

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL
SITING COUNCIL

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CONNECTICUT
SITING COUNCIL

IN RE: DOCKET NO. 272: JOINT APPLICATION OF THE CONNECTICUT LIGHT AND POWER COMPANY AND THE UNITED ILLUMINATING COMPANY FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR A 345 -K V ELECTRIC TRANSMISSION FACILITY AND ASSOCIATED FACILITIES BETWEEN SCOVILL ROCK SWITCHING STATION IN MIDDLETOWN AND NORALK SUBSTATION IN NORWALK

BRIEF OF PAMELA WERTH AND PETER WERTH

I. INTRODUCTION

Peter Werth and Pamela Werth are the owners of 85 Rimmon Road, in Woodbridge, Connecticut. They have owned the property since 1984. They intervened in this proceeding after learning in 2006 that utilities planned to route a transmission line in an unfair and unreasonable manner that hugs their property and has an adverse affect on their environment, viewshed, use of their home, and perceived safety. The new transmission lines will be closer than 300 feet to the Werth home. A survey attached to this brief [demonstrating what the Council saw at the hearing] shows an alternative proposed route that is no more than 300 feet from Congregation B'nai Jacob or the Werth residence.

When the Werths purchased their property, the utility transmission lines which are currently routed over the Congregation B'nai Jacob property next door to their home were located 300 feet from their house. The Werths did not pay steadfast attention to the Siting Council hearing which culminated in the Decision and Order of April 2005 because they had no reason to believe that the hearing

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would result in any negative or adverse impact on them since the transmission lines were already at 300 feet from their house which is the closest acceptable safety recommendation. They continue to hold that belief.¹ The Order [at 6(b)], the portion germane to the Werths, gave no indication it would cause any harm to them. The unfair misinterpretation of the Order given in the D & M plan is not one that reasonable people could have foreseen. Although the Order did state that the lines should be moved further away from the Congregation B'nai Jacob buildings, the Werths believe that the reasonable and fair interpretation of the Order is that the lines would be moved but would still cover a short straight path between the place where the lines entered the B'nai Jacob property. The lines can and should be relocated to meet the requirements of B'nai Jacob while not adversely affecting the Werths. The Werths have proposed a simple map showing that there is ample room for the transmission lines to be moved 300 feet from B'nai Jacob and still maintain the 300 feet that they presently are from the Werths' residence. (See attached).

II THE JULY 14 HEARING

Under the Settlement Agreement between the utilities and Congregation B'nai Jacob et al., the proposed line sets a jagged course designed to hug the border of the B'nai Jacob property at the expense of the Werths.

The hearing held on July 14, 2006, in Woodbridge was thought unnecessary

¹ This, notwithstanding the statements from CL & P and others at the hearing that they would have located the lines as they are currently planned under the D and M plan of June, 2006. These statements are not credible. If the Siting Council wished to order the transmission line on the edge of

Council Order. The only reason the utilities entered into the Settlement, according to the testimony at the hearing, was to avoid the expense and time of continued litigation. We believe the Settlement can be generally effectuated without it having the adverse impact on the Werth property that it does now.

The origin of the Appeal by B'nai Jacob was the decision of Ezra Academy not to renew its lease with B'nai Jacob because of the overhead transmission lines. Those lines are on the west side of B'nai Jacob from the Werth property, and through the parking lot-- also on the west-side of the B'nai Jacob. It is that issue that the Sitting Council addressed when it ordered the transmission lines to be moved further from B'nai Jacob's buildings.

The Settlement was made a part of the Application of the utility companies to the DPUC, Docket 06-07-10, in which they seek approval to sell CL & P parcel appraised at \$1,310,000.00 to the Jewish Federation [or its wholly owned designee] for \$750,000.00. [It is a public record, admitted by the utilities.] B-4 of the Settlement reads:

"B'nai Jacob will convey a 185-foot wide easement over the B'nai Jacob property to CL&P in accordance with the ROW relocation shown on the map attached hereto as Exhibit C and CL& P will release the existing easement over the portion of the B'nai Jacob property impacted by the ROW relocation. The width and terms and conditions of the new easement will be equivalent to those of the existing easement..."

B-8 of the Settlement, which addresses the same geographical area, reads:

"CL & P will utilize its best efforts to construct the new 345-k V transmission structures of the B'nai Jacob property in the locations shown on Exhibit C.

The applicants and their supporters would have this Council believe that the route on Exhibit C has less of an impact on the Werth property than the one

contemplated by the Siting Council in its Order of April, 2005; and that the acquisition by B'nai Jacob of the Reis property actually reduces the impact that would otherwise have existed on the Werth property. An examination of Exhibit C, however, should be persuasive that this is an unfair and unreasonable explanation. There is no rational reason for the easement to be moved to within 138 feet of the Werth property as is planned. The easement over Exhibit C will cost the applicants \$250,000 more to build; and because the lines will be now longer, the lines will cost more to maintain.

Without the Settlement Agreement, there would have been no reason to specify the route on Exhibit C. It should be noted, however, that B'nai Jacob can obtain the benefits of the settlement without adversely impacting the Werths. The lines can be moved 300 feet away from Congregation B'nai Jacob—the distance important to Judge Levine who mediated the discussions-- by drawing a more reasonable, fair, and straightforward route (See attached survey). Such a route should be satisfactory to B'nai Jacob and does not have the same adverse impact on the Werth property.

A far more reasonable interpretation of the Sitting Council's Order of April, 2005, with respect to the route, was presented by Mr. Werth at the hearing, and is shown on surveys prepared for Mr. Werth in connection with this matter. The drawing submitted to the Siting Council on July 14 by Mr. Werth pays due regard to the Order of April, 2005, moving the lines at least 300 feet from B'nai Jacob; provides consideration for the quasi-public nature of B'nai Jacob and Ezra

by CL & P and UI, who argued that nothing in their new plan [as manifested in the D & M Plan of June, 2006,] required a new hearing. Apparently, the utilities believed and argued in their application that the D & M Plan of June 6, 2006, was authorized by the Siting Council's Order of April, 2005. The Siting Council, however, ordered the July 14 hearing because new and prior hereto not considered material was presented in the D & M Plan as a result of the Settlement, which was not within the spirit of its April, 2005 Order.

Similarly, CL & P and UI argued at the July 14 hearing that nothing at that hearing could transpire which has a negative impact on Mr. and Mrs. Werth because the planned route was previously authorized by the Order of April, 2005. We disagree, and believe the Siting Council should disagree as well. How could the new route have been clearly indicated when prior to the Settlement, the Reis property was not used? Why should the Werths have believed that the new route would not be straightforward and efficient? The only way the Werths could have foreseen the relocation is to believe that the utilities were going to act in a way that made no sense, i.e., they would choose a course that violated the 300 foot recommended safety norm when there was ample land to give both B'nai Jacob and the Werths this 300 foot safety distance.

III. THE PROPOSED SETTLEMENT

The hearing of July 14, 2006, was generated by the Proposed Settlement of the appeal brought by Congregation B'nai Jacob and others of the April, 2005 Siting

the Congregation B'nai Jacob property as opposed to moving it further from the buildings, it would have been able to clearly write such an order.

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Academy, and does not adversely impact the Werth property in the same unreasonable and unfair way as the one presently planned.

III. CONCLUSION

The utility companies ought to be constrained to act fairly toward all ratepayers and property owners. The Werths are neither unreasonable nor litigious individuals. The Werths have been very good friends of B'nai Jacob. For over 20 years they have allowed more than ten thousand members of B'nai Jacob to hold a service on their property [because of its proximity to the pond]. They have allowed dozens of children from Ezra Academy to perform their science projects on their property. Countless members have sat on their bench by the pond, others have parked in their driveway and others have walked on their property without a complaint from the Werths. The Werths purchased their residence knowing the location of the transmission line were 300 feet from their residence and considered a safe distance by CL&P recommendations. [Congregation B'nai Jacob, Ezra Academy and the two other parties to the settlement purchased and used their properties knowing the location of the transmission lines as well.] The Werths had no reason to know or believe that the lines would be relocated in accordance with the proposed Settlement per Exhibit C. The Siting Council members, it is submitted, had no reason to think that the lines would be relocated in the drastic way now proposed by the utilities. The Werths were, thus, not "aggrieved" by this Council's Decision of April, 2005. They did not appeal then because they were not then "harmed." To rule otherwise is to ask the Werths - and others - to engage in

litigation whenever they “worry they might be harmed” rather than when they suffer actual harm. The new route of the transmission lines on the border of the B’nai Jacob property is a “loose” and unreasonable interpretation of the Siting Council’s April, 2005 Order. The Werths expected – as they should-- the Order to be interpreted fairly and reasonably, without favoring one property owner and rate payer over another. While not attempting to impugn either the integrity or the character of Attorney David Schaeffer, it is clear that there is an inherent conflict of interest for someone to have been engaged by B’nai Jacob and related organizations to also represent the Town of Woodbridge, including the Werths. The Werths do not believe that Attorney Schaffer could fairly represent both the Town of Woodbridge and B’nai Jacob and come to the proposed settlement. If the town had engaged separate counsel, then other citizens of the town would have been represented in their interests vis-à-vis B’nai Jacob, et al.; and a more reasonable solution would have been achieved that clearly took into account all sides.

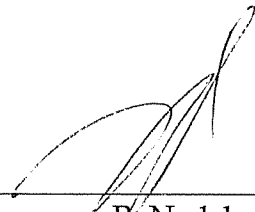
The Werths are clearly aggrieved by the proposal which was the subject of the July 14 hearing. To allow the new route as shown Exhibit C increases the vulnerability of the Werths on their own property, and has a substantial and negative impact on the Werths’ viewshed. Moreover, it creates much more distance from the B’nai Jacob property than the 300 foot standard urged by Judge Levine in the settlement conferences.

The distancing and location negotiated in a settlement where the Werths did

not have a voice, and which is as one-sided as the proposal here, should not be supported by the Siting Council. The Siting Council should order that the route over Congregation B'nai Jacob, in accordance with its Order of April, 2005, be placed further from Congregation B'nai Jacob's buildings than it is now, but in a manner that does not move closer than 300 feet from the Werth property.

The Council should Order that the transmission lines that cross B'nai Jacob do so in a straightforward, reasonable, efficient and direct manner, one that does not favor one property owner and rate payer over another, one that is neither harmful nor arbitrary – such as the one presented by the Werths.

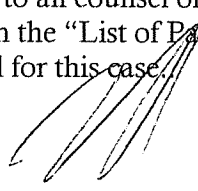
PETER WERTH and PAMELA WERTH

By 

Laurence P. Nadel
Laurence P. Nadel, P.C.
261 Bradley St.
New Haven, CT 06511
Tel. No: 777-8356
Juris No: 042011

CERTIFICATION

I hereby certify that I have sent a copy of the foregoing to all counsel of record, by electronic mailing or fist class mailto each party set forth on the "List of Parties and Intervenor's Service List of the Connecticut Siting Council for this case."

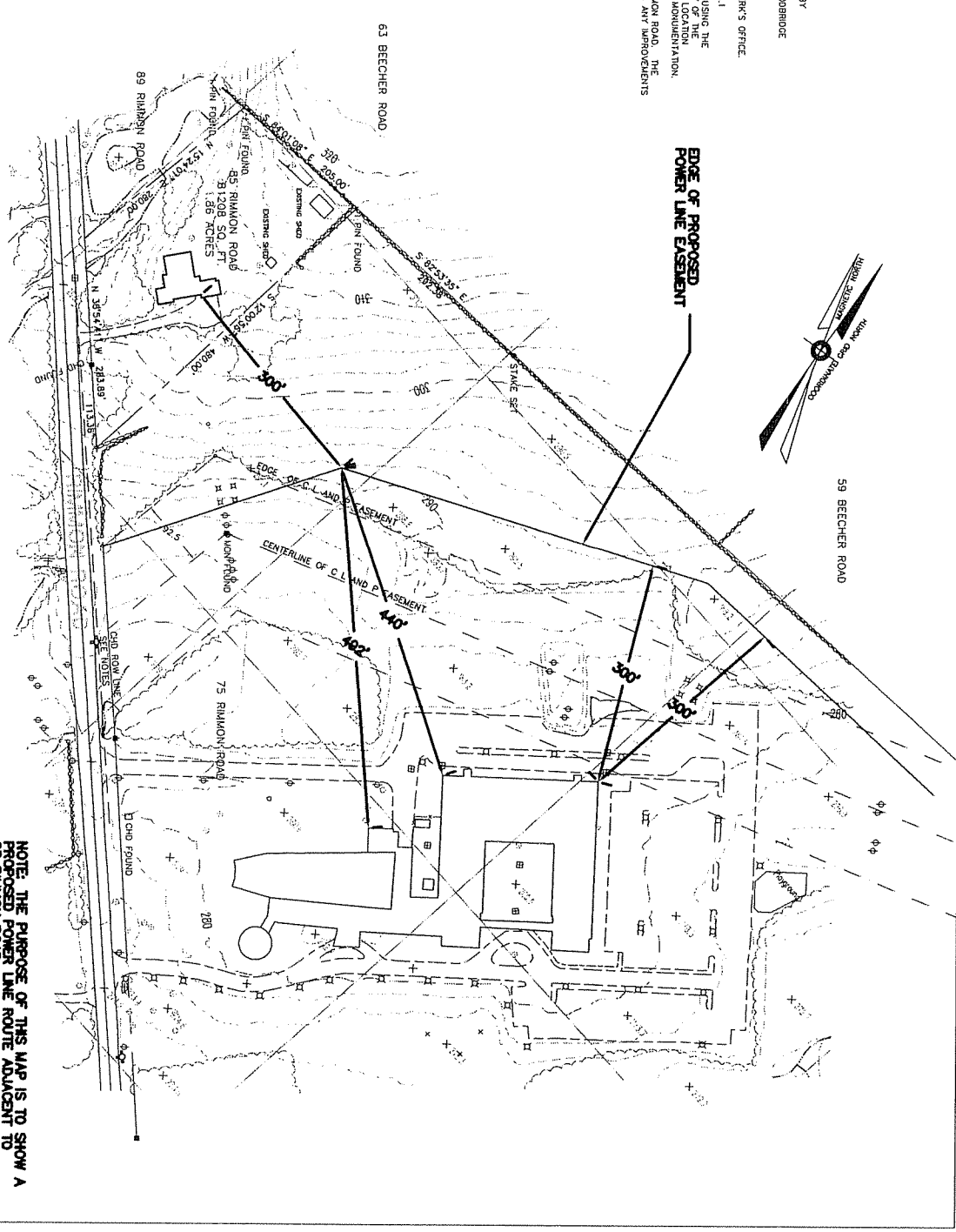
By 

Laurence P. Nadel, Esq.

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NOTES

1. THIS SURVEY AND MAP HAS BEEN PREPARED IN ACCORDANCE WITH THE SURVEYING AND MAPPING ACT OF 1988 AND THE STANDARDS OF CONDUCT OF THE SURVEYING AND MAPPING ACT OF 1988. THE SURVEYING AND MAPPING ACT OF 1988 IS AN ACT OF THE GENERAL ASSEMBLY OF THE STATE OF CONNECTICUT AS ENDED BY PUBLIC ACT 89-11, CHAPTER 106, SECTION 1-106, WHICH IS ASSOCIATED WITH PUBLIC ACT 89-11, CHAPTER 106, SECTION 1-106, WHICH IS ASSOCIATED WITH PUBLIC ACT 89-11, CHAPTER 106, SECTION 1-106. THE SURVEYING AND MAPPING ACT OF 1988 IS AN ACT OF THE GENERAL ASSEMBLY OF THE STATE OF CONNECTICUT AS ENDED BY PUBLIC ACT 89-11, CHAPTER 106, SECTION 1-106, WHICH IS ASSOCIATED WITH PUBLIC ACT 89-11, CHAPTER 106, SECTION 1-106. THE SURVEYING AND MAPPING ACT OF 1988 IS AN ACT OF THE GENERAL ASSEMBLY OF THE STATE OF CONNECTICUT AS ENDED BY PUBLIC ACT 89-11, CHAPTER 106, SECTION 1-106, WHICH IS ASSOCIATED WITH PUBLIC ACT 89-11, CHAPTER 106, SECTION 1-106.
2. REFERENCE IS MADE TO THE FOLLOWING MAPS:
 - A. DEEDS AND RECORDS OF THE REGISTERED PROFESSIONAL SURVEYORS OF THE STATE OF CONNECTICUT.
 - B. THE CONNECTICUT STATE HIGHWAY DEPARTMENT ROW MAP TOWN OF WOODBRIDGE, SHOWING THE LOCATION OF THE CENTERLINE OF THE HIGHWAY DEPARTMENT ROAD EASTERN TO THE ANSONIA ROAD.
 - C. THE ABOVE MAPS ARE ON FILE IN THE WOODBRIDGE TOWN CLERK'S OFFICE.
3. THE PARCELS ARE SHOWN ON WOODBRIDGE ASSESSORS MAP NO. 26.1.
4. THE BOUNDARIES OF 85 AND 75 RIMMON ROAD WERE ESTABLISHED USING THE ROW MAPS AND THE CALLS IN THE FILED DEEDS. THE REAR BOUNDARY OF THE PARCEL TO BE TRANSFERRED WAS ESTABLISHED USING THE CENTERLINE LOCATION AND BACK LINE AS SHOWN ON MAP REFERENCE 2A ABOVE AND FOUND MONUMENTATION.
5. THIS SURVEY IS FOR A PORTION OF 75 RIMMON ROAD, AND 85 RIMMON ROAD. THE EXISTING SITE FOR 75 RIMMON ROAD HAS NOT BEEN SURVEYED, NOR HAS ANY IMPROVEMENTS BEEN LOCATED OR IDENTIFIED.



NOTE: THE PURPOSE OF THIS MAP IS TO SHOW A PROPOSED POWER LINE ROUTE ADJACENT TO 85 RIMMON ROAD.

TO MY KNOWLEDGE AND BELIEF, THIS MAP IS SUBSTANTIALLY CORRECT AS NOTED HEREON.

JOHN PAUL GARCIA, REGISTERED PROFESSIONAL SURVEYOR
 THIS MAP IS NOT VALID WITHOUT A LRS SEAL AND SIGNATURE



REVISIONS		PROJECT TITLE	
		POWER LINE ROUTE 75 RIMMON ROAD & 85 RIMMON ROAD WOODBRIDGE, CT.	
PREPARED BY: JOHN PAUL GARCIA & ASSOC. P.C. ENGINEERS AND SURVEYORS BETHANY, CONNECTICUT 06525 PHONE: (203) 353-3306 FAX: (203) 353-3341	DR. BR. C.A.B. CROD. BR. J.B.G. SCALE: 1"=100' DATE: 8/14/05 JOB NO. 3162	DRAWING NO. C-1	

