

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

APPLICATION OF OPTASITE TOWERS LLC  
AND OMNIPOINT COMMUNICATIONS, INC.  
FOR A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR  
THE CONSTRUCTION, MAINTENANCE AND  
OPERATION OF A TELECOMMUNICATIONS  
FACILITY AT 52 STADLEY ROUGH ROAD,  
DANBURY, CONNECTICUT

DOCKET NO. 366

JANUARY 20, 2009

APPLICANTS' RESPONSES TO CITY OF DANBURY  
PRE-HEARING INTERROGATORIES  
SET V

Q1. The City's Department of Health files indicate that the owners of property located at 14 Indian Spring Road received approval for a subsurface sewage disposal system, containing a curtain drain which is an integral part of the system on April 7, 2006. Said curtain drain is located at 52 Stadley Rough Road on the northwestern boundary of the Christ the Sheppard Church site, as is depicted on document recorded in Volume 1893 at Page 582 of the Danbury Land Records and attached hereto. Said curtain drain as depicted appears to render the current code complying area for the subsurface sewage disposal system at 52 Stadley Rough Road non-compliant with the Technical Standards for Subsurface Sewage Disposal Systems prepared pursuant to Section 19-13-B103d(d) of the RCSA, Section II.A., Table No1, Item H., as the current code complying area is located within 50 feet upgradient of the curtain drain placed in the easement area serving the subsurface sewage disposal system for 14 Indian Spring Road. The ability of the property owner, Christ the Sheppard Church, to utilize the land area proposed for the siting of the cell tower and its accompanying equipment limits potential options for future repair or expansion of the existing subsurface sewage disposal system serving 52 Stadley Rough Road. Pursuant to Section 19-13-B100a(d) and (e) of the Public Health Code, Christ the Sheppard Church will be required to establish a code complying area prior to construction of the proposed cell tower and its accompanying equipment.

If you or the property owner has not yet identified and received approval from the Health Department for an alternate location for the code complying area, then how is the Siting Council to be assured that any alternate code complying area does not fall within the same area in which the cell tower is proposed to be located?

A1. We offer the following information to the Siting Council in response to Danbury's statements above, the recently filed testimony of Mr. Baroody of the City's Health Housing and Welfare Department and the City's Interrogatory question above.

Prior City of Health Department Approval of Subsurface System at Neighboring Property - Illegal City Action and Construction by the owners of 14 Indian Springs Drive?

The Applicants have not reviewed the City Health Department's files associated with its 2006 approval for the subsurface disposal system and curtain drain associated with the single

family home at 14 Indian Springs Road nor has the City provided information regarding the existing or reserve septic areas on 52 Stadley Rough Road to support their factual allegations. Nevertheless, if the facts as outlined by the City and in the testimony of Mr. Baroody dated January 14, 2009 are accurate and in fact regulated by the Public Health Code as suggested by the City (i.e. the neighbors' downgradient groundwater curtain drain is within 50' of the reserve area for the subsurface septic system on 52 Stadley Rough Road and is not permitted), the City's Health Department should have rejected the application as submitted by the owners of 14 Indian Spring Road in 2006. Indeed, the City should have required the neighboring property owners to design a conforming septic system with a curtain drain appropriately located on their own property which has more than enough room for same as shown on the plan provided by the City as an attachment to Mr. Baroody's testimony. As such and if accurate, the City and neighbor actually created the alleged non-conformity for the reserve area at 52 Stadley Rough Road when they respectively approved and built the curtain drain potentially in violation of the State's Public Health Code. As such, the City and neighbor may be exposed to a cause of action by Christ the Sheppard Church, owners of the property at 52 Stadley Rough Road, to resolve the illegal condition if in fact it exists which could include the neighbors being compelled to remove and redesign their subsurface sewage system. This unless, the City is now confirming that when it approved the subsurface sewage system at 14 Indian Springs Road in 2006, it granted that property owner an interpretation or exception from the Technical Standards for Subsurface Disposal Systems, Section 19-13-B103d(b), Section II.A., Table No. 1, Item H, of the Public Health Code to allow the curtain drain to be located within 50' of the "code complying area" and system serving 52 Stadley Rough Road, if that is in fact true.

#### Relationship of Proposed Optasite Tower Facility to Christ the Sheppard Church Septic System

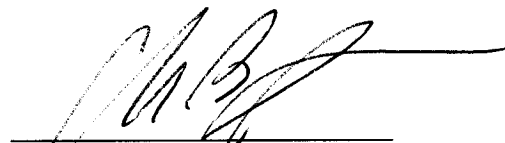
The proposed tower facility by Optasite contains no sanitary facilities and as such is not regulated by the Public Health Code. Sections 19-13-B100a(d) and (e) of the Public Health Code regulate residential accessory structures or other activities by a property owner that do not necessarily fall within the ambit of cell tower siting. As such, contrary to the assertion of Mr. Baroody in his testimony at subparagraphs "(d)" through "(g)", no permit or approval is required from the City's Health Department prior to construction of the proposed cell tower by Optasite. Moreover, resolution of the City's issue, if any, is solely for the City and the property owners at 14 Indian Springs Drive and 52 Stadley Rough Road and unrelated to any approvals for the tower facility. In resolving same, Christ the Sheppard Church is bound by the lease with Optasite, a memorandum of which was filed on City land records back in September of 2005, and any subsurface sewage expansion or design serving the church could not legally be implemented in Optasite's 10,000 square foot lease area. While irrelevant to the Council's decision in this Docket, the Applicants' have nevertheless had the attached sketch prepared which shows more than adequate areas on the over 5 acre property at 52 Stadley Rough Road for subsurface sewage expansion and reserves for the Church. Resolution of the issue identified by the City will still come down to how the City intends to address the potentially illegal improvements it approved for the owners of the 14 Indian Springs Road property in violation of the Public Health Code and whether it will force those neighbors to relocate their system, if the facts as alleged are accurate. The City simply has no authority under the facts alleged and presented by it to force the owners of 52 Stadley Rough Road to prove other areas on the property are adequate for expansion or reserve let alone make this a Siting Council issue.

CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and twenty copies of Optasite's and T-Mobile's responses to The City of Danbury's fifth set of interrogatories were served on the Connecticut Siting Council by overnight mail with an electronic copy sent via email and copy served via overnight mail and email to:

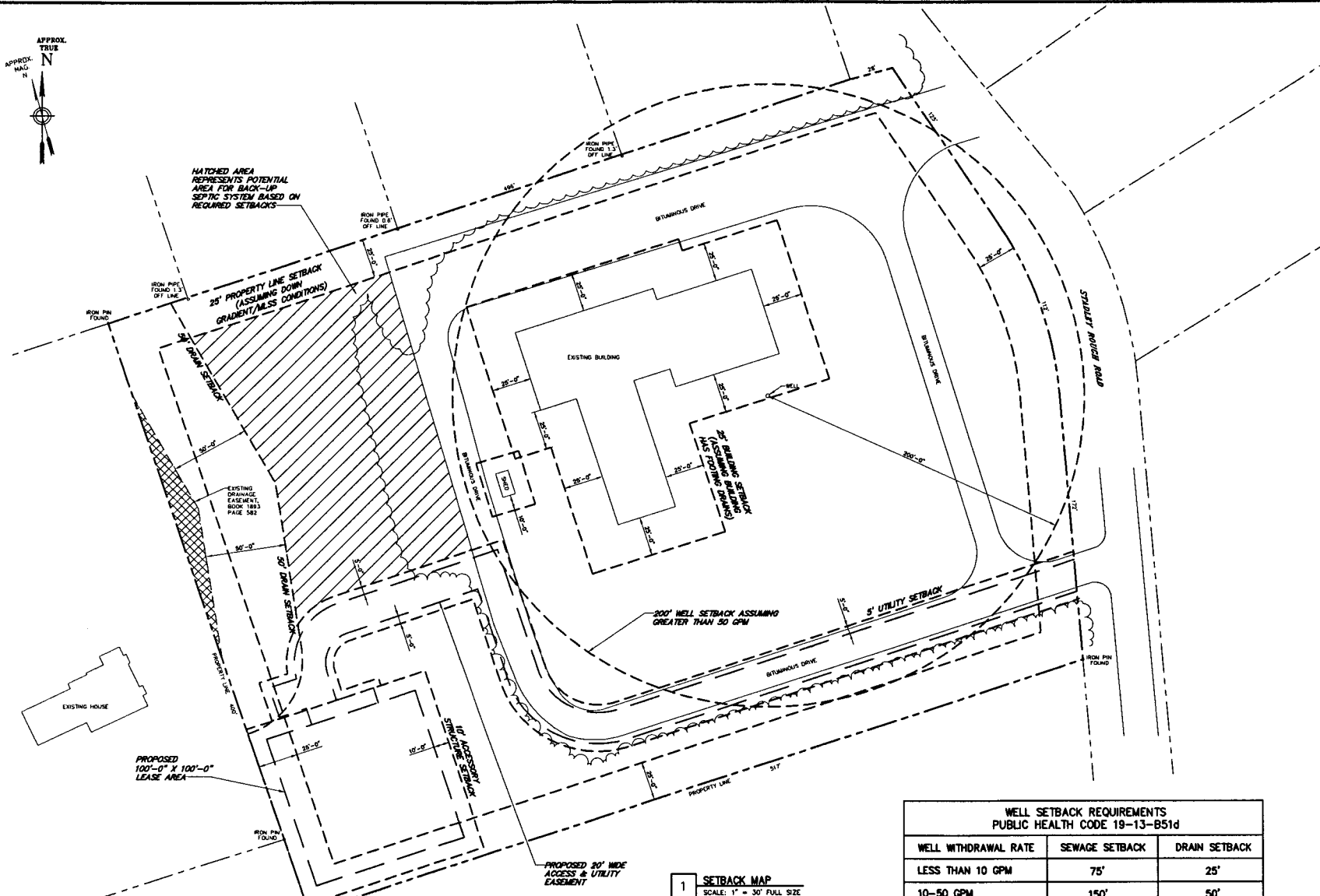
City of Danbury  
Laslo L. Pinter, Esq.  
Robin L. Edwards, Esq.  
City of Danbury  
Office of the Corporation Counsel  
155 Deer Hill Avenue  
Danbury, Connecticut 06810  
(203) 797-4518  
R.Edwards@ci.danbury.ct.us  
L.Pinter@ci.danbury.ct.us

Dated: January 20, 2009

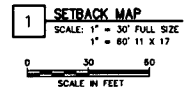


Christopher Fisher

cc: Charles Regulbuto  
Hans Fiedler  
Hollis Redding  
Rod Bascom, P.E.



**BASEMAP NOTES:**  
 1. BASEMAP INFORMATION OBTAINED FROM DRAWINGS BY URS CORPORATION AS DATED DECEMBER 21, 2005.  
 2. WETLAND FLAG LOCATIONS BASED ON A WETLAND DELINEATION BY KLENFELDER AND A SURVEY BY QM2 ASSOCIATES, INC.



WELL SETBACK REQUIREMENTS PUBLIC HEALTH CODE 19-13-B51d		
WELL WITHDRAWAL RATE	SEWAGE SETBACK	DRAIN SETBACK
LESS THAN 10 GPM	75'	25'
10-50 GPM	150'	50'
GREATER THAN 50 GPM	200'	50'

\*GPM = GALLONS PER MINUTE

**Optasite**  
 OPTASITE TOWERS LLC  
 1 RESEARCH DRIVE, SUITE 200C  
 WESTBOROUGH, MA 01581

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**CHA**  
 2130 Mill Creek Highway, Suite 212 - Rocky Hill, CT 06067-2339  
 Mobile (860) 397-4887 • www.chacorp.com  
 CHA PROJECT NO:  
 15363 - 1030 - 1801

NO. SUBMITTAL			
D	BY	CHK. PAL	APP'D. JPS
01/19/09			

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

SITE ID:  
 CT-999-0041  
 SITE NAME:  
 DANBURY  
 SITE ADDRESS:  
 52 STADLEY ROUGH ROAD  
 DANBURY, CT  
 06811  
 FAIRFIELD COUNTY

SHEET TITLE  
 SEPTIC  
 SETBACKS

SHEET NUMBER  
 C01