STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL
Ten Franklin Square, New Britain, CT 06051
Phone: (860) 827-2935 Fax: (860) 827-2950
E-Mail: siting.council@ct.gov
www.ct.gov/csc

May 21, 2014

Christopher B. Fisher, Esq.
Cuddy & Feder, LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601

RE: **TS-CING-138-140509** – New Cingular Wireless, PCS, LLC request for an order to approve tower sharing at an existing telecommunications facility located at 200 Oronoque Lane, Stratford, Connecticut

Dear Attorney Fisher:

Thank you for your letter dated May 16, 2014 regarding the above-referenced tower share request, which clearly describes the relevant facts that were absent from the filing for this tower share request that was received by the Connecticut Siting Council (Council) on May 9, 2014. It is my pleasure to provide you with the following response.

Statutory Authority

The Council derives its jurisdiction over telecommunications towers and associated equipment from Conn. Gen. Stat. §16-50i(a)(6), which defines a "facility" as "such telecommunications 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, as defined in the Code of Federal Regulations Title 47, Part 22, as amended, which may have a substantial adverse environmental effect, …" In furtherance of the legal analysis provided in your May 16, 2014 correspondence relative to the lack of jurisdiction of the Council over "municipal towers," I've attached for your convenience a formal Attorney General Opinion (Opinion) dated September 5, 2007. The Opinion refers to the term "municipal tower" as "a tower used, at least in part, for [cell phone service] when that tower is owned by a municipality on municipal property." The Opinion also refers to the rule of statutory construction, expressio unius est exclusio alterius (the expression of one thing is the exclusion of another) in the interpretation of Conn. Gen. Stat. §16-50i(a)(6) as specifically excluding "municipal towers."[1] This resolves the jurisdictional matter with regard to existing "municipal towers," but not with regard to proposed "municipal towers" that would host mixed municipal communications systems and cellular communications systems once constructed.

[1] Despite the Attorney General's recommendation to seek legislative clarification on the matter, this formal opinion is instructive.

It is clear from the legislative history that the intent behind Conn. Gen. Stat. §16-50aa, was to require the Council, before issuing a certificate, to consider additional factors related to shared use of towers or other existing structures, to allow the Council to impose and enforce reasonable conditions for sharing towers in granting certificates, to allow a potential tower user to request the owner of an existing tower to share it and to establish proceedings to compel sharing if the tower owner denies the request. Consideration of these additional factors applies to applications for new towers and shared use of existing towers. The overarching purpose of the State of Connecticut Tower Sharing Policy expressed in Conn. Gen. Stat. §16-50aa is to avoid the unnecessary proliferation of towers. The statute requires entities requesting to share an existing facility to submit a written request on a form specified by the Council that the proposed shared use of the facility is technically, legally, environmentally and economically feasible and meets public safety concerns. If the Council finds the proposed shared use is technically, legally, environmentally and economically feasible and meets public safety concerns, it shall issue an order approving the shared use. Under Conn. Gen. Stat. §16-50aa, the term "facility" is defined as "a tower owned or operated for a commercial or public purpose by a person, firm, corporation or a public agency which uses such tower for transmitting or receiving signals in the electromagnetic spectrum pursuant to a Federal Communications Commission license." This is a more expanded definition of "facility" that clearly contemplates the sharing of towers that do not meet the definition of "facility" under Conn. Gen. Stat. §16-50i(a)(6), including, but not limited to, "municipal towers" and other facilities that may host mixed municipal communications systems and cellular communications systems. Therefore, in response to your statement on page 2 of your May 16, 2014 correspondence that "it is not clear that a tower sharing filing is legally required in this matter," pursuant to the provisions of Conn. Gen. Stat. §16-50aa, a tower sharing filing is legally required in any matter where a telecommunications provider is seeking to collocate associated telecommunications equipment on a tower facility owned or operated for a commercial or public purpose by a person, firm, corporation or public agency.

Case Law

The jurisdictional issue of a proposed tower hosting mixed municipal communications systems and cellular communications systems was addressed in the *Town of Westport v. Connecticut Siting Council,* 260 Conn. 266 (2002), a copy of which is attached for your convenience.[2] In *Westport,* the town filed an appeal of the Council's decision to grant a certificate to Cellco Partnership for the construction and operation of a telecommunications tower because the Council's decision permitted both cellular and non-cellular providers to use the tower. The town argued that the "mixed use" of the tower required the town to apply local laws. The Supreme Court reasoned that the primary proposed use of the tower was "in a cellular system," as defined under Conn. Gen. Stat. §16-50i(a)(6), and recognized the Council's determinations in its decision that shared access to the tower by the cellular and non-cellular service providers would be consistent with state law and policy promoting shared use. Furthermore, the Court found "the sharing of facilities is encouraged if not required by Conn. Gen. Stat. §16-50p(b)(1)(B), the Council is authorized to impose tower sharing as part of its locational order under Conn. Gen. Stat. §16-50p(b)(2), and these statutes do not limit the scope of the duty to investigate the sharing of towers, or the Council's ultimate requirements regarding sharing, to cellular providers only." The judgment of the trial court dismissing the Town of Westport's appeal was affirmed.

---

[2] The Supreme Court adopted the trial court's decision in *Town of Westport v. Connecticut Siting Council,* 47 Conn. Supp. 382 (2001) as the Memorandum of Decision fully addressed the arguments raised in the appeal.

The question presented by the above-referenced tower share request in Stratford is the reverse of the question addressed in *Westport.* However, *Hurley v. Planning & Zoning Commission of the Town of Monroe,* 2004 Conn. Super. LEXIS 495 (2004), a copy of which is attached for your convenience, addressed the reverse question. In *Hurley*, residents filed an appeal from the Town of Monroe Planning & Zoning Commission decision to grant a special exception permit to the Monroe Volunteer Fire Department to construct a tower that would host both municipal public safety equipment and commercial wireless telecommunications equipment. The plaintiffs argued, unsuccessfully, that the tower fell within the definition of "facility" under Conn. Gen. Stat. §16-50i(a)(6) because it would be used for telecommunications purposes in addition to municipal public safety purposes. The court distinguished the facts of this case from the facts in *Westport* where the proposed use was exclusively for a cell phone service provider and possibly for the future use of other non-cellular providers. In *Hurley*, the court found the use to be exclusively for public safety communications with the possibility of future use by commercial telecommunications providers. The appeal was denied. The court also conceded that "any potential future use of [this] tower by commercial telecommunications providers will necessarily come before the Siting [Council] as per statute." Clearly, the court was referring to the tower sharing statute, Conn. Gen. Stat. §16-50aa.

Connecticut Siting Council Precedent[3]

In your May 16, 2014 correspondence, you reference Petition No. 561 as guidance for projects involving public safety communications entities and their sites such as the above-referenced tower share request in Stratford. Another Siting Council precedent that provides guidance for projects involving public safety communications entities and their sites is TS-AT&T-159-020823, "Tower Sharing Request by AT&T Wireless, Wethersfield Municipal Tower, 23 Kelleher Court, Wethersfield, Connecticut" (Wethersfield Tower Share).[4] In 2002, AT&T requested the Council "to approve the shared use of an approved municipal communications tower to be constructed at 23 Kelleher Court in the Town of Wethersfield and to be owned by the Town of Wethersfield." A copy of the August 22, 2002 tower sharing request is attached for your convenience. The facts and circumstances of the Wethersfield Tower Share appear to be identical to the facts and circumstances in the above-referenced tower share request in Stratford.

What differentiates the above-referenced tower share request in Stratford from the Wethersfield Tower Share and Petition No. 561 is that the above-referenced tower share request is deficient in providing two decisive documents – the town approval for the construction of the municipal tower that includes reference to the shared use of the tower by commercial wireless carriers and the fully executed lease that identifies the town as the owner of the tower when construction is complete. In the Wethersfield Tower Share and Petition No. 561, these documents were included with the tower share requests to establish that the primary purpose for the towers was to support public safety

---

[3] Although not completely relevant to the issue presented, there is also established Siting Council precedent that tower share requests will not be reviewed or approved by the Council unless and until there is an approved Development & Management Plan for any certificated facility upon which a cellular carrier seeks to collocate. See TS-CLEARWIRE-138-100730.

[4] Of note, this matter resulted in the Council holding a feasibility proceeding under Conn. Gen. Stat. §16-50aa at the request of Sprint after their request to share the tower was denied by the Town of Wethersfield, which had enacted a moratorium on any additional commercial collocations on the tower due to concerns of residents regarding the number of additional commercial cellular carrier antennas installed on the tower.

communications equipment and that the ownership of the towers, pursuant to specific lease provisions, was to be turned over to the towns once construction was complete.

Therefore, based on these precedents, the Council is amenable to processing the above-referenced tower share request in Stratford upon receipt of the Town of Stratford approval for construction of the municipal tower that includes reference to the shared use of the tower by AT&T and the executed lease that confers ownership of the fully constructed tower to the Town of Stratford.

Please respond in writing at your convenience if your client is amenable to the Council processing the tower share request upon receipt of the additional documentation. Please also confirm in your written response that this request for additional documentation shall have the effect of tolling the Federal Communications Commission (FCC) 90-day collocation timeframe in accordance with Paragraph 49 of the FCC Declaratory Ruling issued on November 18, 2009 (FCC WT Docket No. 08-165).

Thank you for your attention to this matter. Should you have any questions, please feel free to contact me at (860) 827-2951.

Sincerely,

Melanie A. Bachman
Staff Attorney/Acting Executive Director

Enclosures

MAB/cm

CC: Christopher Smedick, Esq., Town Attorney (with enclosures)
Connecticut Siting Council Members (without enclosures)

Attorney General's Opinion

Attorney General, Richard Blumenthal

September 5, 2007

Daniel F. Caruso, Chairman
State of Connecticut Siting Council
Ten Franklin Square
New Britain, Connecticut 06051

Dear Chairman Caruso:

Your agency has asked for an opinion on whether the Connecticut Siting Council ("Council") has jurisdiction over the siting o municipal towers pursuant to Conn. Gen. Stat. § 16-50i (a)(6). By the term "municipal tower", the Council means a tower used, a least in part, for wireless telephone (commonly called "cell phone") service when that tower is owned by a municipality on municipa property. Specifically, the Council seeks an opinion as to whether the Council has jurisdiction over proposed towers that are to be owned by a municipality, built on municipal property, and will have one or more antennas to provide commercial cell phone service. According to the information you have provided, for many years the Council has interpreted its statutory authority to prohibit jurisdiction over such municipal towers. For the reasons stated below, I conclude that the Council should seek legislative clarificatior on this issue.[1]

The Public Utility Environmental Standards Act ("PUESA"), codified at Conn. Gen. Stat. § § 16-50g, *et seq.*, grants exclusive jurisdiction over the siting of certain facilities to the Council. Such facilities are defined in Conn. Gen. Stat. § 16-50i (a). Conn. Gen Stat. § 16-50i (a)(6) defines the term "facility" to include "such telecommunications 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, as defined in the Code of Federal regulations Title 47, Part 22, as amended, which may have a substantial adverse environmental effect, as said council shall, by regulation, prescribe." The Council's relevant regulations include Reg. Conn. State Agencies § 16-50j-2a (g), which states, in part, that "facility" includes "telecommunications towers owned or operated by the state, a public service company as defined in section 16-1 of the General Statutes, or used for public cellular radio communications service as defined in section 16-50i of the General Statutes, which may have a substantial adverse environmental effect."

In recent years, the courts have interpreted Conn. Gen. Stat. § 16-50i (a)(6). In *Sprint Spectrum LP v. Connecticut Siting Council*, 274 F.3d 674 (2d Cir. 2001), the United States Court of Appeals for the Second Circuit held that the Council's jurisdiction covered both cellular systems regulated by 47 C.F.R. Part 22 and Personal Communications Services (PCS) regulated by 47 C.F.R Part 24. In *Town of Westport v. Connecticut Siting Council*, 47 Conn. Supp. 382, 797 A.2d 6555 (2001), *affirmed*, 260 Conn. 266, 796 A.2d 510 (2002), it was held that the Council had exclusive jurisdiction over mixed use towers (towers used in part, but not exclusively, for cellular service). Neither case concerned municipal ownership of towers.

Conn. Gen. Stat. § 1-2z states: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." The literal text of Conn. Gen. Stat. § 16-50i (a)(6) gives the Council jurisdiction over all "telecommunications towers. . . used in a cellular system" and does not exempt municipal towers from the Council's jurisdiction. Without a specific exemption for municipalities in the statute, a municipal tower "used in a cellular system. . . which may have a substantial adverse environmental effect" appears to fall within the Council's regulatory authority. Conn. Gen. Stat. § 16-50i(a)(6).

However, while a reasonable interpretation of Conn. Gen. Stat. § 16-50i(a)(6) places municipals towers within the Council's jurisdiction, other factors make the Council's jurisdiction less clear. First, although the text of the statute does not specifically exempt municipal towers, neither does the statute include municipal towers within the Council's jurisdiction. Conn. Gen. Stat. § 16-50i(a)(6) specifically gives the Council jurisdiction over towers "owned or operated by the state," but does not give the Council similar specific authority over towers owned by municipalities. Had the legislature intended to give the Council jurisdiction over all facilities owned by governmental entities "that were used for public cellular radio communications services," the legislature may not have specifically included state owned facilities within the Council's jurisdiction. The legislature's failure to include towers owned or operated by municipalities within its definition of regulated facilities, while including those owned or operated by the state, may be construed as a legislative decision not to give the Council jurisdiction over municipal towers. *See Gay & Lesbian Law Students Ass'n v. Board of Trustees*, 236 Conn. 453, 476 (1996) (citing rule of statutory construction, expressio unius est exclusio alterius, or "the expression of one thing is the exclusion of another"); *Hyatt v. Burlington Coat Factory*, 263 Conn. 279, 295 (2003).

Second, Conn. Gen. Stat. § 16-50*l* (e) requires prior consultation with the chief elected official of a municipality by an applicant before filing an application with the Council, and permits the municipality to conduct public hearings. If the legislature had intended that municipal towers fall within the Council's jurisdiction, the process set forth in Section 16-50*l* (e) would require the town to consult with itself prior to filing an application with the council: "[w]e presume that the legislature intends sensible results from the statutes it enacts . . . Therefore, we read each statute in a manner that will not thwart its intended purpose or lead to absurd results." *Collins v. Colonial Penn. Ins. Co.*, 257 Conn. 718, 728-29 (2001) (citations omitted; internal quotation marks omitted.)

Finally, the Council itself has never interpreted this statute to give it jurisdiction over municipal towers and continues to recognize that it has no jurisdiction over towers constructed by a town on town property that do not contain cell phone antennas, even if the town installs such antennas after the tower is constructed. Courts accord "considerable deference to the construction given a statute by the administrative agency charged with its enforcement, particularly when the agency has consistently followed its construction over a long period of time." *Sutton v. Lopes*, 201Conn. 115, 120 (1986).

The legislative history does not clarify whether municipal towers are facilities under Conn. Gen. Stat. § 16-50i (a)(6) as it contains no reference to municipal towers. As the Superior Court in *Town of Westport v. Connecticut Siting Council, supra*, noted:

> Public Acts 1984, No. 84-249 added subsection 6 to the definitions of § 16-50i(a). The act as initially passed in the Senate gave the council exclusive jurisdiction to regulate telecommunications towers used for public cellular radio communication services. 27 S.Proc., Pt. 3, 1984 Sess., p. 842, remarks of Senator John B. Larson. In the House proceedings, Representative David Lavine first generally pointed out that the purpose of the legislation was to end ad hoc town-by-town regulation in favor of regulation by the council. He also introduced an amendment that changed the Senate language to the current 'used in a cellular system' terminology with a reference to the federal definition of a cellular system. 27 H.R.Proc., Pt. 9, 1984 Sess., pp. 3206-11, especially pp. 3209-10. The Senate later joined in the bill as amended in the House. Public Act 84-249 as enacted thus contains broader language than as initially proposed.

Town of Westport v. Connecticut Siting Council, supra, 47 Conn. Supp. at 398-399.[2]

While the legislative history supports granting the Council exclusive jurisdiction over the siting of cellular towers, in contrast to town-by-town regulation, it does not clarify the Council's jurisdiction over towers owned by municipalities themselves. Both the language of Conn. Gen. Stat. § 16-50i (a)(6), and its legislative history are ambiguous as to the Council's jurisdiction over municipal towers and legislative clarification of this matter is, therefore, appropriate.

Please advise me if any further clarification is required.

Very truly yours,

RICHARD BLUMENTHAL
ATTORNEY GENERAL

---

[1] It should be noted that this opinion request does not include towers built by a municipality for municipal communications that have sufficient space for cell phone antennas, but are initially built without such antennas. You have informed this office that the Council maintains that it has no jurisdiction over such towers. For example, if a municipality wishes to build a tower for police and fire department communications on town land and there is no cell antenna on the tower, the Council continues to hold that it has no jurisdiction over the siting and building of such a tower, even if such a tower could, at a later date, accommodate a cell antenna.

[2] Note that the Connecticut Supreme Court essentially adopted the Superior Court's decision. *Town of Westport v. Connecticut Siting Council*, 260 Conn. 266, 796 A.2d 510 (2002),

---

Back to the 2007 Opinions Page
Back to the Opinions Page

Content Last Modified on 9/7/2007 2:55:43 PM

Printable Version

TOWN OF WESTPORT v. CONNECTICUT SITING COUNCIL ET AL.

(SC 16600), (SC 16601)

SUPREME COURT OF CONNECTICUT

260 Conn. 266; 796 A.2d 510; 2002 Conn. LEXIS 180

March 13, 2002, Argued
May 21, 2002, Officially Released

PRIOR HISTORY: [***1] Appeal, in the first case, from the decision by the named defendant granting a certificate of environmental compatibility and public need for the construction of a cellular telecommunications facility by the defendant Cellco Partnership, and appeal, in the second case, from a decision by the defendant denying the plaintiff's application for a certificate of zoning compliance required to obtain the building permit for that proposed facility, brought to the Superior Court in the judicial district of New Britain, where the cases were consolidated and tried to the court, Cohn, J.; judgment in the first case for the defendants dismissing the plaintiff's appeal, and judgment in the second case sustaining the plaintiff's appeal, from which the plaintiff in the first case and the defendant in the second case appealed.

Town of Westport v. Conn. Siting Council, 47 Conn. Supp. 382, 2001 Conn. Super. LEXIS 1803 (Super. Ct. 2001).

DISPOSITION: Affirmed.

COUNSEL: Ira W. Bloom, with whom was Michael S. Toma, for the appellant in each case (plaintiff town of Westport and defendant zoning board of appeals of the town of Westport).

Kenneth C. Baldwin, with whom, on the brief, were Bradford S. Babbitt and Joey Lee Miranda, for the appellee in both cases (Cellco Partnership).

Mark F. Kohler, assistant attorney general, [***2] for the appellee in the first case (defendant Connecticut Siting Council).

Richard Blumenthal, attorney general, and Phillip Rosario and Neil Parille, assistant attorneys general, filed a brief for the office of the attorney general as amicus curiae.

Mary-Michelle U. Hirschoff filed a brief for the Connecticut Conference of Municipalities as amicus curiae.

Jonathan S. Zorn and Kenneth Ira Spigle, pro hac vice, filed a brief for Sprint Spectrum L.P. as amicus curiae.

JUDGES: Borden, Norcott, Katz, Palmer and Zarella, Js.

OPINION

[**512] [*267] PER CURIAM. This is a consolidated appeal [1] emanating from a decision of the Connecticut siting council (council), the named defendant in the first case, approving, subject to certain modifications and conditions, an application of the defendant Cellco Partnership (Cellco), doing business as Bell Atlantic Mobile, filed pursuant to the Public Utility Environmental Standards Act; *General Statutes § 16-50g et seq.*; for a certificate of environmental compatibility and public need for the construction, operation and maintenance of a telecommunications tower facility (tower) to be located in the town of Westport (town). Cellco's [***3] application proposed to share the tower with four other wireless telecommunication [*268] service providers, [2] including both cellular and noncellular providers. The council approved the application following three public hearings held pursuant to *General Statutes § 16-50m*, [3] at which the town participated [**513] and opposed Cellco's application. In addition, the [*269] four other service providers participated as intervenors in the council proceedings. [4]

1 The plaintiff in the first case, the town of Westport, and the defendant in the second case, the zoning board of appeals of the town of Westport, appealed from the trial court's judgments to the Appellate Court. We then transferred the consolidated appeal to this court pursuant to *Practice Book § 65-1* and *General Statutes § 51-199 (c)*.

2 **The other providers are: Springwich Cellular Limited Partnership (Springwich); Sprint Spectrum L.P., doing business as Sprint PCS (Sprint); Nextel Communications of the Mid-Atlantic, Inc., doing business as Nextel Communications (Nextel); and Omnipoint Communications, Inc. (Omnipoint). Springwich, like Cellco, is a federally licensed provider of cellular service. Sprint and Omnipoint are federally licensed providers of wireless service known as personal communications service, and Nextel is a federally licensed provider of wireless service known as enhanced specialized mobile radio service.**

[***4]

3 ***General Statutes § 16-50m*** **provides: "(a) Upon the receipt of an application for a certificate complying with section 16-50*l*, the council shall promptly fix a commencement date and location for a public hearing thereon not less than thirty days nor more than one hundred fifty days after such receipt. At least one session of such hearing shall be held at a location selected by the council in the county in which the facility or any part thereof is to be located after six-thirty p.m. for the convenience of the general public. After holding at least one hearing session in the county in which the facility or any part thereof is to be located, the council may, in its discretion, hold additional hearing sessions at other locations. If the proposed facility is to be located in more than one county, the council shall fix the location for at least one public hearing session in whichever county it determines is most appropriate, provided the council may hold hearing sessions in more than one county.**

"(b) (1) The council shall hold a hearing on an application for an amendment of a certificate not less than thirty days nor more than sixty days after receipt of the application in the same manner as a hearing is held on an application for a certificate if, in the opinion of the council, the change to be authorized in the facility would result in any material increase in any environmental impact of such facility or would result in a substantial change in the location of all or a portion of the facility, other than as provided in the alternatives set forth in the original application for the certificate, provided the council may, in its discretion, return without prejudice an application for an amendment of a certificate to the applicant with a statement of the reasons for such return. (2) The council may hold a hearing on a resolution for amendment of a certificate not less than thirty days nor more than sixty days after adoption of the resolution in the same manner as provided in subsection (a) of this section. The council shall hold a hearing if a request for a hearing is received from the certificate holder or from a person entitled to be a party to the proceedings within twenty days after publication of notice of the resolution. Such hearing shall be held not less than thirty days nor more than sixty days after the receipt of such request in the same manner as provided in subsection (a) of this section. (3) The county in which the facility is deemed to be located for purposes of a hearing under this subsection shall be the county in which the portion of the facility proposed for modification is located.

"(c) The council shall cause notices of the date and location of each hearing to be mailed, within one week of the fixing of the date and location, to the applicant and each person entitled under section 16-50*l* to receive a copy of the application or resolution. The general notice to the public shall be published in not less than ten point, boldface type.

"(d) Hearings, including general hearings on issues which may be common to more than one application, may be held before a majority of the members of the council.

"(e) During any hearing on an application or resolution held pursuant to this section, the council may take notice of any facts found at a general hearing."

[***5]

4 **Residents of Clinton Avenue and Residents of Sunny Lane, two interested groups representing residents in the areas likely to be affected by the proposed construction and operation of the tower, also participated in the proceedings.**

The council's decision approving the application was predicated on its determination that it had jurisdiction over the proposed facility because the facility would be "used in a cellular system" within the meaning of *General Statutes § 16-50i (a) (6).* [5] Indeed, the council asserted that, pursuant to *General Statutes § 16-50x (a),* [6] [*270] it had *exclusive* authority, maintaining that the town does not retain jurisdiction to enforce its own municipal laws, despite the fact that the proposed tower would have both cellular *and* noncellular attachments. In addressing the merits of whether to issue the certificate, the council found that Cellco's existing facilities in the area did not provide adequate coverage or capacity in the northern portion of the town and noted similar deficiencies by the other [***6] carriers. The council determined that shared access to the tower by the cellular and noncellular service providers would be consistent with state law and policy promoting shared use. With regard to the potential environmental impact of the facility, the council made extensive findings supporting its conclusions that "development of the . . . site would involve minimal land disturbance and would not substantially alter the character of the natural resources including wetlands and watercourse, vegetative composition, and wildlife habitats. Furthermore, there are no environmental constraints at this site [that] would justify denial of this site." Finally, in response to [**514] concerns raised by the town, in order to minimize the impact on the residential neighborhood, the scenic quality of the Merritt Parkway and the Poplar Plains brook that traversed the proposed site, the council ordered that the tower be reduced in height and relocated on the lot further away from the inland wetlands and the watercourse than proposed by Cellco.

> 5 ***General Statutes § 16-50i (a)*** **provides in relevant part: "'Facility' means . . . (6) 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,* as defined in the *Code of Federal Regulations Title 47, Part 22,* as amended, which may have a substantial adverse environmental effect, as said council shall, by regulation, prescribe . . . ." (Emphasis added.)**
>
> **A minor technical change, which is not relevant to this appeal, was made to *§ 16-50i (a) (6)* in 1999, after the council had rendered its decision in this case. See Public Acts 1999, No. 99-286, § 8. References herein are to the current revision of the statute.**

[***7]

> 6 ***General Statutes § 16-50x (a)*** **provides: "Notwithstanding any other provision of the general statutes to the contrary, except as provided in section 16-243, the council shall have exclusive jurisdiction over the location and type of facilities and over the location and type of modifications of facilities subject to the provisions of subsection (d) of this section. In ruling on applications for certificates for facilities and on requests for shared use of facilities, the council shall give such consideration to other state laws and municipal regulations as it shall deem appropriate. Whenever the council certifies a facility pursuant to this chapter, such certification shall satisfy and be in lieu of all certifications, approvals and other requirements of state and municipal agencies in regard to any questions of public need, convenience and necessity for such facility."**

Following the council's approval of the application and grant of the certificate of environmental compatibility and public need, subject to certain conditions, Cellco [*271] **proceeded with plans to construct** [***8] **the approved tower. It submitted the certificate to the town zoning enforcement officer in order to receive the zoning certification necessary to obtain a building permit. The zoning officer informed Cellco that its failure to comply with the town's zoning regulations prevented the issuance of the permit. Cellco appealed from the zoning enforcement officer's decision to the zoning board of appeals, which thereafter denied the appeal.**

Pursuant to *General Statutes §§ 4-183* and *16-50q,* [7] the town appealed from the council's decision approving Cellco's application for the certificate of environmental compatibility, and pursuant to *General Statutes §§ 8-8* and *8-10,* [8] Cellco appealed from the zoning board of [*272] appeals' decision denying its appeal from the zoning officer's denial of its application for a certificate of zoning compliance. See *Westport v. Connecticut Siting Council, 2001 Conn. Super. LEXIS 1803, 47 Conn. Supp. 382, A.2d (2001).* Because the claims overlapped, the trial court consolidated the appeals.

> 7 ***General Statutes § 4-183 (a)*** **provides in relevant part: "A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. . . ."**
>
> ***General Statutes § 16-50q*** **provides: "Any party may obtain judicial review of an order issued on an application for a certificate or an**

amendment of a certificate in accordance with the provisions of *section 4-183*. Any judicial review sought pursuant to this chapter shall be privileged in respect to assignment for trial in the Superior Court."

[***9]

8 ***General Statutes § 8-8 (b)*** **provides: "Except as provided in subsections (c), (d) and (q) of this section and sections 7-147 and 7-147i, any person aggrieved by any decision of a board may take an appeal to the superior court for the judicial district in which the municipality is located. The appeal shall be commenced by service of process in accordance with subsections (e) and (f) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes. The appeal shall be returned to court in the same manner and within the same period of time as prescribed for civil actions brought to that court."In 1999, a minor technical change, not relevant to this appeal, was made to *§ 8-8 (b)*. See Public Acts 1999, No. 99-238. References herein are to the current revision of the statute.**

General Statutes § 8-10 **provides: "The provisions of *sections 8-8* and *8-9* shall apply to appeals from zoning boards of appeals, zoning commissions or other final zoning authority of any municipality whether or not such municipality has adopted the provisions of this chapter and whether or not the charter of such municipality or the special act establishing zoning in such municipality contains a provision giving a right of appeal from zoning boards of appeals or zoning commissions and any provision of any special act, inconsistent with the provisions of said sections, is repealed."**

[***10]

The trial court first considered Cellco's claim that, because the council has exclusive jurisdiction over the siting of a telecommunications tower, pursuant to the Public Utility Environmental Standards Act, and the town had no direct role in the siting process, the town was not aggrieved and, therefore, the court did not have jurisdiction to consider the town's appeal. [**515] **See *Connecticut Business & Industry Assn., Inc. v. Commission on Hospitals & Health Care, 214 Conn. 726, 729, 573 A.2d 736 (1990)*** (party must be aggrieved to have standing to bring administrative appeal). The trial court rejected that contention, however, concluding that, because, under the town's theory, a mixed use of cellular *and* noncellular providers, as in this case, would allow the town to apply its local laws and ordinances, the decision of the council interfering with the town's rights made it an aggrieved party.

Turning to the merits of the consolidated appeals, the trial court addressed the issue of whether the council improperly asserted its exclusive authority in locating the tower and, concomitantly, whether the zoning board of appeals improperly denied Cellco's appeal from the [***11] **denial of its application for a certificate of zoning compliance necessary for the issuance of a building permit. The trial court determined, based upon its reading of *§§ 16-50x (a)* and *16-50i (a) (6)*,** [9] in conjunction with *General Statutes § 16-50p (b) (1) (B)* and *(b) (2)*, [10] that [*273] the legislature intended to give the council exclusive jurisdiction over telecommunication towers, including those that are shared by cellular and noncellular carriers. The trial court next considered the town's argument that the council's actions were procedurally and substantively illegal. Applying a limited standard of review pursuant to *§ 4-183 (j)*, the court examined whether the council's findings were supported by substantial evidence in the record and whether its decision approving the application subject to certain modifications reflected a proper application of the pertinent statutory factors set forth in the Public Utility Environmental Standards Act. Concluding that the council's actions were proper, the trial court next turned to the town's procedural claim that the council had acted improperly by deferring any consideration of the town's zoning regulations [***12] until after the council's approval of the [*274] application for [**516] the certificate of environmental compatibility and public need. Following its examination of the record before the council, which included testimony and exhibits relating to the town's zoning and other regulatory concerns, the court rejected the town's procedural claim, concluding that the council had recognized the town's concerns, including the factors encompassing environmental and residential objections, prior to the application approval, as evidenced, in part, by it conditioning its approval on Cellco's compliance with some of the town's recommendations. Accordingly, the trial court, in separate judgments, dismissed the town's appeal and sustained Cellco's appeal. This appeal followed.

9 **See footnotes 5 and 6 of this opinion.**

10 ***General Statutes § 16-50p (b)*** **provides in relevant part: "(1) Prior to granting an applicant's certificate for a facility described in subdivision (5) or (6) of *section 16-50i*, the council shall examine, in addition to its consideration of subdivisions (1) to (5), inclusive, of subsection (a) of this section . . . (B) whether**

such facility, if constructed, may be shared with any public or private entity which provides telecommunications or community antenna television service to the public, provided such shared use is technically, legally, environmentally and economically feasible at fair market rates, meets public safety concerns, and the parties' interests have been considered . . . .

"(2) When issuing a certificate for a facility described in subdivision (5) or (6) of subsection (a) of *section 16-50i*, the council may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state. The council shall, prior to issuing a certificate, provide notice of the proposed facility to the municipality in which the facility is to be located. Upon motion of the council, written request by a public or private entity which provides telecommunications or community antenna television service to the public or upon written request by an interested party, the council may conduct a preliminary investigation to determine whether the holder of a certificate for such a facility is in compliance with the certificate. Following its investigation, the council may initiate a certificate review proceeding, which shall include a hearing, to determine whether the holder of a certificate for such a facility is in compliance with the certificate. In such proceeding, the council shall render a decision and may issue orders which it deems necessary to compel compliance with the certificate, which orders may include, but not be limited to, revocation of the certificate. Such orders may be enforced in accordance with the provisions of section 16-50u."

[***13]

Our careful examination of the record, coupled with the briefs and arguments of the parties, persuades us that the judgments of the trial court should be affirmed. The question of aggrievement, and the issues pertaining to whether the council's jurisdiction was exclusive and whether there existed any prejudicial procedural impropriety, were properly resolved in the thoughtful and comprehensive memorandum of decision filed by the trial court. See *Westport* v. *Connecticut Siting Council,* supra, 2001 Conn. Super. LEXIS 1803, 47 Conn. Sup. . Because that memorandum of decision fully addresses the arguments raised in the present appeal, it would serve no useful purpose for us to repeat the discussion therein contained. Accordingly, we adopt the trial court's well reasoned decision. See ***Walsh v. National Safety Associates, Inc., 241 Conn. 278, 282, 694 A.2d 795 (1997)***; ***Molnar v. Administrator, Unemployment Compensation Act, 239 Conn. 233, 235, 685 A.2d 1107 (1996)***; ***Greater Bridgeport Transit District v. State Board of Labor Relations, 232 Conn. 57, 64, 653 A.2d 151 (1995)***; ***Advanced Business Systems, Inc.* v. *Crystal, 231 Conn. 378, 380-81, 650 A.2d 540 (1994).*** [***14]

The judgments are affirmed.

John M. Hurley, Jr. et al. v. Planning & Zoning Commission, Town of Monroe et al.

CV020389661

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF FAIRFIELD, AT BRIDGEPORT

2004 Conn. Super. LEXIS 495

March 8, 2004, Decided
March 8, 2004, Filed

NOTICE: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

DISPOSITION: Appeal of the plaintiffs denied.

JUDGES: JOSEPH W. DOHERTY, JUDGE.

OPINION BY: JOSEPH W. DOHERTY

OPINION

MEMORANDUM OF DECISION

This is an appeal from the approval of the defendant planning and zoning commission of the town of Monroe (commission) and Monroe Volunteer Fire Department No. 1 (MVFD) of a special exception permit to construct a "Cell Phone Tower" at 18 Shelton Road in the town of Monroe.

The appeal addresses the following issues:

> (1) Whether the commission has jurisdiction to approve the construction of a 185-foot monopole structure (tower) to be used for the placement of both municipal public safety equipment (fire and police) and commercial wireless telecommunications equipment;
>
> (2) Whether the approval of the special exception by the commission violated the *Connecticut Environmental Policy Act*;
>
> (3) Whether the commission was required to request a review of the application by the State Historic Preservation Officer; and
>
> (4) Whether the commission acted in accordance with its own regulations in approving the MVFD [*2] application.

The plaintiffs, Hurley and Deaso, are Monroe residents whose properties are each situated within a radius of one hundred feet of the subject property. As such, they are found to be aggrieved, pursuant to *Sec. 8-8, C.G.S.* and have the requisite standing to bring this appeal.

STANDARD OF REVIEW

When acting on a special permit, a zoning commission acts in an administrative capacity. *Sheridan v. Planning Board of City of Stamford, 159 Conn. 1, 16, 266 A.2d 396 (1969).*

To justify the grant of the special permit, it must appear from the record before the commission that the manner in which the applicant proposes to use his property satisfies all conditions imposed by the regulations. *Abramson v. Zoning Board of Appeals, 143 Conn. 211, 213, 120 A.2d 827.*

"The appeal to the court from the decision of the board did not require or permit the court, by trial de novo, to substitute its finding and conclusions for the decision of the board. Its functions were limited to a determination whether the board, as alleged by the appeal, had

acted arbitrarily or illegally, or so unreasonably as to have abused its discretion. *Id., p. 214.* [*3]

The proposed use, however, must satisfy standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience, and property values . . . Acting in this administrative capacity, the [zoning commission's] function is to determine whether the applicant's proposed use is expressly permitted under the regulations, and whether the standards set forth in the regulations and the statute are satisfied." *Connecticut Resources Recovery Authority v. Planning & Zoning Commission, 46 Conn.App. 566, 569, 700 A.2d 67 (1997).*

"On factual questions . . . a reviewing court cannot substitute its judgment for that of the agency." *Timber Trails Corp. v. Planning & Zoning Commission, 222 Conn. 380, 401, 610 A.2d 620 (1992).* If there is conflicting evidence in support of the zoning commission's stated rationale, the "reviewing court . . . cannot substitute its judgment as to the weight of the evidence for that of the commission." *Whisper Wind Dev. Corp. v. Planning & Zoning Comm'n, supra, 32 Conn. App. 523.* "The agency's decision must be sustained if an examination of the record discloses [*4] evidence that supports any one of the reasons given." Huck v. Inland Wetlands & Watercourses. *Irwin v. Planning & Zoning Commission of Litchfield, 244 Conn. 619, 629, 711 A.2d 675 (1998).*

"Where a zoning authority has expressed the reasons for its decision, a reviewing court 'may only determine if the reasons given are supported by the record and are pertinent to the decision,' and the authority's action 'must be sustained if even one of the stated reasons is sufficient to support it.' Torsiello v. Zoning Board of Appeals, supra, 50, quoting *Hoagland v. Zoning Board of Appeals, 1 Conn.App. 285, 290, 471 A.2d 655 (1981)." Connecticut Health Facilities v. Zoning Board, 29 Conn.App. 1, 10, 613 A.2d 1358 (1992).*

The court makes the following findings of fact.

On or about September 6, 2001, the defendant MVFD applied to the defendant commission for special permission to construct a 185-foot monopole tower at 18 Shelton Road, Monroe. The reason given for the tower was to provide better emergency service communication by the MVFD throughout the town and to make provision for future use by the Monroe Police Department

On September 20, 2001, the defendant [*5] commission, after due notice, held a public hearing on the application of MVFD for the same purpose thereby substantially improving full emergency coverage throughout the town.

At its January 3, 2002 meeting, the commission voted to grant MVFD's application. Notice of that decision was published on or about January 8, 2002 in the Connecticut Post, a newspaper of general circulation in the area.

The plaintiffs maintain in their appeal that the reasons given by the commission are not supported by the record and they are not consistent with the Monroe Zoning Regulations.

Sec. 8-2, C.G.S. provides that, "the zoning commission of each city, town or borrough (sic) is authorized to regulate, within the limits of each such municipality, the height, number of stories and size of buildings and other structures . . ." The proposed tower is governed by this statute.

Additionally, however, *C.G.S. Sec. 16-50i et seq.*, the *Public Utility Environmental Standards Act* (PUESA) provides at *Sec. 16-50x(a)*, "notwithstanding any provision of the General Statutes to the contrary . . . the [Siting] Council shall have exclusive jurisdiction over the location [*6] and type of facilities. That this tower is a "facility" as defined in *Sec.16-50i* is not disputed. However, the plaintiffs cited no authority for their claim that a tower which is a town "facility," within the jurisdiction of the commission, never the less falls within the exclusive province of PUESA if it also is used for telecommunications.

The record establishes that the tower will be used for emergency communications by the MVFD and, potentially, by the Monroe Police Department. The court finds that usage to be distinguishable from the facts in *Town of Westport v. Siting Council, 260 Conn. 266, 796 A.2d 510 (2002)*, where in that case the proposed use was exclusively for a cell phone service provider and possibly other non-cellular providers. All of the users in that case would be commercial wireless communication providers, unlike the instant case where the town fire and police departments for the public safety of the community. A reading of *Sprint Spectrum LP v. Connecticut Siting Council, 274 F.3d 674 (2001)*, permits the court to find that there was no commercial vs. public safety application issue in that case, either.

The jurisdictional tug of war [*7] is inappropriate for the reason that no commercial use involving Siting Committee responsibility exists at this time. The use is exclusively public safety communications. It is conceded that any potential future use of that tower by commercial telecommunication providers will necessarily come before the Siting Committee as per statute.

The court has also considered the plaintiffs' claims that approval of the special exception by the commission violates the Connecticut Environmental Policy Act, *Section 22a-14, et seq., C.G.S.*

The court finds that, as expressly provided in that act, "The provisions of *sections 22a-15 to 22a-19*, inclusive, shall be applicable to the unreasonable destruction of historic structures and landmarks of the state, which shall be those properties (1) listed or under consideration for listing as individual units on the National Register of Historic Places . . ." (Emphasis added.)

This court finds that the commission did not abuse its discretion in failing to equate the proposed tower as action by the town which would "adversely effect the surrounding neighborhood" as articulated in *Barberino Realty and Development Corp. v. Planning & Zoning Commission, 222 Conn. 607, 610 A.2d 1205 (1992).* [*8]

Having considered the plaintiffs' claims, the court further finds that there was no legal basis to require an environmental assessment (EA) under the provisions of the Code of Federal Regulations. The respondents are correct in their assertion that the Code provisions authorizing such environmental assessments apply to actions of the Federal Communications Commission (FCC) and not the local land use agencies. No action of the FCC is required to approve the tower in question in the instant case.

The court further finds that the actions of the commission concern property which is not within the Monroe Historical District and, for that reason, *Sec. 10-320b(b)13*, C.G.S., is not applicable as there is no state or federal action involved in this application.

Additionally, as the respondents point out, any such review by the State Historic Preservation Office is discretionary in the commission by the language of the statute. "The commission may review planned state and federal actions to determine their impact on historic structures and landmarks." *Sec. 10-320b(b)(13), C.G.S.*

The court has also considered whether the commission acted in accordance with the applicable [*9] provisions of its own regulations in approving the application for the special exception permit for the construction of the tower. Having found that the Zoning Regulations of the town of Monroe contain specific standards and requirements with regard to wireless communication facilities (Monroe Zoning Regulations, Article XV), the court further finds that the commission did adhere to those regulations and, by their provisions, the commission could not deny the application if it conformed to the criteria set forth in the regulations. See *De Maria v. Enfield Planning & Zoning Com., 159 Conn. 534, 540, 271 A.2d 105 (1970)*, where the court held, "When a zoning commission states the reasons for its action, 'the question for the court to pass on is simply whether the reasons assigned are reasonably supported by the record and whether they are pertinent to the considerations which the commission is required to apply under the zoning regulations.' " Citing *Zieky v. Town Plan & Zoning Commission, 151 Conn. 265, 267, 196 A.2d 758 (1963).*

The court further finds that the plaintiffs' claim that the commission failed to consider allegations that the tower would have an adverse [*10] effect on property values to be unsubstantiated in that while such claims were made, the record contains no compelling evidence that such assertion was in fact true.

Having considered the record and the claims of the plaintiffs, the court finds that they have failed to sustain their burden of proof that the commission's action was inconsistent with the Monroe Zoning Regulations, that it failed to comply with the various state and federal acts concerning the environment and the preservation of historic properties, or that it otherwise acted illegally, arbitrarily or contrary to law and in abuse of its discretion.

For those reasons the appeal of the plaintiffs is hereby denied.

BY THE COURT,

JOSEPH W. DOHERTY, JUDGE

CUDDY & FEDER & WORBY LLP

90 MAPLE AVENUE
WHITE PLAINS, NEW YORK 10601-5196

(914) 761-1300
TELECOPIER (914) 761-5372/6405
www.cfwlaw.com

500 FIFTH AVENUE
NEW YORK, NEW YORK 10110
(212) 944-2841
TELECOPIER (212) 944-2843

WESTAGE BUSINESS CENTER
300 SOUTH LAKE DRIVE
FISHKILL, NEW YORK 12524
(845) 896-2229
TELECOPIER (845) 896-3672

STAMFORD, CONNECTICUT
NORWALK, CONNECTICUT

CUDDY & FEDER
1971-1995

NEIL J. ALEXANDER (also CT)
CHARLES T. BAZYDLO (also NJ)
THOMAS R. BEIRNE (also DC)
THOMAS M. BLOOMER
JOSEPH P. CARLUCCI
KENNETH J. DUBROFF
ROBERT FEDER
CHRISTOPHER B. FISHER (also CT)
ANTHONY B. GIOFFRE III (also CT)
SUSAN E.H. GORDON
KAREN G. GRANIK
JOSHUA J. GRAUER
WAYNE E. HELLER (also CT)
KENNETH F. JURIST
MICHAEL L. KATZ (also NJ)
JOSHUA E. KIMERLING (also CT)
DANIEL F. LEARY (also CT)
BARRY E. LONG

WILLIAM S. NULL
DAWN M. PORTNEY
ELISABETH N. RADOW
NEIL T. RIMSKY
RUTH E. ROTH
JENNIFER L. VAN TUYL
CHAUNCEY L. WALKER (also CA)
ROBERT L. WOLFE
DAVID E. WORBY

Of Counsel
MICHAEL R. EDELMAN
ANDREW A. GLICKSON (also CT)
ROBERT L. OSAR (also TX)
MARYANN M. PALERMO
ROBERT C. SCHNEIDER
LOUIS R. TAFFERA

August 22, 2002

VIA FEDERAL EXPRESS
Hon. Mortimer Gelston, Chairman and Members
of the Siting Council
Connecticut Siting Council
10 Franklin Square
New Britain, Connecticut 06051

Re: Tower Sharing Request by AT&T Wireless
Wethersfield Municipal Tower
23 Kelleher Court, Wethersfield, Connecticut

Hon. Mortimer Gelston, Chairman and Members of the Siting Council:

Pursuant to Connecticut General Statutes (C.G.S.) § 16-50aa, AT&T Wireless PCS LLC, by and through its agent AT&T Wireless Services, Inc., ("AT&T") hereby requests an order from the Connecticut Siting Council (the "Council") to approve the proposed shared use of an approved municipal communications tower to be constructed at 23 Kelleher Court in the Town of Wethersfield (the "Kelleher Court Tower") and to be owned by the Town of Wethersfield.

The Kelleher Court Tower

The Kelleher Court Tower will consist of an approximately one hundred eighty (180) foot monopole (the "Tower") and associated equipment, to be constructed and used for emergency municipal and wireless communications purposes. The tower will be located on town owned property that is part of the Wethersfield Volunteer Fire Department No. 3. The Town itself

processed all approvals for the municipal tower in the Spring of 2001. See Planning & Zoning Commission Minutes from May 1, 2001 annexed hereto as Exhibit A. Subsequent thereto, AT&T entered into an agreement with the Town in July of 2002 to build the tower and deed it over to the municipality with a lease back of space for AT&T's wireless facility as more particularly described herein. See copy of pg. 1 of Lease Agreement and Signature pages annexed hereto in Exhibit B.

AT&T Wireless' Facility

As shown on the enclosed plans prepared by Tectonic/Keyes Associates, including a site plan and tower elevation of the Kelleher Court Tower, AT&T Wireless proposes shared use of the tower to provide FCC licensed services. AT&T Wireless will install 6 panel antennas at approximately the 140 foot level of the Tower and associated equipment cabinets (2 proposed, 2 future, each 76"H x 30" W x 30" D) located on a concrete pad within the fenced compound.

Connecticut General Statutes § 16-50aa provides that, upon written request for shared use approval, an order approving such use shall be issued, "if the council finds that the proposed shared use of the facility is technically, legally, environmentally and economically feasible and meets public safety concerns." (C.G.S. § 16-50aa(c)(1).) Further, upon approval of such shared use, it is exclusive and no local zoning or land use approvals are required C.G.S. § 16-50x. Shared use of the Kelleher Court Tower satisfies the approval criteria set forth in C.G.S. § 16-50aa as follows:

A. Technical Feasibility The Tower will be built to the specifications of the tower manufacturer for the municipality and six carriers as shown on the enclosed plans. The proposed shared use of this tower is therefore technically feasible.

B. Legal Feasibility Pursuant to C.G.S. § 16-50aa, the Council has been authorized to issue an order approving shared use of the Kelleher Court Tower (C.G.S. § 16-50aa(c)(1)).

C. Environmental Feasibility The proposed shared use would have a minimal environmental effect, for the following reasons:

1. The proposed installation would have a de minimis visual impact, and would not cause any significant change or alteration in the physical or environmental characteristics of the approved tower;

2. The proposed installation by AT&T Wireless would not increase the height of the tower nor extend the site boundaries;

3. The proposed installation would not increase the noise levels at the approved tower site boundaries by six decibels or more;

4. Operation of AT&T Wireless' antennas at this site would not exceed the total radio frequency electromagnetic radiation power density level adopted by the FCC and Connecticut Department of Health. The "worst case" exposure calculated for the operation of this facility for all carriers, would be approximately 0.53% of the standard. See Cumulative Emissions Compliance Report dated July 16, 2002, prepared By Nader Soliman, RF Engineer, annexed hereto as Exhibit C;

5. The proposed shared use of the Kelleher Court Tower would not require any water or sanitary facilities, or generate air emissions or discharges to water bodies. Further, the installation will not generate any traffic other than for periodic maintenance visits.

D. Economic Feasibility As evidenced in Exhibit B annexed hereto, the Applicant and the tower owner have entered into a mutual agreement to share use of the Kelleher Court Tower on terms agreeable to both parties. The proposed tower sharing is therefore economically feasible.

E. Public Safety As stated above and evidenced in the Cumulative Emissions Compliance Report annexed hereto as Exhibit C, the operation of AT&T Wireless' antennas at this site would not exceed the total radio frequency electromagnetic radiation power density level adopted by the FCC and Connecticut Department of Health. Further, the addition of AT&T Wireless' telecommunications service in the Wethersfield area through shared use of the Kelleher Court Tower is expected to enhance the safety and welfare of local residents and travelers through the area resulting in an improvement to public safety in this area of Wethersfield.

Conclusion

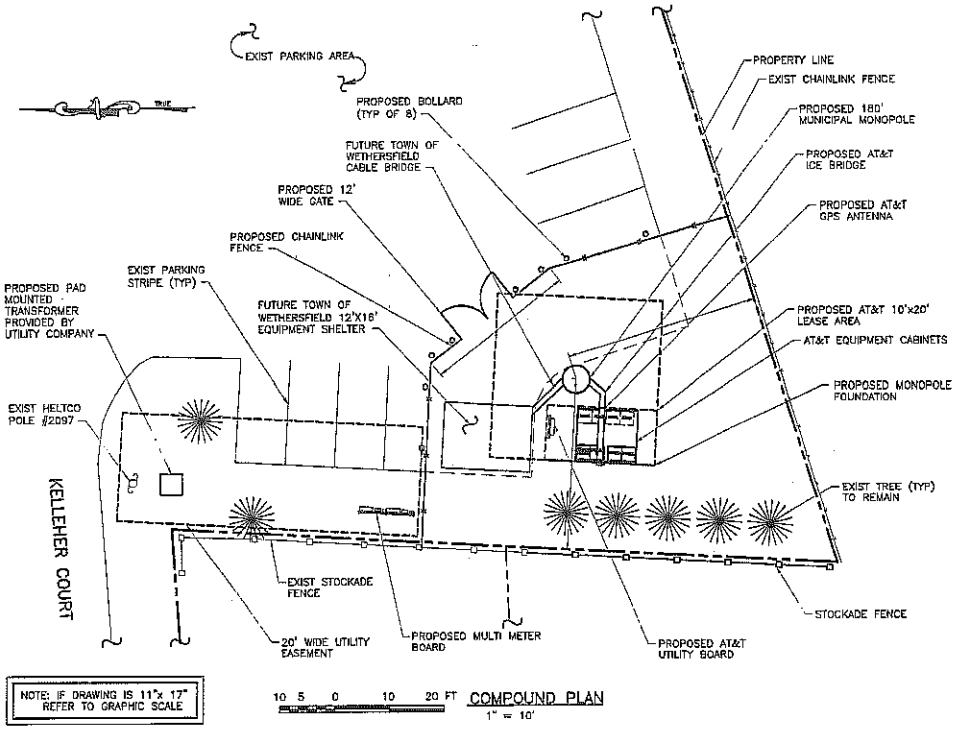
As delineated above, the proposed shared use of the Kelleher Court Tower satisfies the criteria set forth in C.G.S. § 16-50aa, and advances the General Assembly's and the Siting

Council's goal of preventing the proliferation of towers in the State of Connecticut. AT&T Wireless therefore requests the Siting Council issue an order approving the proposed shared use of the Kelleher Court Tower.

Respectfully submitted,

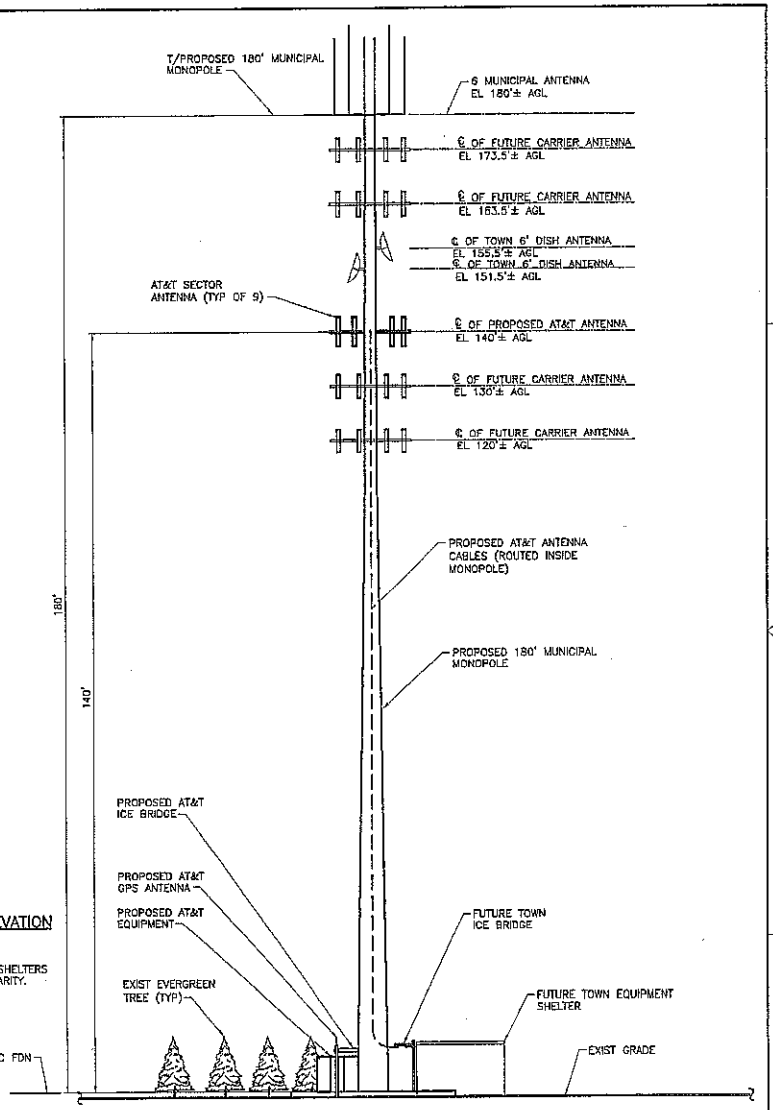
Christopher B. Fisher, Esq.
On behalf of AT&T Wireless

cc: Town Manager, Town of Wethersfield
RJ Wetzel, Bechtel



COMPOUND PLAN
1" = 10'

NOTE: IF DRAWING IS 11"x 17" REFER TO GRAPHIC SCALE



TOWER ELEVATION
1" = 10'

NOTE:
FUTURE EQUIPMENT SHELTERS NOT SHOWN FOR CLARITY.

TECTONIC/KEYES ASSOCIATES
1344 SILAS DEANE HIGHWAY, SUITE 303
ROCKY HILL, CT 06067-1349
OFFICE: (860)563-2341
FAX: (860)257-4682

ROCKY HILL SOUTH
SITE NO. CT-122
23 KELLEHER COURT
WETHERSFIELD, CT 06109

AT&T
AT&T WIRELESS PCS, LLC
13 Omega Dr, Second Floor
Stamford, CT 06902

NO.	DATE	REVISIONS	BY	CHK	APP'D
1	8/15/02	REVISED PER COMMENTS	MBF	MC	JDF
0	8/5/02	ISSUED FOR FINAL APPROVAL	RPM	MC	JDF
A	7/24/02	ISSUED FOR APPROVAL	RPM	MC	JDF

SCALE: AS SHOWN | DESIGNED: JDF | DRAWN: RPM

TECTONIC/KEYES ASSOCIATES

COMPOUND & TOWER ELEVATION

W.O. #	JOB NO.	DRAWING NUMBER	REV
2650.CT122	24445	907-007-122A-SC003	1

WETHERSFIELD PLANNING AND ZONING COMMISSION
PUBLIC HEARING **MAY 1, 2001**

The Wethersfield Planning and Zoning Commission held a public hearing on May 1, 2001, at 8:00 p.m. in the Council Chamber of the Town Hall, 505 Silas Deane Highway, Wethersfield, Connecticut.

Members present: Richard P. Jurasin, Chairman
Richard Roberts, Vice Chairman
Peter Leombruni, Clerk
Matthew Cholewa
Joseph L. Hammer
George Oickle
Richard Roberts
Raul Rodriguez
Richard Sitnik
Earle R. Munroe, Alternate

Members absent: Frank S. Chuang, Ph.D.
Darlene Oblak
Theodore Paulding

Also present: Stuart B. Popper, Town Planner

Chairman Jurasin called the meeting to order.

Application No. 1351-01-Z. was removed from the table.

APPLICATION NO. 1351-01-Z. Town of Wethersfield seeking to amend Article 27, 167-117 to add 167-117A to read "This Article shall not apply to municipal communication facilities which shall be exempt."

Commissioner Leombruni, Clerk, read to the Commission a memorandum from John S. Karangekis, Chief of Police; William R. Clark, Fire Chief; and Paul J. DeJohn, President of W.V.A.A. (dated April 26, 2001 - on file) describing the condition of the four (4) radio systems that are still in use; residual benefits that could possibly be attached; and the current tower presently at Company #3.

Commissioner Leombruni, Clerk, then read to the Commission a memorandum from Mr. Stuart B. Popper, Town Planner (dated April 26, 2001 - on file) that gave some background information concerning other municipalities' Zoning Regulations.

I

F = North Radio Tower

Atty. John Bradley, Town of Wethersfield Attorney, explained some of the legal information concerning the regulations, specific to the height of radio towers. He explained that the Commission would be acting in this instance as a legislative body, not an administrative body, and in doing so must promote the general welfare of the community. Atty. Bradley said as a legislative body, the local Commission is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions indicate the need for a change. He also explained that there is precedence in the zoning regulations for exemptions.

Commissioner Oickle asked Atty. Bradley why he did not ask for a change in the height requirement. Atty. Bradley explained that the applicants were trying to keep the amended change simple because of the current review in the restructuring of the zoning regulations.

Commissioner Roberts asked what the process would be for erecting a communications tower. Commissioner Roberts said his understanding was that only a building permit would be needed, not actual approval of a site plan. Atty. Bradley indicated that this was correct.

Commissioner Cholewa asked if there were any exemptions that exempted a particular party or type of applicant wholly from the zoning regulations. Atty. Bradley indicated that he was not aware of any except for the State of Connecticut.

Commissioner Leombruni asked about the situation that was brought regarding Judge Covello's decision. Atty. Bradley explained that Judge Covello ruled that the new digital cell phone equipment is not under the jurisdiction of the municipalities, but goes to the jurisdiction of the Siting Council and that this ruling was currently under review.

Commissioner Hammer asked for clarification regarding town-owned sites. He understood that the Town only needs a building permit to construct a tower. He explained that the height requirement is the most problematic and if the application was reworded to read the height limitation portion of this article shall be exempt, it might make things more clear. Atty. Bradley said that he thought that would be acceptable.

Commissioner Oickle felt uncomfortable with the Commission making this decision. He said that the memo from Mr. Popper regarding the various other towns that have exemptions did not list any immediate towns in the greater Hartford area. Commissioner Oickle also said that he looked at the site and that he felt the current tower was unobtrusive. He also stated that he was bothered by the fact that if the Commission approved this application, the Town would be exempt from having to follow the zoning regulations.

Commissioner Cholewa said that he thought cell phone antenna could be located on electrical transmission towers. Mr. Michael Turner, Town Engineer, said that he has never seen those types of antennas on transmission towers.

Chief of Police, John S. Karangekis explained that this was a public safety issue. He also explained that the site currently under consideration for the possible construction of an antenna was the only location that would cover 98% of the area and that the site was tested. Chief Karangekis said they have examined all of the possibilities and it appears the site under consideration is the only site that would provide the necessary coverage.

Commissioner Hammer asked if screening for the first 5 feet would be a problem and Mr. Karangekis said that it would not be a problem. Commissioner Hammer also asked about the requirement that if in a residential zone, the tower must be at least 5 feet from side and rear lot lines. Mr. Karangekis said that it was already looked into.

Mr. Charles Varca, Deputy Fire Chief, pointed out that the existing tower on the roof of Company #3 has gone past its time and if it does fail, the Town will lose their secondary communication center, which serves a number of agencies. He also explained that the roof of Company #3 needs major repairs.

Commissioner Jurasin, Chairman asked if there was anyone wishing to speak either in favor or in opposition to the subject application.

Paul J. DeJohn, President, Wethersfield Volunteer Ambulance Association, recommends that this be approved because if information is not delivered in a timely manner, this will only delay care. Also, he said that it would be a big benefit for all agencies to work together.

Mr. Gary Santoro, 44 Victory Lane, asked the Commission to support this amendment.

Ms. Susan Bookman, 51 Gooseberry Hill, said that the safety of the people should be the first and foremost consideration. She explained that public safety officials have many exemptions and that this exemption should be something that the Town of Wethersfield should have.

Mr. Robert Young, 20 Coppermill Road, was concerned that the Town of Wethersfield was asking for special exemptions that nobody else would be able to get.

The Commission members and Mr. Mike Turner, Town Engineer discussed what a tower would look like.

The Commission then discussed various wording to revise the current application.

There was a 5-minute recess.

Atty. Bradley proposed the following amendment to the Town's application: "The height restrictions of this article as set forth in Section 167-121 shall not apply to municipal public safety radio communication facilities."

There being no one else who wished to speak, Commissioner Jurasin, Chairman, declared the Public Hearing closed.

WETHERSFIELD PLANNING AND ZONING COMMISSION

_____
Peter Leombruni, Clerk

I hereby certify that the above is a true copy of the minutes as approved by the Planning and Zoning Commission on _____.

_____
Peter Leombruni, Clerk

The Wethersfield Planning and Zoning Commission held a public meeting on May 1, 2001, immediately following the public hearing, in the Council Chambers of the Town Hall, 505 Silas Deane Highway, Wethersfield, Connecticut.

Members present: Richard P. Jurasin, Chairman
Richard Roberts, Vice Chairman
Peter Leombruni, Clerk
George Oickle
Richard Roberts
Raul Rodriguez
Richard Sitnik
Earle R. Munroe, Alternate

Members absent: Frank S. Chuang, Ph.D.
Darlene Oblak
Theodore Paulding
Matthew Cholewa
Joseph L. Hammer

Also present: Stuart B. Popper, Town Planner

APPLICATION NO. 1351-01-Z. Town of Wethersfield seeking to amend Article 27, 167-117 to add 167-117A to read "This Article shall not apply to municipal communication facilities which shall be exempt", which would be amended as follows: "The height restrictions of this article as set forth in Section 167-121 shall not apply to municipal public safety radio communication facilities."

The Commission discussed the responsibilities of the Town to take into account the surrounding residential areas and be sensitive to their needs. The Commission also discussed the public safety issue.

Upon motion made by Commissioner Leombruni, seconded by Commissioner Sitnik, and a poll of the Commission, it was voted 8 in favor and 2 against, the amended article was voted that the subject amended application BE APPROVED.

MANDATORY REFERRAL, from the Town Council under Statute Section 8-24, for the School Projects Building Committee Report from Chairman McEntire dated April 24, 2001, as amended.

Commissioner Leombruni, Clerk, read to the Commission a memorandum from Mr. Lee C. Erdmann, Town Manager, (dated May 1, 2001 - on file) concerning the financial parameters for School Projects.

Mr. Charlie Viani, Co-Chairman of the School Projects Building Committee, introduced himself, Mr. Glenn Yeakel, Architect with Friar Associates and Mr. William Yocom, Landscape Architect with Richter & Cegan. Mr. Viani said we are here tonight to present information to the address the issues and concerns raised by the Planning and Zoning Commission at their March 20th, 2001 meeting

Market: Connecticut
Cell Site Number: CT-122-E /Town of Wethersfield Apartments
Address: 23 Kelleher Court, Wethersfield, CT 06109

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), dated as of the date below, is entered into by The Town of Wethersfield a Municipal corporation, having a mailing address of 505 Silas Deane Highway, Wethersfield CT 06109, (hereinafter referred to as "Landlord") and AT&T Wireless PCS LLC, a Delaware limited liability company, by and through its member, AT&T Wireless Services, Inc., d/b/a AT&T WIRELESS, having a mailing address of 2729 Prospect Park Drive, Rancho Cordova, California 96570 (hereinafter referred to as "Tenant").

BACKGROUND

Landlord owns that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 23 Kelleher Court, Wethersfield, CT 06109 in the County of Hartford, State of Connecticut (collectively "Property"). **Landlord desires to grant** Tenant **the right** to use a portion of the Property in connection with its federally licensed communications business **and** in accordance with this Agreement.

The parties agree as follows:

1. **LEASE OF PREMISES.** Landlord leases to Tenant portions of the Property consisting of (a) a room/cabinet/ground area space of approximately 200 square feet (10'X20'); and (b) space on the **190' monopole** structure suitable for the antennae of the town and 5 other carriers **constructed by Tenant for Landlord,** together with such easements as are necessary for the antennas and initial installation as described on attached **Exhibit 1** (collectively, "Premises").

2. **PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair and replacement of its communication facility and related equipment, cables, accessories and improvements, which may include a suitable support structure associated antennas (up to 12 antennas and 24 related coaxial cable, GPS unit and LMU for E911 and one (1) coaxial cable for each), equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively the "Communication Facility"); such use may include the right to test, survey and review title on the Property (collectively, the " Permitted Use". Landlord and Tenant agree that any portion of the Communication Facility that may be described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. **Exhibit 1** includes conceptual drawings of the initial installation of the Communication Facility and Tenant's scope of work is further defined in **Exhibit 3**, attached hereto. Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. Tenant has the right to make Property improvements, alterations or additions ("Tenant Changes") appropriate for Tenant's use **subject to the written approval of Landlord which approval shall not be unreasonably withheld, conditioned, or delayed, provided that, Tenant may make any "in-kind" improvements or alterations within its equipment cabinet/shelter without the prior written approval of Landlord.** Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement.

3. **TERM.** (a) The initial lease term will be ten (10) years ("Initial Term"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the tenth annual anniversary of the Commencement Date occurs.

(b) This Agreement will automatically renew for five (5) additional five (5) year Term(s) (each five (5) year term shall be defined as the "Extension Term"), upon the same terms and conditions unless the Tenant notifies the Landlord

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed and effective as of the date the last party executed this Agreement below.

WITNESSES:

Print Name: JOHN W BIVENS IV

Print Name: Chris Fitzpatrick

LANDLORD"

The Town of Wethersfield, a Municipal Corporation

By: _____
Print Name: Lee C. Erdmann
Its: Town Manager
Date: July 29, 2002

"TENANT"

AT&T WIRELESS PCS, LLC, a Delaware limited liability company, by and through its member, AT&T Wireless Services, Inc., d/b/a AT&T WIRELESS

Susana Silva

Print Name: 7/30/02

Print Name: THEOPHILUS A. BLACKSHEAR

By: _____
Print Name: Carmen Chapman
Its: System Development Manager
Date: 7/30/02