting held April 13, 1953, for the consideration of ELEVEN THOUSAND FIVE HUNDRED ($11,500.00) DOLLARS received to its full satisfaction of GREENWICH WATER COMPANY, a corporation organized under the laws of the State of Connecticut, and located in said Town of Greenwich, does remise, release, and forever QUIT-CLAIM unto the said GREENWICH WATER COMPANY, its successors and assigns forever, all the right, title, interest, claim and demand whatsoever as it the said Releasor has or ought to have in or to,

All that certain tract, piece or parcel of land, with the improvements, if any, thereon or attached thereto, situated in the Town of Greenwich, County of Fairfield and State of Connecticut, bounded and described as follows:

Beginning at the point formed by the intersection of the division line between land of the Releasor, being the premises hereby conveyed, and land of The Institute of Evolutionary Psychology with the easterly line of Valley Road, and running thence along land of The Institute of Evolutionary Psychology South 58° 04' 40" East 36.0 feet, thence southerly along the westerly shore of a pond to and along the westerly bank of the Mianus River about 1015 feet, thence through land of the Releasor North 80° 32' 40" West 37.71 feet to the easterly line of Valley Road, thence northerly along the easterly line of Valley Road 297.15 feet along the arc of a circle curving to the right on a radius of 200.8 feet, the chord of which is North 2° 40' 25" West 270.77 feet, North 39° 43' 10" East 73.0 feet, North 40° 08' 20" East 248.90 feet, North 42° 02' East 85.09 feet, North 46° 41' 10" East 15.86 feet, North 52° 41' 30" East 23.72 feet, North 52° 44' East 8.36 feet, North 58° 06' 20" East 15.75 feet, South 48° 18' East 26.67 feet, North 40° 00' 50" East 84.69 feet, North 61° 30' 50" East 26.69 feet and North 37° 46' 20" East 26.53 feet to the point of beginning, and containing about 2.63 acres.

The general boundaries of the above described tract of land are Northerly by Valley Road and land of The Institute of

Evolutionary Psychology, Easterly by waters of a pond and Mianus River, Southerly by other land of the Releasor and Valley Road, Westerly by Valley Road.

Together with all rights of the Town of Greenwich in the Mill Pond, dam and river bed adjacent to the above described premises.

Said premises consisting of about 2.63 acres, and said Mill Pond, dam and river bed adjacent to said premises, are shown and designated on a certain map entitled, "Property of Greenwich Water Co. Greenwich, Conn." made by S. E. Minor & Co., Inc. Civil Engineers, Greenwich, Conn. September 2, 1953, filed or to be filed in the Office of the Town Clerk of said Greenwich, reference thereto being had.

Together with all the flowage rights, riparian rights in the river flow, and water rights conveyed by The Southern Connecticut Real Estate Company to the Town of Greenwich by Deed dated August 30, 1945, and recorded in the Greenwich Land Records in Book 402 at Page 577, except the right of the Releasor to have 1,000,000 gallons of water per day flow below the premises conveyed as provided in paragraph 2 of the restrictive covenants below.

This deed is given and accepted upon the following covenants, agreements and provisions which shall be binding forever upon the Releasee, its successors and assigns and inure to the benefit of the Releasor, its successors and assigns:

1. The Releasee covenants and agrees to install prior to December 31, 1954, at its own expense the necessary water mains and fire hydrants to make water service available in Mianus Mill Village, all as shown on a certain map entitled "Mianus Mill Property" dated February 5, 1953.

2. The Releasee agrees that it will release a flow of one million gallons per day below said described premises, provided that the Releasee may be temporarily relieved of the necessity of releasing all or any portion of said daily flow upon application to the Board of Selectmen of the Town of Greenwich if and when, in the judgment of the Selectmen, emergency drought conditions arise such that the water required to be released is more urgently required by the customers of Greenwich Water Company. The Releasee agrees that it will never exercise any present or future right of eminent domain in respect to the river flow below the aforesaid premises whereby by reason of such condemnation the flow below said premises shall be thereby reduced to less then one million gallons per day, and agrees that should this covenant not to condemn be violated, the premises hereby conveyed shall revert to the Releasor, its successors and assigns.

3. The Releasee agrees that the premises hereby conveyed shall be used for water works purposes, and shall revert to the Releasor herein, its successors and assigns, in the event the premises cease to be used for water works purposes.

TO HAVE AND TO HOLD the premises, with all the

appurtenances, unto the said Releasee, its successors and assigns forever, so that neither it the Releasor, nor its successors or assigns nor any other person under it or them shall hereafter have any claim, right or title in or to the premises, or any part thereof, but therefrom it is and they are by these presents forever barred and excluded; except as provided above.

IN WITNESS WHEREOF, the said TOWN OF GREENWICH has hereunto set its corporate name and affixed its corporate seal by C. Carleton Gisborne, Frank R. Parker and John P. Sullivan, its Selectmen, hereunto duly authorized, this 27th day of September A.D., 1953.

Signed, Sealed and Delivered in the Presence of:

TOWN OF GREENWICH

By C. Carleton Gisborne

Frank R. Parker

John P. Sullivan

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } SS: GREENWICH September 28 1953

Personally appeared C. Carleton Gisborne, ~~Frank R. Parker~~ and John P. Sullivan, Selectmen of said TOWN OF GREENWICH, hereunto duly authorized, signers and sealers of the foregoing instrument, and acknowledged the same to be their free act and deed, and the free act and deed of said municipal corporation, before me.

Notary Public

EXHIBIT 2

Supreme Court of Connecticut.
Henry MORGENBESSER et al.
v.
AQUARION WATER COMPANY OF CONNECTICUT et al.

No. 17395.
Argued Nov. 22, 2005.
Decided Jan. 24, 2006.

Background: Neighbors brought declaratory-judgment action against property owner and telecommunications company, asserting that restrictive covenant barred installation of wireless telecommunications facility on property. The Superior Court, Judicial District of Stamford-Norwalk, Karazin, J., granted neighbors' motion for summary judgment. Company appealed, and appeal was transferred from the Appellate Court. Company dismissed appeal. The Superior Court, Hiller, J., granted joint motion for entry of judgment that dismissed all claims except declaratory-judgment claim. Company appealed.

Holding: The Supreme Court held that restrictive covenant prohibited installation of wireless telecommunications antenna panels and related improvements.

Affirmed.

West Headnotes

[1] Judgment 228 185(2)

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185 Evidence in General
228k185(2) k. Presumptions and Burden of Proof. Most Cited Cases

In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. Practice Book 1998, § 17-49.

[2] Judgment 228 185(2)

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185 Evidence in General
228k185(2) k. Presumptions and Burden of Proof. Most Cited Cases

Party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law. Practice Book 1998, § 17-49.

[3] Appeal and Error 30 863

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In General. Most Cited Cases

On appeal from decision on motion for summary judgment, Supreme Court must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court. Practice Book 1998, § 17-49.

[4] Appeal and Error 30 863

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In General. Most Cited Cases

Supreme Court's review of a trial court's decision to grant a defendant's motion for summary judgment is

plenary. Practice Book 1998, § 17-49.

[5] Covenants 108 ⚿51(1)

108 Covenants
108II Construction and Operation
108II(C) Covenants as to Use of Real Property
108k51 Buildings or Other Structures or Improvements
108k51(1) k. In General. Most Cited Cases

Restrictive covenant providing that structures and improvements on property were to be used for "water supply purposes or purposes incidental or accessory thereto" prohibited installation of wireless telecommunications antenna panels and related improvements; use of word "thereto" clearly was intended to tie incidental or accessory purpose to primary purpose of water supply.

[6] Contracts 95 ⚿143(1)

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k143 Application to Contracts in General
95k143(1) k. In General. Most Cited Cases

Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms.

[7] Contracts 95 ⚿143(2)

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k143 Application to Contracts in General
95k143(2) k. Existence of Ambiguity. Most Cited Cases

When interpreting a contract, a court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity.

[8] Contracts 95 ⚿143(2)

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k143 Application to Contracts in General
95k143(2) k. Existence of Ambiguity. Most Cited Cases

Any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms.

[9] Covenants 108 ⚿49

108 Covenants
108II Construction and Operation
108II(C) Covenants as to Use of Real Property
108k49 k. Nature and Operation in General. Most Cited Cases

Although the words in a restrictive covenant are to be interpreted in their ordinary and popular sense, if any of the words have acquired a particular or special meaning in the particular relationship in which they appear, such particular or special meaning will control.

[10] Covenants 108 ⚿49

108 Covenants
108II Construction and Operation
108II(C) Covenants as to Use of Real Property
108k49 k. Nature and Operation in General. Most Cited Cases

Restrictive covenant must be narrowly construed and ought not to be extended by implication.

[11] Covenants 108 ⚿21

108 Covenants
108II Construction and Operation
108II(A) Covenants in General
108k21 k. General Rules of Construction. Most Cited Cases

If the covenant's language is ambiguous, it should be construed against rather than in favor of the covenant.

**1079 Thomas J. Donlon, with whom was Edward V. O'Hanlan, Stamford, for the appellant (defendant Cellco Partnership).

Jay H. Sandak, Stamford, for the appellees (plaintiffs).

SULLIVAN, C.J., and NORCOTT, KATZ, PALMER and ZARELLA, Js.

PER CURIAM.

*825 This appeal arises out of an action brought by the plaintiffs, [FN1] individual owners of property in the town of Greenwich (town), against the defendants, Aquarion Water Company of Connecticut (Aquarion) and Cellco Partnership, doing business as Verizon Wireless (Verizon). The plaintiffs sought, inter alia, a declaratory judgment and temporary and permanent *826 injunctions prohibiting the installation of telecommunications antenna panels and related improvements on a property located in the town at 20 Bowman Drive (property). The trial court rendered summary judgment for the plaintiffs on their action for a declaratory judgment and the plaintiffs withdrew their remaining claims. Verizon appeals from the judgment,[FN2] claiming that the trial court improperly interpreted the terms of a restrictive covenant governing the use of the property to prohibit the use of the property for this purpose. We affirm the judgment of the trial court.

FN1. The plaintiffs are Henry Morgenbesser, Karen Morgenbesser, Angela O'Donnell, Michael O'Donnell, Howard Roitman and Lisa Roitman.

FN2. The defendants appealed to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199(c) and Practice Book § 65-1.

The record reveals the following relevant facts and procedural history. In February, 1952, King Merritt Acres, Inc., transferred the property, which was in a residential zone and was part of a subdivision known as King Merritt Acres, to the Greenwich Water Company. At the time of the transfer, the town's zoning regulations permitted certain nonresidential uses in residential zones. Specifically, the regulations provided for "[r]eservations for public water supply including land and improvements used for water supply purposes or purposes incidental or accessory thereto." Consistent with this regulation, the deed transferring the property contained a restrictive covenant limiting the use of the property to "water supply purposes or purposes incidental or accessory thereto." [FN3] The Greenwich Water Company erected a water tower on the property **1080 that was 114 feet in height and 50 feet in diameter. After King Merritt Acres, Inc., transferred the property to the *827 Greenwich Water Company, it conveyed the lots in the King Merit Acres subdivision currently owned by the plaintiffs to the plaintiffs' predecessors in title.

FN3. The restrictive covenant provided: "The Grantee [Greenwich Water Company], for itself, its successors and assigns, covenants and agrees with the Grantor [King Merritt Acres, Inc.], its successors and assigns that said premises and the structures and improvements erected and maintained thereon shall be used for water supply purposes or purposes incidental or accessory thereto."

In December, 2000, the Greenwich Water Company's successor in interest, the Connecticut-American Water Company, entered into a lease with Verizon authorizing Verizon to install a wireless telecommunications facility (facility) on the property. The proposed facility included "[twelve] panel-type antennae attached to the railing of the water tower at approximately [sixty-five] feet above ground level ... [twelve] antenna cables, leading from the antennae ... a [twelve foot by twenty foot] equipment shelter less than [one] story in height located at the base of the water tower; and ... [two] ground air conditioning condensers surrounded by a noise attenuation structure." On April 3, 2002, Verizon applied to the town planning and zoning commission (commission) for approval of the site plan for the proposed facility. On April 26, 2002, the Connecticut-American Water Company assigned the lease to Aquarion. On July 30, 2002, the commission approved Verizon's site plan application.

Thereafter, the plaintiffs brought this action against the defendants alleging breach of the restrictive covenant and seeking, inter alia, temporary and permanent injunctions against the installation of the facility and a judgment declaring that the restrictive covenant prohibits the use of the property "for anything other than for water supply purposes or purposes

incidental or accessory thereto." The defendants filed separate motions for summary judgment claiming that the plain language of the restrictive covenant precluded the plaintiffs' interpretation that it allowed uses related to water supply only and that, therefore, the defendants were entitled to judgment as a matter of law. The plaintiffs filed a cross motion for summary judgment claiming that the restrictive covenant precluded the defendants ***828** from using the property for the proposed facility as a matter of law. The court granted the plaintiffs' cross motion for summary judgment and rendered judgment declaring that the property could be used for water supply and uses related to water supply only. Verizon appealed to the Appellate Court and we transferred the appeal to this court.

Thereafter, this court sua sponte raised the question of whether there was an appealable final judgment because the trial court had not ruled on the plaintiffs' claim for injunctive relief. Verizon withdrew its appeal and the parties submitted to the trial court a joint motion for entry of judgment in which the plaintiffs withdrew all of the counts and causes of action in their complaint except for the request for declaratory judgment. The trial court granted the motion and rendered judgment thereon, from which Verizon appealed. Verizon claims on appeal that the trial court improperly interpreted the language of the restrictive covenant to prohibit the installation of the proposed facility. We disagree.

[1][2][3][4] As a preliminary matter, we set forth the applicable standard of review. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.... The party moving for summary ****1081** judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law.... On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of ***829** decision of the trial court.... Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Citations omitted; internal quotation marks omitted.) *Cogan v. Chase Manhattan Auto Financial Corp.*, 276 Conn. 1, 6-7, 882 A.2d 597 (2005).

[5][6][7][8][9][10][11] "Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity .... Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms.... Although the words in a restrictive covenant are to be interpreted in their ordinary and popular sense, if any of the words have acquired a particular or special meaning in the particular relationship in which they appear, such particular or special meaning will control." (Citation omitted; internal quotation marks omitted.) *Southbury Land Trust, Inc. v. Andricovich*, 59 Conn.App. 785, 788-89, 757 A.2d 1263 (2000). "A restrictive covenant must be narrowly construed and ought not to be extended by implication. *Neptune Park Assn. v. Steinberg*, 138 Conn. 357, 361, 84 A.2d 687 (1951). Moreover, if the covenant's language is ambiguous, it should be construed against rather than in favor of the covenant. *Hooker v. Alexander*, 129 Conn. 433, 436, 29 A.2d 308 (1942)." *5011 Community Organization v. Harris*, 16 Conn.App. 537, 541, 548 A.2d 9 (1988).

We conclude that the language of the restrictive covenant limiting the use of property to "water supply purposes or purposes incidental or accessory thereto" clearly and unambiguously limited the use of the property to uses related to water supply. The word "accessory" is defined as "aiding or contributing in a secondary way" or "present in a minor amount and ***830** not essential as a constituent," for example, as "an [accessory] mineral in a rock." Merriam-Webster's Collegiate Dictionary (10th Ed.1993). "Incidental" is defined as "being likely to ensue as a chance or minor consequence" or "occurring merely by chance or without intention or calculation." Id. The use of the word "thereto" in the restrictive covenant clearly was intended to tie the incidental or accessory purpose to the primary purpose of water supply and, therefore, rules out the second alternative definition of each of these words. Thus, allowable uses must aid, contribute to or be likely to ensue from the primary use of water supply.

This interpretation is consistent with our decision in *Lawrence v. Zoning Board of Appeals,* 158 Conn. 509, 264 A.2d 552 (1969). In *Lawrence,* we construed a zoning ordinance that defined " 'accessory building or use' " as " '[o]ne which is subordinate and customarily incidental to the main building and use on the same lot.' " Id., at 510 n. 1, 264 A.2d 552. We stated that "[t]he word 'incidental' as employed in a definition of 'accessory use' incorporates two concepts. It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance. Indeed, we find the word 'subordinate' included in the definition in the ordinance under consideration. But 'incidental,' when used to define an accessory use, must also incorporate the concept**1082 of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant. To ignore this latter aspect of 'incidental' would be to permit any use which is not primary, no matter how unrelated it is to the primary use." Id., at 512, 264 A.2d 552

The defendants argue, however, that *Lawrence* does not govern the present case because, in *Lawrence,* this court was construing an ordinance that defined the term " 'accessory' " by using the term " 'incidental,' " *831 while, in the restrictive covenant at issue here, those terms are used in the alternative. See id., at 510 n. 1, 264 A.2d 552. They argue that the terms must be construed to have entirely different meanings in the restrictive covenant in order to avoid redundancy. See *United Illuminating Co. v. Wisvest-Connecticut, LLC,* 259 Conn. 665, 674, 791 A.2d 546 (2002) ("[t]he law of contract interpretation militates against interpreting a contract in a way that renders a provision superfluous"). We disagree. In *Lawrence,* we recognized that, in the land use context, the term "accessory use" traditionally connotes a relationship with the primary use. *Lawrence v. Zoning Board of Appeals,* supra, 158 Conn. at 512, 264 A.2d 552. Because the term "incidental" was used to define "accessory use" in that case, we concluded that the term "incidental" also connoted a relationship with the primary use. Thus, we recognized that the terms are similar and that their meanings overlap to some degree as used in that context. It does not follow that the words are completely synonymous or that they cannot be used disjunctively in a contractual context unless they are given entirely different meanings. Defining a word by its very nature requires the use of other words that have similar but not identical meanings. Thus, our conclusion in the present case that both accessory purposes and incidental purposes must have a relationship to the primary purpose of water supply does not render the term "incidental" superfluous. It is not necessarily the case that any use that aids or contributes to the primary use also ensues as a consequence of that use. In any event, even if our interpretation rendered the terms "accessory" and "incidental" redundant, that result would be preferable to an interpretation that would require us to give a meaning to the word "incidental" that it clearly was not intended to have.

The defendants also argue that the restrictive covenant cannot be read to exclude uses not related to water *832 supply because: (1) ambiguous limitations on usage contained in a restrictive covenant must be construed against the covenant; (2) such an interpretation would render the entire phrase "or purposes incidental or accessory thereto" superfluous; and (3) the proposed use is consistent with public policy. We have concluded, however, that, to the extent that the words "accessory" and "incidental" are ambiguous, the use of the word "thereto" in the restrictive covenant clearly and unambiguously indicates that any subordinate uses of the property must be related to the primary use of water supply. The defendants' interpretation would require us to rewrite the restrictive covenant to allow "water supply purposes or other accessory or minor purposes." Moreover, our interpretation does not render the phrase "or purposes incidental or accessory thereto" superfluous. The construction of a road, for example, is not a water supply use in and of itself, but might contribute to the use of the property for that purpose and, therefore, could be an accessory use. Finally, the fact that the use of the property to operate a wireless communications facility might advance the public policy favoring universal access to telecommunications services does not **1083 permit this court to ignore the clear and unambiguous language of the restrictive covenant prohibiting such a use.

The judgment is affirmed.

Conn.,2006.
Morgenbesser v. Aquarion Water Co. of Connecticut
276 Conn. 825, 888 A.2d 1078

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