

October 30, 2015

VIA E-MAIL & FIRST CLASS MAIL

Melanie A. Bachman, Acting Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: Town of Cheshire Jurisdictional Request
Wireless Communications Sites
1338 Highland Avenue, Cheshire, Connecticut

Dear Executive Director Bachman:

Thank you for your correspondence dated October 6, 2015 with respect to the above referenced matter. We are in receipt of a corresponding letter from Attorney Burton Cohen on behalf of his client, the Town of Cheshire ("Town") to the Connecticut Siting Council dated October 2, 2015. On behalf of New Cingular Wireless PCS, LLC ("AT&T"), we are providing comments on the Town's "request for the Connecticut Siting Council to assume jurisdiction" over the wireless communications facility located at 1338 Highland Avenue in the Cheshire.

Factual Background

For purposes of our correspondence, it should be noted that the site is an existing silo that is part of a garden center business located in an industrial zoning district in Cheshire ("Silo"). The Silo is owned by the underlying property owner and part of its site plan approved by the Cheshire Planning & Zoning Commission ("Cheshire P&Z"). Over the past two decades, various wireless carriers have affixed antennas and screening on top of the Silo with associated equipment located at grade. The wireless carriers have each, individually, obtained zoning permits for their installations, including approvals from the Cheshire P&Z. These municipal zoning approvals for wireless attachments were duly issued in accordance with the Town's Zoning Regulations and sites constructed in furtherance of building permits issued by the Town's Building Department.

State Siting Council and Municipal Zoning Jurisdiction Over Wireless Attachments

As you know, antennas affixed to existing silos, water tanks, and buildings are to this day considered wireless attachments, not towers, and subject to applicable municipal zoning regulations. As such, in 1999, at the time of the first wireless attachment to the Silo in Cheshire, the Town had zoning jurisdiction over the project which was not in and of itself a project involving a telecommunications tower as defined in Section 16-50i and related Siting Council regulations. The Town has subsequently approved and maintained its zoning jurisdiction over various wireless carrier attachments to the Silo for the past 16 years, something noted by

Attorney Cohen in his letter and corresponding attachments. It should be noted that wireless carriers were under no legal obligation to file any notices or applications with the Siting Council for a second approval of their wireless attachments to the Silo, it being commonly known that the Council and municipal zoning agencies do not have concurrent jurisdiction over wireless infrastructure. See generally, *Town of Westport v. Connecticut Siting Council*, 260 Conn. 266, 796 A.2d 510 (2002). As such, the Town currently has zoning jurisdiction over the carriers' separate wireless installations and the Silo which is owned by the property owner.

Do the Facts Support a Petition for a Declaratory Ruling by the Town to have the Silo Deemed a Tower Subject to CSC Jurisdiction?

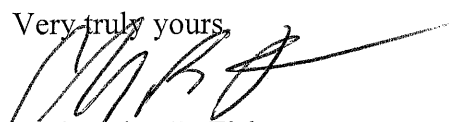
The Town's letter raises an interesting legal and procedural question, namely whether or not two units of government may assign or delegate between themselves separate and distinct statutory authority over various types of infrastructure as set forth and proscribed by the State Legislature. Agencies may not delegate to one another their respective jurisdiction, particularly where it would contravene the State Legislature's statutes. Thus, in the absence of express statutory authority for delegation of permitting jurisdiction, agencies such as the Connecticut Siting Council and municipal zoning authorities must maintain their separate jurisdictional authority as respectively set forth in Section 16-50i (PUESA) and 8-2 (Zoning Regulations) of the Connecticut General Statutes.

Nevertheless, as presented by the Town, and provided its filing is treated as a petition for a declaratory ruling, its goal of having the Siting Council maintain jurisdiction over the Silo as a tower may be possible under the unique facts as presented. As the Council is aware, there are various declaratory rulings it has issued over the years related to silos and wireless facilities. One in particular involved an abandoned silo that was no longer used for agricultural purposes (and part of a garden center) and which would not be used for any purpose other than as an antenna support structure. The carrier requested by petition that the structure as rebuilt be deemed a tower facility under the Council's jurisdiction. In that circumstance and based on the unique facts presented in that case, the Council issued such a ruling.

In this case, it is not clear whether or not the underlying property owner which owns the Silo has an intent to abandon any future use of it in its garden center business and dedicate it solely to use as an antenna support structure. If that is the case, the Town's filing might be treated as a petition for a declaratory ruling and the Silo ultimately declared a tower facility for purposes of the PUESA. AT&T takes no position at this time on the treatment of the filing and simply notes that the property owner, not AT&T, would have all of the responsibilities generally associated with Certificated tower facilities.

Thank you for your consideration of our comments on behalf of AT&T.

Very truly yours,


Christopher B. Fisher

Cc: CSC Service List