



Robert M. DeCrescenzo
(t) 860.548.2625
(f) 860.584.2680
bdecrescenzo@uks.com

October 6, 2023

VIA ELECTRONIC MAIL

Lisa.Fontaine@ct.gov
Siting.council@ct.gov

Ms. Lisa Fontaine, Fiscal Administrative Officer
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06501

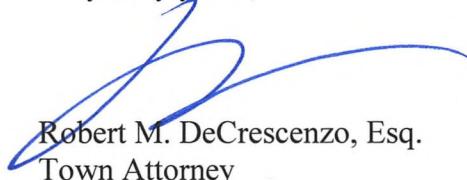
Re: PETITION NO. 1572 – East Windsor Solar Two, LLC petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 4.0-megawatt AC solar photovoltaic electric generating facility located at 31 Thrall Road, East Windsor, Connecticut, and associated electrical interconnection.

Dear Ms. Fontaine:

This office represents the Town of East Windsor (“Town”). On behalf of the Town, I have enclosed the following: (1) proposed findings of fact and (2) posthearing brief.

Please do not hesitate to contact me with any questions.

Very truly yours,



Robert M. DeCrescenzo, Esq.
Town Attorney

Enclosures

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

.....)
East Windsor Solar Two, LLC PETITION) PETITION NO. 1572
FOR DECLARATORY RULING THAT)
NO CERTIFICATE OF)
ENVIRONMENTAL COMPATIBILITY)
AND PUBLIC NEED IS REQUIRED FOR)
A 4.0 MEGAWATT AC SOLAR) October 6, 2023
PHOTOVOLTAIC ELECTRIC)
GENERATING FACILITY IN EAST)
WINDSOR CONNECTICUT)

TOWN OF EAST WINDSOR'S PROPOSED FINDINGS OF FACT

In accordance with § 16-50j-31 of the Regulations of Connecticut State Agencies, the Town of East Windsor ("Town") respectfully submits the following additional proposed Findings of Fact in connection with the above captioned proceeding. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Council's Draft Findings of Fact dated September 22, 2023.

THE PROJECT

1. The groundwater located beneath a majority of the Project Site is classified as GA. A GA classification means existing or potential public or private supply of water which is suitable for drinking without treatment (EWST 1, p. 29).

2. EWST has not done any pre-construction well testing on properties adjacent to or in close proximity to the Project Site (Tr., p. 97).

3. EWST has not conducted any physical testing of the soil on the Project Site, including a Phase I ESA (Tr., 59, 96).

4. EWST has performed phase ESAs on similar sites, which had former tobacco fields, which showed a high concentration of herbicides and pesticides. (Tr., p. 95).

5. The proposed Facility would require the excavation and placement of at least one thousand five hundred (1,500) holes roughly ten (10) feet deep for the racking posts necessary to support the solar panels for the Facility. (Tr., 97; EWST's response to Council Interrogatory No. 48).

6. Samples of the soil were not taken nor georeferenced to determine existing soil

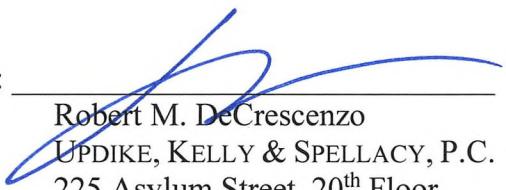
physical and chemical properties to use as a baseline. (EWST's response to Town Interrogatory No. 46).

7. EWST does not propose posting a decommissioning bond. (Tr., p. 99).

8. There will be no surety that can be enforced by any public agency to make sure EWST decommissions the Project. (Tr., p. 100).

Respectfully submitted by,

THE TOWN OF EAST WINDSOR

By: 

Robert M. DeCrescenzo
UPDIKE, KELLY & SPELLACY, P.C.
225 Asylum Street, 20th Floor
Hartford, CT 06103
(860) 548-2625
Email: bdecrescenzo@uks.com

CERTIFICATION

I hereby certify that on this day that the foregoing was delivered by electronic mail and regular mail, postage prepaid, in accordance with § 16-50j-12 of the Regulations of Connecticut State Agencies, to all parties and intervenors of record, as follows:

Counsel for EWST

Kenneth C. Baldwin
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
kbaldwin@rc.com



Robert M. DeCrescenzo
Commissioner of the Superior Court

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

.....)
East Windsor Solar Two, LLC PETITION) PETITION NO. 1572
FOR DECLARATORY RULING THAT)
NO CERTIFICATE OF)
ENVIRONMENTAL COMPATIBILITY)
AND PUBLIC NEED IS REQUIRED FOR)
A 4.0 MEGAWATT AC SOLAR) October 6, 2023
PHOTOVOLTAIC ELECTRIC)
GENERATING FACILITY IN EAST)
WINDSOR CONNECTICUT)

TOWN OF EAST WINDSOR'S POSTHEARING BRIEF

In accordance with § 16-50j-31 of the Regulations of Connecticut State Agencies, the Town of East Windsor (“Town”) respectfully submits the following Post Hearing Brief in connection with a Petition for Declaratory Ruling that No Certificate of Environmental Compatibility and Public Need Is Required for a 4.0 Megawatt AC Solar Photovoltaic Electric Generating Facility in East Windsor Connecticut (“Petition”) filed by East Windsor Solar Two, LLC (“EWST”) with the Connecticut Siting Council (“Council”).

The Town urges the Council to deny EWST’s Petition and require a full certification of environmental compatibility and public need be imposed. Connecticut General Statutes (CGS) § 16-50p requires, as a part of the certification process, that the Council consider “the environmental impact of the facility alone *and cumulatively* (emphasis added) with other existing facilities, including a specification of every significant adverse effect, including but not limited to, (i) electromagnetic fields that, whether alone or cumulatively with other effects, impact on, and conflict with the policies of the state concerning the natural environment, (ii) ecological balance, (iii) public health and safety, (iv) scenic, historic and recreational values, (v) agriculture, (vi)

forests and parks, (vii) air and water purity, and (viii) fish, aquaculture and wildlife.^{1”}

The Town’s primary concern is the safety and well-being of its residents. EWST’s lack of an environmental review of the project site, which did not include any on-site assessment, fails to provide even basic assurances that construction of a large utility scale solar facility on a site with close proximity to potable water wells can be accomplished in a safe manner. The Town additionally took the position during the proceedings that, even if safety and environmental concerns were adequately addressed, additional changes to the proposed facility were required to ensure that the facility, if approved, fit within the Town’s culture, history and aesthetics and address the concerns of abutters and affected neighborhoods, the Town would not oppose the Petition. These issues include: (1) the overall reduction of the proposed Facility to lessen impact on the abutters; (2) implementing appropriate screening for abutters; (3) a plan site plan for the stormwater pond proposed for the site with full engineering details and a stormwater report; and (4) ensuring an enforceable decommissioning plan with the appropriate decommissioning bond.

As presented to the Council, the Petition fails to adequately address pre-construction concerns designed to ensure that construction of a project of this magnitude is safe for the community. The Petition should be denied for this reason alone. If safety concerns can be met, the Town asks that the Council require EWST to take reasonable measures to ensure that this project is constructed in a way that does not diminish the appearance, history, culture, and value of the East Windsor community.

I. PRELIMINARY STATEMENT

The Town has done more than its share to support solar projects. The Project is not compatible with its surroundings. The East Windsor Board of Selectmen and Planning and Zoning

¹ Connecticut General Statute 16-50p(3)(B)

Commission jointly submitted a letter to the Council in September of 2021 stating the Town's collective position in opposition to the continued use of prime farmland to facilitate additional utility scale solar projects. In that correspondence, the Town noted an abundance of already-sited projects consuming considerable farmland in East Windsor, a town that takes great pride in its agricultural heritage and feel. The Town also requested that no further grid-scale projects be approved on farmland or forestland within the community. Further the East Windsor Planning and Zoning Commission passed a resolution dated April 28, 2023, opposing the utility scale project being sited on agricultural or residentially zoned property and found the proposed project to be inconsistent with the Town Plan of Construction and Development ("POCD") (See Docket, Town of East Windsor Exhibits).

Several years ago, there was an effort to decentralize the siting of landfills and trash-to-energy facilities from urban centers, citing environmental justice concerns around the adverse effects of those facilities in only a few municipalities. Now, the same phenomenon is happening, only this time to a small handful of rural municipalities being required to host renewable energy projects, against their will. This time, the voices crying out for relief are not coming from urban centers, but rather from small towns that have done more than their fair share to host utility scale solar projects on prime land, destroying the rural vistas that help define the Town.

Regrettably, another utility scale project is now before the Council for its consideration. While the Town recognizes that local jurisdiction does not apply to the work of the Council, the Town asks that the Council consider the East Windsor POCD. In that document, the Town clearly lays out that the "rural, village, agricultural and business character that define East Windsor must be preserved to keep the Town an attractive place to live, work and play.²" The plan further says

² Town of East Windsor 2016 Plan of Conservation and Development, pg. 2

that “residential and village area development must be carefully guided to ensure compatibility with community character (emphasis added) and allow East Windsor to prepare for the impacts of future growth and age populations. Economic development must be retained and expanded to support the community with services, jobs, and taxes, while remaining sensitive to the community’s environment and quality of life (emphasis added)³. As cited above, The East Windsor Planning and Zoning performed a review of its POCD in the context of the EWST proposal and found that the project was not consistent with the POCD.

The Town has spent decades developing land use controls to enhance and preserve the beautiful landscape and character of the Town. The results are immediately obvious to anyone visiting the Town or merely passing through. These land use controls are grounded in respect for the natural environment, celebrating and preserving the Town’s history and guiding the built environment so that any large scale commercial or industrial development does not overwhelm and sacrifice the existing look and feel of the community. The Town is a place where raising a family, providing first class education, and access to the Town’s wonderful natural environment are of the highest priority. While commercial development is not discouraged, its placement, scale and context are strictly examined and controlled to assure that development is properly located on appropriate sites within the Town. The EWST proposal site is not an appropriate site for purposes of an industrial scale utility development.

EWST’s proposed Facility is a major threat to these principles. The Council’s process precludes the Town’s land use boards from engaging in their customary in-depth scrutiny of this proposed development. Instead, the Town is a party to a state-mandated proceeding where the Council will supplant the careful, thoughtful review that the Town’s own boards and commissions

³ ibid

would normally engage in for a commercial project of this scale. We respectfully request that the Council implement the same level of careful review that the Town's land use boards would undertake and deny the Petition.

The detailed analysis that follows is intended to assist the Council in achieving the goal of careful scrutiny of EWST's proposed Facility, to protect the Town's inherent right to ensure that the industrial development of a 17.86-acre parcel of land in a residential zone does not come at the cost of the Town's neighborhoods and the health and safety of its residents.

As a result of such scrutiny, the Town believes the Council cannot approve the Petition as submitted. For the reasons set forth below, the Town believes that too many critical issues have been ignored, or not addressed in sufficient detail, to allow for the approval of the Petition as submitted at this time.

II. THE FACILITY AND PROJECT SITE

On May 5, 2023, EWST submitted a petition to the Council, pursuant to CGS § 16-50k and §4-176, for a declaratory ruling for the construction, maintenance, and operation of a 4.0-megawatt AC solar photovoltaic electric generating facility ("Facility") on a 17.86 acre site located at 31 Thrall Road in East Windsor, Connecticut ("Project Site"), and associated electrical interconnection ("Petition" or "Project"). (EWST 1, p. 1). The planned industrial development on the Project Site is in a classic New England rural landscape, with scattered residential development; intermixed with historic homes, woods and agricultural lands and narrow roads.

III. PRE-CONSTRUCTION TESTING OF THE PROJECT SITE IS INADEQUATE

A. Pertinent Environmental Characteristics and History of the Project Site.

The groundwater located beneath a majority of the Project Site is classified as GA. A GA classification means existing or potential public or private supply of water which is suitable for drinking without treatment. (EWST 1, p. 29). Despite the Project's proximity to private wells and potential contamination thereof, EWST has not done, and is not planning, any pre-construction well testing on properties adjacent to or in close proximity of the Project Site. (Tr., p. 97). The Council must remedy this glaring deficiency and order a comprehensive pre-construction well testing regimen including pre-construction, construction and post-construction testing phases with ongoing monitoring.

Potential contamination of private wells is essential given the historic use of the Project Site. Portions of the Project Site were formerly used for growing and cultivating tobacco (EWST 1, p. 3). EWST has not conducted any physical testing of the soil on the Project Site, including a Phase I ESA (Tr., pp. 59, 96). According to their own testimony, EWST recognizes the risks of developing the Project Site. EWST has performed phase ESAs on similar sites, which had former tobacco fields, which showed a high concentration of herbicides and pesticides. (Tr., p. 95). EWST should not be allowed to begin construction without comprehensive testing of the subsurface environmental conditions of the Project Site, and the potential existence of herbicides, pesticides, and other hazardous materials.

B. Pertinent Components of the Construction of the Facility.

The proposed Facility would require the excavation and placement of at least one thousand five hundred (1,500) holes roughly ten (10) feet deep for the racking posts necessary to support the solar panels for the Facility. (Tr., p. 97; EWST's response to Council Interrogatory No. 48). The excavation and grading contemplated by EWST constitutes a significant soil disturbance. The construction of the Facility, which includes prime farmland, has the potential to impact unknown

environmental conditions existing on the Project Site. It is undisputed that the Facility constitutes a significant construction project, which could disturb any unknown sources of contamination on a site surrounded by private wells. The prior known usage of the Project Site demands that environmental testing be performed before any construction begins and the Town urges the Council not to approve the Petition until the results of the testing are known and evaluated.

In addition, the Council must require pre-construction well testing to establish a baseline and provide testing before and after construction. A significant issue concerning the auger or pile driving of posts for the proposed Facility is the creation of preferential pathways for potentially existing pockets of contaminants. Samples were not taken nor georeferenced to determine existing soil physical and chemical properties to use as a baseline. (EWST's response to Town Interrogatory No. 46). EWST cannot know whether the subsurface environmental conditions of the Project Site would yield pesticide residues or significant pockets of contaminants without conducting a proper Phase I and soil and water testing. The entire area of homes surrounding the Project Site relies on private wells for their potable water. EWST has no idea what potential damage their Project development will have or may have on the existing wells.

IV. THE LACK OF ADEQUATE ALARMS FOR POTENTIAL OIL LEAKAGE NEEDS TO BE ADDRESSED

The proposed transformers on the Project Site will not have a containment system in the event of an oil leak, nor will they have a low-level alarm to alert EWST in the event of an oil leak. (Tr., p. 37; EWST's response to Town Interrogatory No. 67). The one thousand (1,000) kVA and three thousand (3,000) kVA transformers would contain three hundred fifty-four (354) gallons and five hundred fifty (550) gallons of FR3 oil, respectively. (Tr., p. 78). EWST confirmed that during

facility operation they will have no idea if a transformer or transformers is leaking oil until something indicated that the solar panels were not in good operation. (Tr., p. 38). Additionally, EWST advised that it is not their intention to store any fuels on the Project Site (Tr., p. 38), but they did not deny the possibility of fuels being stored on the Project Site. The Town urges the Council not to approve the Petition until a plan to install these standard safety measures prior to Facility operations is submitted by EWST and reviewed by the Council.

V. THE LACK OF APPROPRIATE SCREENING RESULTS IN THE UNACCEPTABLE VISUAL IMPACT OF THE PROPOSED FACILITY ON RESIDENTIAL AREAS.

A. EWST's Proposed Fencing is Not Compatible with the Surrounding Neighborhood.

EWST proposed two (2) different fence options that would surround the Project Site. The first option was a standard black vinyl chain-link fence, with a majority of the fence having a height of seven (7) feet, while the frontage area along nine hundred (900) feet of the frontage on Thrall Road would have a height of eight (8) feet with a privacy mesh. (Tr., pp. 17, 85). The second option was a farm-style livestock fence, which would not include any privacy mesh screening. (Tr., p. 17). Neither of these proposals are adequate to address the visual concerns of the surrounding residential areas. The Project Site does not currently have any fencing in place, but the first proposal would suggest adding approximately nine hundred (900) feet of a chain-link fence. (Tr., p. 85). This industrial style chain-link fence does not fit in the residential zone.

The Town would prefer a fence style and landscaping plan that is aesthetically compatible with the surrounding area, natural looking and unobtrusive (Tr., pp. 123-126). EWST could install the farm style livestock fence, however the proposed privacy mesh associated with the chain link perimeter fence could not be installed with a farm style livestock fence. (EWST's response to

Council Interrogatory No. 44; Tr., p. 17). Residents would have a year-round view of the Project Site and equipment to the south and east of the Facility, which does not conform to the residential use of the zone (EWST's response to Town Interrogatory No. 42). The entire Project Site is zoned for residential uses and is surrounded by residential neighborhoods. Because the facility is not permitted under the Regulations, and the zoning classifications of most of the Project Site, the residential property owners could not have anticipated a large-scale solar project in their backyards.

B. EWST Has Proposed a Landscaping Plan that is Inadequate.

Based on its review of the Petition and evaluation of the community, the Town strongly recommends that the proposed landscaping and fencing be modified. It is the Town's recommendation that the modification take the form of a combination of vegetated (red fescue type grasses and/or native pollinators) undulating earthen berms, fencing (i.e., cedar split rail), deciduous (i.e., Green Mountain Sugar Maples) and evergreen plantings placed in a manner to effectively soften and screen the Facility from the nine hundred (900) feet of frontage on Thrall Road.

In addition to the foregoing fence options, EWST has also proposed installing two (2) rows of evergreen plantings (approximately ten (10) feet center to center spacing) along the exterior southwestern fence line. A total of one hundred seventy (170) trees would be planted with a staggered formation. (EWST 1, Attachment B, Site Plan OP-2; Tr, pp. 82-84, 90). When the evergreens are first planted, they will be approximately six (6) to eight (8) feet in height and approximately ten (10) feet apart. (Tr., p. 83). Until these evergreens reach a larger maturity, they will not provide adequate screening and residents will be able to see through the gaps and see the fence surrounding the Project Site. (Tr., p. 83). When asked whether there will be one uniform

type of tree along all nine hundred (900) feet of frontage, EWST responded “*I think that's yet to be determined.*” (Tr., p. 84). The exact species that would be planted would be selected from a list of species (listed as Spartan Juniper, Brandon's Arborvitae, Emerald Green Arborvitae, Star Powered Juniper, Gillette, Swiss Stone Pine, Iowa Juniper, Sunkist Arborvitae, and Dragon Lady Holly) (Tr., pp. 91-92).

The Town's concern is the specific species of evergreen plantings that will be planted as a buffer between the Project Site and the road won't be selected until the time of construction. (Tr., pp. 92-93). The Town requests that EWST file a landscape plan in conjunction with the D and M plan that clearly identifies the species of the proposed evergreen plantings. Residents of the Town, especially abutting landowners, have the right to know what specific species of evergreen plantings will be utilized on the Project Site prior to construction.

The installation of a chain link fence, along with ill-conceived and minimalistic landscaping is contrary to the vernacular existing in the immediate area. Ultimately, the proposed fencing and landscaping contradicts the character of the Town, particularly the surrounding area, which includes a nearby scenic road. As suggested by a Council member during the straw vote, EWST must be required to match or exceed the landscaping plan in Simsbury as part of Petition No. 1313. The Town requests that the Council take administrative notice of the final landscaping plan approved in Petition No. 1313 for the DWW Solar II project on Hoskins Road, Simsbury Connecticut and require the same character and quality of the landscaping buffer it required for Docket No. 1313.

C. The Proposed Project Utility Poles Are Not Compatible with the Surrounding Neighborhood.

Additionally, the Project will require the installation of eight forty-to-forty-five-foot utility poles for EWST's equipment and Eversource's equipment to support the operations of the Project.

(Tr., pp. 107, 108). Given the size of these utility poles, they will remain visible during the duration of the Project.

D. A Glare Study Must be Conducted and Submitted Prior to Approval of the Petition.

EWST has also failed to conduct a full glare study and impact analysis for the nine thousand nine hundred thirty-two (9,932) mono-facial photovoltaic variable angled solar panels on the Project Site. (EWST's response to Town Interrogatory No. 61). When asked how the residents of the Town can be assured there will be no glare issue, EWST responded that they don't think there will be any glare. (Tr., p. 110). Should the Council approve this Petition, the Town would request that low-level alarms are installed to immediately alert EWST of any oil leakage from the transformers.

E. Traffic Concerns must be Addressed Prior to Council Approval of the Petition.

Additionally, during construction, sixteen (16) trucks per day would visit the site over approximately a two-to-three-week period. This would consist of approximately five (5) flatbed semi-trucks for delivery of racking equipment; seven (7) trucks with approximately forty (40) foot-long containers for solar modules; and four (4) flatbed semi-trucks for transformers, inverts, wire rolls and other equipment (Tr. 1, pp. 77-78).

VI. LOSS OF FARMLAND AND POTENTIAL IMPACT ON FUTURE FARMING

The host parcel is zoned residential (R-3) and is currently used for agriculture. (EWST 1, p. 3). The entire 33.68-acre parcel, upon which the Project Site is located, contains approximately 18.1 acres of prime farmland soil and 7.6 acres of statewide important farmland soil. The Project Site will occupy approximately 17.86 acres. (EWST 1, Appendix J). Prime Farmland Soils are

defined by the United States Department of Agriculture National Resources Conservation Service as the most suitable land for producing food, feed, fiber, forage, and oilseed crops (Council Administrative Notice Item No. 14). As a result of the Project, the Town will lose valuable farmland during the useful life of the solar panels. EWST is unaware of any plans by the site owner to offer agricultural easements across other land it owns in Town to supplement the loss of farming land at the Project Site. (EWST's response to Town Interrogatory No. 21). EWST's goal throughout the useful life of the Project would be *to try* and retain and potentially improve the soil characteristics of the Project (Tr., pp. 62-63).

Pursuant to CGS § 16-50p(g), the Council has no authority to evaluate, amend and/or determine rights under any lease with the property owner of the proposed site, including but not limited to, the restoration of the soils to prime farmland status (CGS § 16-50p(g) (2023). The Town requests additional assurances from EWST concerning the preservation and potential improvement of the agricultural soil on the Project Site for future farming use.

VII. ADEQUATE FINANCIAL SECURITY AND ACCOUNTABILITY FOR DECOMMISSIONING MUST BE REQUIRED

EWST does not propose to post a decommissioning bond. (Tr., p. 99). There will be no surety that can be enforced by any public agency to make sure EWST decommissions the Project. (Tr., p. 100). At the conclusion of the useful life of the Project, neither the Town nor the Council will have any authority to mandate the decommissioning of the Project. EWST has failed to provide adequate assurance to the Town that said decommissioning will take place. Should the Council approve this Petition, the Town requests an order directing EWST to post a decommissioning bond.

VIII. CONCLUSION

The Council must deny the Petition in its current form and order EWST to submit a revised petition for full certification of environmental computability and public need under CGS § 16-50p for the following reasons: (1) EWST has failed to perform critical pre-construction testing of the soil and surrounding water wells to determine the potential contamination exposure and overall environmental impact of the Project; (2) EWST has failed to propose an adequate landscaping buffer that matches or exceeds the buffer required by the Council for the Simsbury Solar Project, CSC Docket No. 1313; (3) EWST has not provided adequate information regarding stormwater management, the effects of glare or truck traffic; (4) EWST proposed site development includes eight (8) forty-five (45) foot industrial utility poles to be placed in the middle of a rural residential neighborhood; and (5) EWST has failed to post a decommissioning bond and/or provide any public agency the ability to enforce the decommissioning obligations of EWST at the end of the useful life of the Project. For these reasons, the Town urges the Council to deny the Petition as presented. In the alternative, the Town respectfully requests that the Council order the various mitigation measures addressed herein and in connection with the Development and Management Plan.

Respectfully submitted by,

THE TOWN OF EAST WINDSOR

By: _____


Robert M. DeCrescenzo
UPDIKE, KELLY & SPELLACY, P.C.
225 Asylum Street, 20th Floor
Hartford, CT 06103
(860) 548-2625
Email: bdecrescenzo@uks.com

CERTIFICATION

I hereby certify that on this day that the foregoing was delivered by electronic mail and regular mail, postage prepaid, in accordance with § 16-50j-12 of the Regulations of Connecticut State Agencies, to all parties and intervenors of record, as follows:

Counsel for EWST

Kenneth C. Baldwin
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
kbaldwin@rc.com



Robert M. DeCrescenzo
Commissioner of the Superior Court