



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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CERTIFIED MAIL

RETURN RECEIPT REQUESTED

January 8, 2016

Burton B. Cohen, Esq.
Murtha Cullina LLP
265 Church Street, P.O. Box 704
New Haven, CT 06503

RE: PETITION NO. 1212 - Town of Cheshire petition for a declaratory ruling for the Connecticut Siting Council to assume jurisdiction over an un-certificated telecommunications facility located at 1338 Highland Avenue, Cheshire, Connecticut.

Dear Attorney Cohen:

At a public meeting held on January 7, 2016, the Connecticut Siting Council (Council) considered the Town of Cheshire's request for the Council to assume jurisdiction over the telecommunications facility located at 1338 Highland Avenue in Cheshire.

The Council ruled as follows:

1. The request be treated as a petition for a declaratory ruling from the Town of Cheshire submitted under Connecticut General Statutes §4-176 for the Council to assume jurisdiction over the existing silo facility pursuant to Connecticut General Statutes §16-50i (a)(6) and Regulations of Connecticut State Agencies §16-50j-2a (23);
2. Waiver of the petition filing fee for the Town of Cheshire's petition for a declaratory ruling pursuant to Regulations of Connecticut State Agencies §16-50j-3; and
3. Issuance of a declaratory ruling that the Council assumes jurisdiction over this existing telecommunications facility based on the fact that the silo structure is no longer used principally for garden center purposes pursuant to the Council's declaratory ruling in Petition No. 581 and the regulatory definition of "tower" under Regulations of Connecticut State Agencies §16-50j-2a (23).

This decision is under the exclusive jurisdiction of the Council and is not applicable to any other telecommunications facility.

Enclosed for your information is a copy of the staff report for this matter.

Very truly yours,

Robert Stein
Chairman

RS/MAB/cm

Enclosure: Staff Report dated January 7, 2016

c: Michael A. Milone, Town Manager, Town of Cheshire
William S. Voelker, Town Planner, Town of Cheshire



**Request from the Town of Cheshire for the Connecticut Siting Council to assume jurisdiction over
an uncertificated telecommunications facility located at 1338 Highland Avenue, Cheshire,
Connecticut
Staff Report
January 7, 2016**

On October 5, 2015, the Connecticut Siting Council (Council) received correspondence from the Town of Cheshire (Town) respectfully requesting the Council initiate a proceeding to assume jurisdiction over an existing, uncertificated telecommunications facility located at 1338 Highland Avenue in Cheshire.

The existing facility is a 64 foot silo structure located approximately 80 feet east of Highland Avenue (State Route 10) on property owned by Tower Farms Nursery. The site property is located in a Cheshire I-2 Industrial District Zone. Telecommunications antennas were initially attached to the existing silo structure pursuant to a site plan application submitted by Springwich Cellular Limited Partnership and SNET Mobility, Inc. to install cellular antennas and an equipment cabinet that was approved by the Cheshire Planning & Zoning Commission on November 22, 1999 with the condition that the applicant comply with comments in a memo from the Cheshire Police Department dated November 4, 1999.

On July 22, 2002, the Cheshire Planning & Zoning Commission approved a site plan application from AT&T Wireless PCS, LLC (AT&T) to collocate antennas on the facility with the conditions that the antenna collocation should blend color and material with the existing tower and the equipment cabinet shall be of such character as to harmonize with the other cabinet and/or buildings in the immediate area.

On November 16, 2005, the Cheshire Planning & Zoning Commission approved a special permit application from Nextel Communications of Mid-Atlantic, Inc. (Nextel) to collocate antennas on the facility with the conditions that any proposed lighting on the tower or equipment cabinet shall comply with Section 33.9 of the Cheshire Zoning Regulations, Nextel must submit to the Town's emergency key box system and provide key access for emergency use and proposed plantings must be evergreens such as arborvitae or white pine and shall have a minimum height of 5-6 feet.

At the time these site plan and special permit applications were submitted to the Town, the existing silo structure was used for garden center purposes. At this time, however, the existing silo structure is no longer used for garden center purposes.

Specifically, the reasons for the Town's request for the Council to assume jurisdiction are as follows:

1. Certain safety-related issues have recently arisen with the facility;
2. The Town lacks the technical resources and institutional knowledge to ensure that the facility is in compliance with applicable state and federal requirements concerning construction, installation, operation and modification; and
3. The facility meets the definition of a "telecommunications facility" under Connecticut General Statutes §16-50i (a)(6) and the definition of a "tower" under Section 16-50j-2a(23) of the Regulations of Connecticut State Agencies.

On October 6, 2015, the Council provided notice of the Town's correspondence to the Telecommunications Service List and requested submission of comments, including, but not limited to, whether a public hearing

should be held, regarding the Town's request for the Council to assume jurisdiction over the silo telecommunications facility on or before October 30, 2015. The Council received correspondence from Sprint, the successor in interest to Nextel, dated October 13, 2015 indicating that although Nextel received Town of Cheshire Planning & Zoning Commission approval to install equipment on the facility on October 12, 2005, Nextel decommissioned their cell site at 1338 Highland Avenue in Cheshire on or about October 9, 2013 and removed all of the Nextel equipment from the site.

On October 30, 2015, AT&T submitted comments on the Town's request indicating that antennas affixed to existing silos, water tanks and buildings are considered "wireless attachments" that are subject to municipal jurisdiction rather than antennas affixed to "towers" that are subject to Council jurisdiction. However, AT&T also notes that the Council has issued declaratory rulings related to silos and wireless facilities in the past based on unique facts presented in certain cases, but AT&T takes no position on the treatment of the Town's filing.

On December 8, 2015, the Town provided additional correspondence reporting that ownership of the silo was conveyed from the property owner to GTP Towers I, LLC (GTP) in 2007 and according to the agreement, GTP is obligated to maintain the structural integrity, upkeep and maintenance of the silo. In 2013, the parent company of GTP, Global Tower Partners, was acquired by American Tower Corporation (ATC); however, the Town was never notified by ATC of its interest in the facility. In the same correspondence, the Town reiterated its request for the Council to undertake procedural steps to assume jurisdiction over the silo facility located at 1338 Highland Avenue in Cheshire, but the Town also indicated that it takes no position on procedural issues relating to this request.

Under Connecticut General Statutes §16-50i (a)(6), the Council has jurisdiction over "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..."

Under Regulations of Connecticut State Agencies §16-50j-2a (23), "tower means a structure, whether free standing or attached to a building or another structure, that has a height greater than its diameter and that is high relative to its surroundings, or that is used to support antennas for sending or receiving radio frequency signals, or for sending or receiving signals to or from satellites, or any of these, which is or is to be:

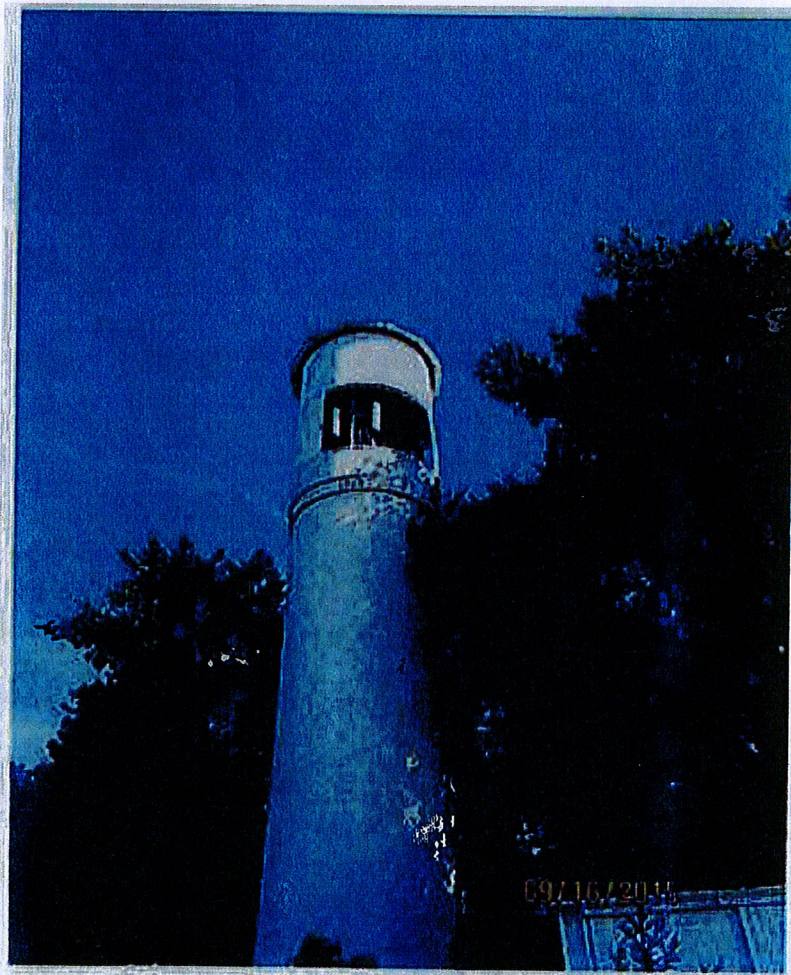
- (A) Used principally to support one or more antennas for receiving or sending radio frequency signals, or for sending or receiving signals to or from satellites, or any of these, and
- (B) Owned or operated by the state, a public service company as defined in Section 16-1 of the Connecticut General Statutes, or a certified telecommunications provider, or used in a cellular system as defined in Section 16-50i(a) of the Connecticut General Statutes."

In its October 30, 2015 correspondence, AT&T cited to the Council's decision in Petition 581 that involved an abandoned silo structure located at a garden center that was no longer used for agricultural purposes and would not be used for any other purpose than as an "antenna support structure." The Council issued a declaratory ruling based on the unique facts presented in the petition for a declaratory ruling and affirmatively stated in its decision that the Council assumed jurisdiction in order to establish a clear precedent for circumstances where unused or abandoned structures are used principally as antenna support structures by

telecommunications carriers. Antenna installations on unused or abandoned structures, such as the subject silo, fall under the regulatory definition of "tower" and thus, the Council has jurisdiction over these installations. A copy of the decision letter and staff report for Petition 581 is attached.

Staff recommends the following:

1. The Council treat this request as a petition for a declaratory ruling from the Town of Cheshire submitted under Connecticut General Statutes §4-176 for the Council to assume jurisdiction over the existing silo facility pursuant to Connecticut General Statutes §16-50i (a)(6) and Regulations of Connecticut State Agencies §16-50j-2a (23);
2. The Council waive the petition filing fee for the Town of Cheshire's petition for a declaratory ruling pursuant to Regulations of Connecticut State Agencies §16-50j-3; and
3. The Council issue a declaratory ruling that the Council assumes jurisdiction over this existing telecommunications facility based on the fact that the silo structure is no longer used principally for garden center purposes pursuant to the Council's declaratory ruling in Petition No. 581 and the regulatory definition of "tower" under Regulations of Connecticut State Agencies §16-50j-2a (23).



Existing 64-foot silo structure at 1338 Highland Avenue in Cheshire.