

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

In Re: Application of New Cingular Wireless : Docket No. 373  
PCS, LLC (AT&T) for a Certificate of Environmental :  
Compatibility and Public Need for the Construction :  
Maintenance and Operation of a Telecommunications :  
Tower Facility at St. Matthews Lutheran Church at :  
224 Lovely Street in the Town of Avon : June 18, 2010

**Testimony of  
Steven Kushner**

**On behalf of  
The Town of Avon, Connecticut**

**June 18, 2010**

My name is Steven Kushner, AICP. I am the Director of Planning and Community Development for the Town of Avon. I also serve as the Town Zoning Enforcement Officer. I hold a Bachelor of Science degree from the University of Massachusetts in Natural Resource Studies and a Master of Regional Planning from the same University. I have been employed by the Town of Avon since 1989. I have held the position of Director of Planning and Community Development for the past two years and for the previous 19 years served as Town Planner and Zoning Enforcement Officer. During this time, I have drafted many of the zoning regulations for the Town of Avon and authored both of the 1989 and 2006 Town of Avon Plan of Conservation and Development. As Director of Planning and Community Development I oversee the divisions of Planning, Inland Wetlands, Zoning Enforcement, Building Inspection, and Fire Prevention. Prior to employment with the Town of Avon, I was the Town Planner for the Town of Ellington, CT (2 years); Assistant Town Planner for the Town of Farmington, CT (3 years); and worked as Senior Regional Planner for the Northeastern Connecticut Regional Planning Agency (5 years). I have a total of 31 years experience as a public sector planner. I am certified by the American Institute of Certified Planners (AICP) since 1991. In addition, I am certified as a Zoning Enforcement Officer by the CT Association of Zoning Enforcement Officers since 1984.

The Town of Avon is a party to this application, Docket 373. I personally have participated as a witness in connection with the initial proceedings and visited the site where the tower is to be located on several occasions. Based on measurements taken by Town Staff, it appears that the new location (#4) is approximately 76 feet north of the approved location. We believe that the changed location presents adverse impacts to additional properties located to the east on Cold Spring Road. In addition, the new staked location appears to be very close to the edge of wetlands associated with Roaring Brook. These wetlands are part of an extensive and high-quality wetland system in Avon. We would ask that the Siting Council refer this matter to the State DEP for review and comment.

The D & M Plan prepared by AT&T suggests that the tower might, in fact, be designed in a manner such that it could be expanded by an additional 20 feet. We would ask that the Siting Council only consider approving the tower in accordance with the 110-foot limit imposed in the October 9, 2009, ruling. We would also ask that due to adverse impacts in this residential area that AT&T stipulate not to seek future approvals to expand the height of this tower or locate additional towers on these premises.

I would like to submit as official testimony, of the Town of Avon, 2 letters previously submitted. These letters are dated January 13, 2010 and June 3, 2010, each addressed to Mr. S. Derek Phelps, Executive Director, CT Siting Council, signed by Brandon Robertson, Avon Town Manager. These letters are labeled "Exhibit A" and "Exhibit B".

Thank you for your consideration.

Sincerely,



Steven Kushner, AICP

Director of Planning and Community Development

Copy: Brandon Robertson, Avon Town Manager  
Avon Planning and Zoning Commission



TOWN  
OF  
AVON

"Exhibit A"

60 West Main St. Avon, CT 06001-3743  
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January 13, 2010

Mr. S. Derek Phelps  
Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

Dear Mr. Phelps:

I am writing to you regarding Docket 373 which relates to a request by AT&T to construct a cellular communication tower located at 228 Lovely Street on property owned by St. Matthew Lutheran Church.

A final ruling on this matter was issued by the Siting Council on October 8, 2009, after a lengthy public hearing process and review by the Council spanning approximately 10 months. During the course of the hearing there was a significant amount of discussion relating to choosing an appropriate location for the tower. The Siting Council was quite specific in its ruling, selecting what was referred to in the record as Location #3. The decision clearly named Location #3 while excluding Locations #1 and #2. The ruling also directed AT&T to work with the Town of Avon in choosing the final design of the equipment building, fence enclosure, as well as a landscape plan.

On December 8, 2009, at the request of AT&T, the Director of Planning met at the site along with two representatives of AT&T and one representative of the St. Matthew Lutheran Church. At this meeting he was shown a staked location where the tower was proposed and an area nearby where the equipment building and fence enclosure was proposed. Apparently, between the October 8 decision and the December 8 field meeting, AT&T and the church had discussions regarding Location #3 and agreed on what they believed to be a more appropriate substitute location, which shifts the tower approximately 50 feet to the north of the approved Location #3 and the equipment building also about 50 feet to the northwest. The new location appears to be about midway between Locations #2 and #3, as described in the record.

This matter was discussed with the Avon Town Council at their meeting held on January 7, 2010, at the Avon Town Hall. At this meeting, the Town Council also

Mr. S. Derek Phelps  
January 13, 2010  
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received input from property owners who live near the site, many of whom who sought and received intervener status during the public hearing portion of this application.

It is the opinion of the Avon Town Council that the proposed change in location is a significant deviation from the specific language in the Siting Council's decision. Location #3 was chosen by the Siting Council taking many different factors into consideration. It is also the opinion of the Town Council that the revised location presents impacts which are significantly different to 3 homes located on Cold Spring Road, to the east. The Town Council recommends that the Siting Council require that AT&T construct the tower in the location originally approved by the Siting Council.

At the meeting which took place in the field on December 8, AT&T representatives indicated to Town Staff that they were seeking input from the Town on matters, as directed by the Siting Council, relating to the equipment building and fence enclosure prior to the preparation of a D&M plan. AT&T representatives presented to Town Staff pictures of a concrete, pre-fabricated, box-like structure with a flat roof and a second drawing showing a chain-link fence with a green plastic woven material (photos enclosed). These options were reviewed by the Town Council at their January 7 meeting as well. It was determined by the Council that these decisions are unacceptable and do not meet the Council's objectives of lessening impacts to the surrounding residential neighborhood.

I am enclosing, along with this letter, photographs of 2 buildings which were constructed in Avon by the Avon Water Company, which the Town Council believes would be more appropriate and better replicate the single-family character of the adjoining residences. These include a wood-sided structure built as a booster pump station, as well as a second masonry structure which houses pumps in connection with an underground public water supply well. In these two instances, the structures present themselves in a very appealing manner such that a fence enclosure is not necessary. In order to accomplish a similar type of structure, the Town of Avon requests that AT&T immediately engage the services of a licensed architect to prepare plans which may be reviewed by Town Staff. This approach is preferred over a pre-fabricated building. With regard to fencing, AT&T should utilize a high-quality residential cedar fence. Finally, AT&T should engage the services of a licensed landscape architect to prepare a plan which will help in further reducing the impact of this facility. These matters should be addressed in the preparation of the D & M Plan.

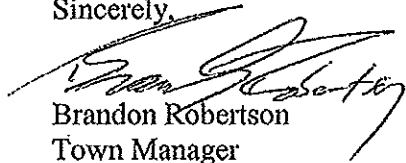
As an alternative to the above, the Town Council suggests that the Siting Council give consideration to permitting the proposed new location in between Locations #2 and #3. However, due to the additional impacts this will have on certain properties located to the east, the Town Council requests that AT&T construct a flagpole antenna which we believe will be less obtrusive to nearby single-family residences. A review of the record will indicate that the Town Council presented to the Siting Council a list of ranked preferences regarding tower

Mr. S. Derek Phelps  
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Page 3

type. In this letter, a flagpole was ranked as a higher priority as compared to the approved monopole with flush-mount antennas. In addition, should the Siting Council approve the changed location, we request that consideration also be given to burying the equipment facility completely below grade. The revised location for the equipment shelter is directly to the rear of a single-family home to the north (in contrast to the approved location). This home will have a direct view of the equipment shelter area. I am enclosing a photograph of a facility which was completed approximately 6 months ago in Avon also by the Avon Water company at the intersection of Woodmont and West Avon Road. This is a large booster pump station, approximately 4 to 5 times as large as the proposed equipment building, which houses a substantial number of pumps used in the Avon Water Company's distribution system. This below-grade facility is immediately adjacent to a single-family residence. The only structure which projects above ground is an access hatch and an exhaust pipe used for a backup generator for this facility. You can see from the photographs that the site was also heavily landscaped.

Thank you for your consideration. We look forward to hearing from you.

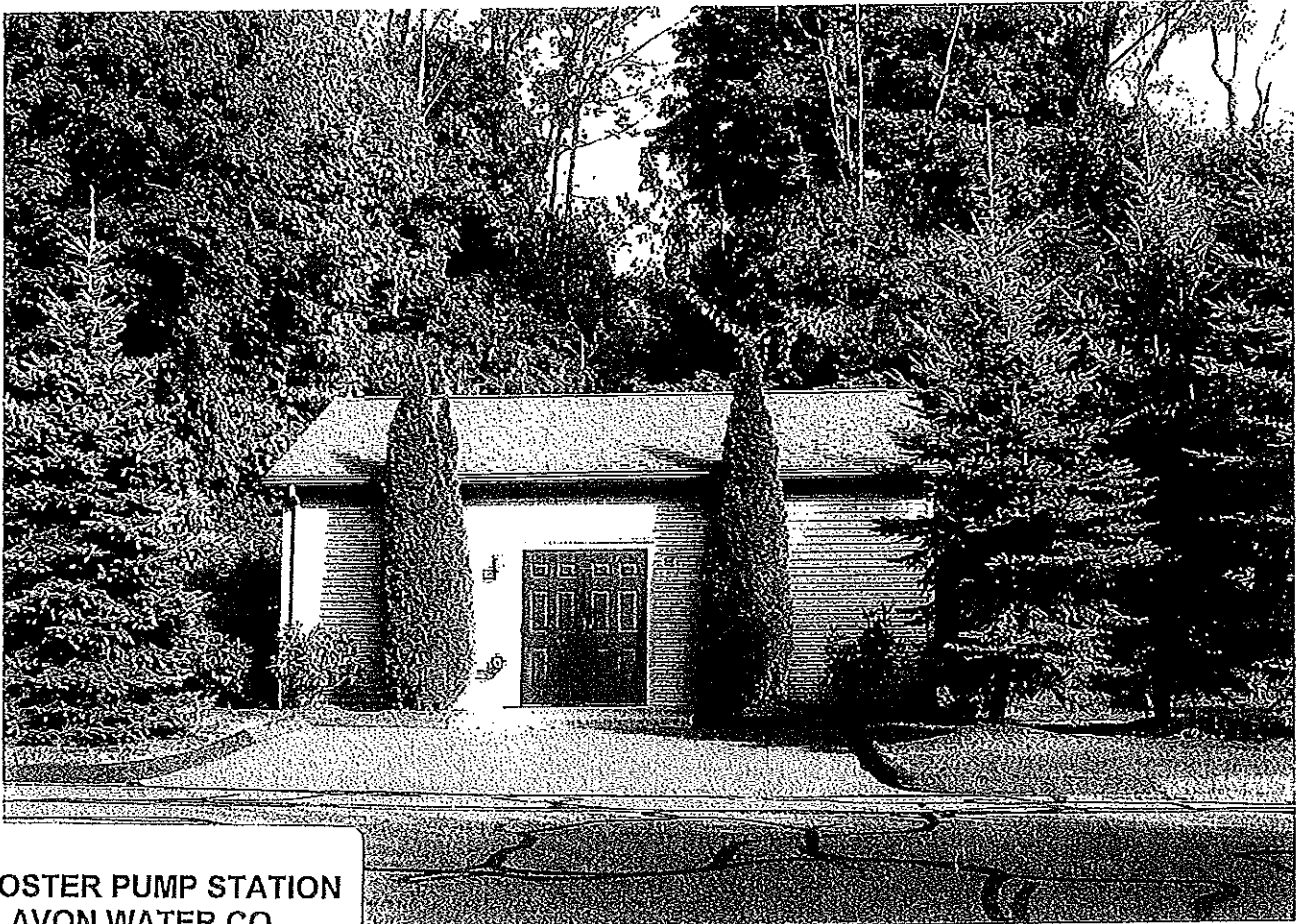
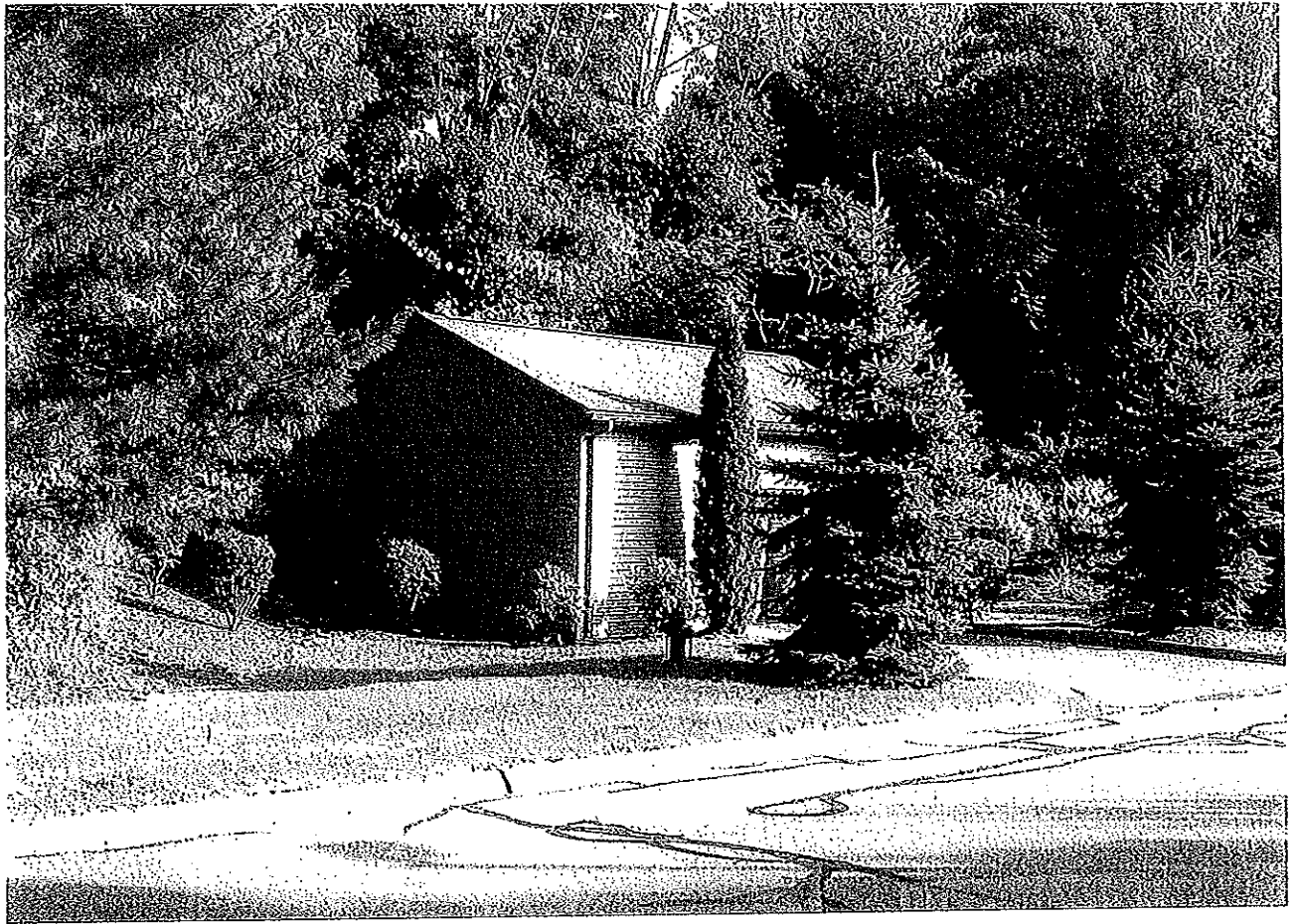
Sincerely,



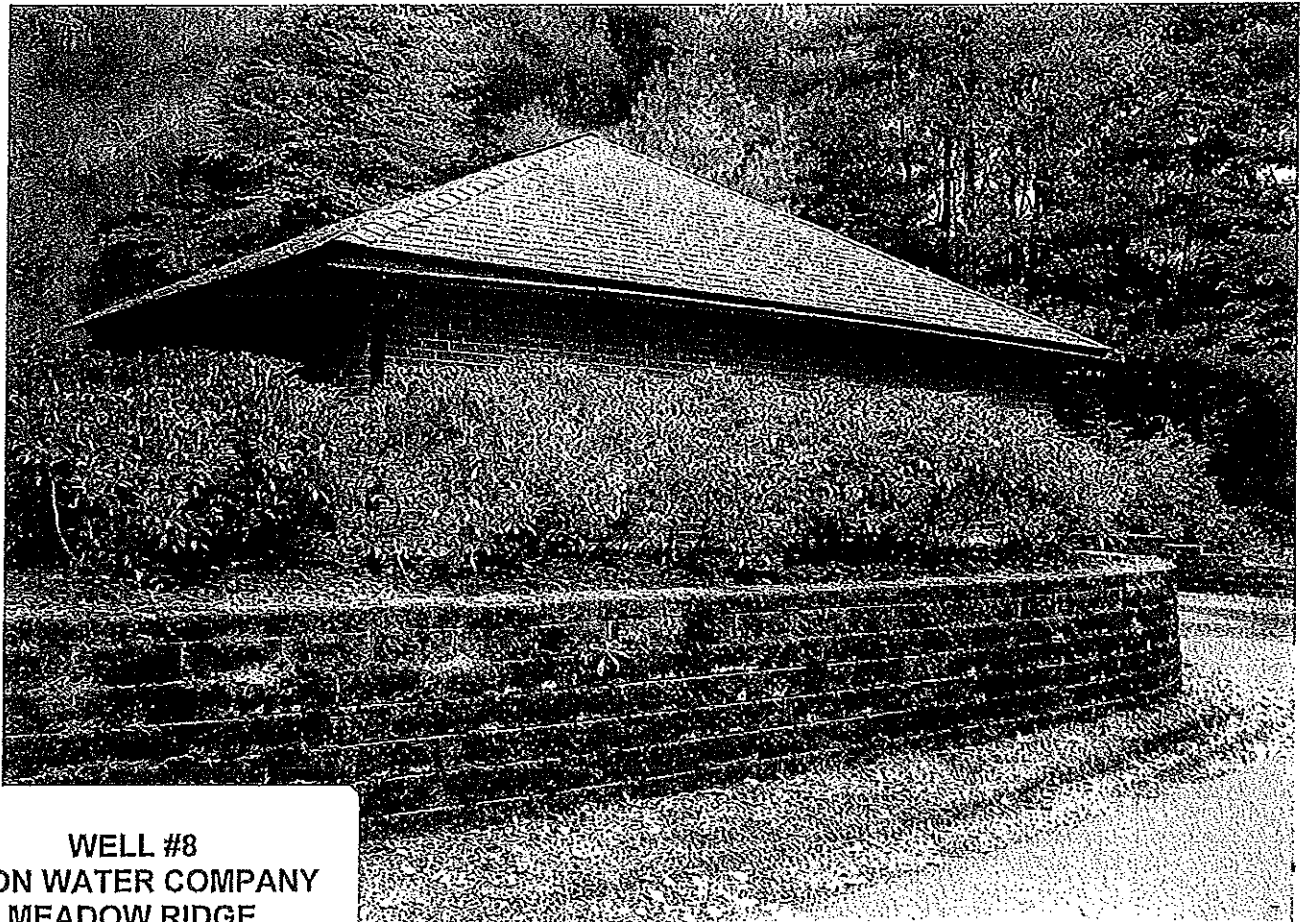
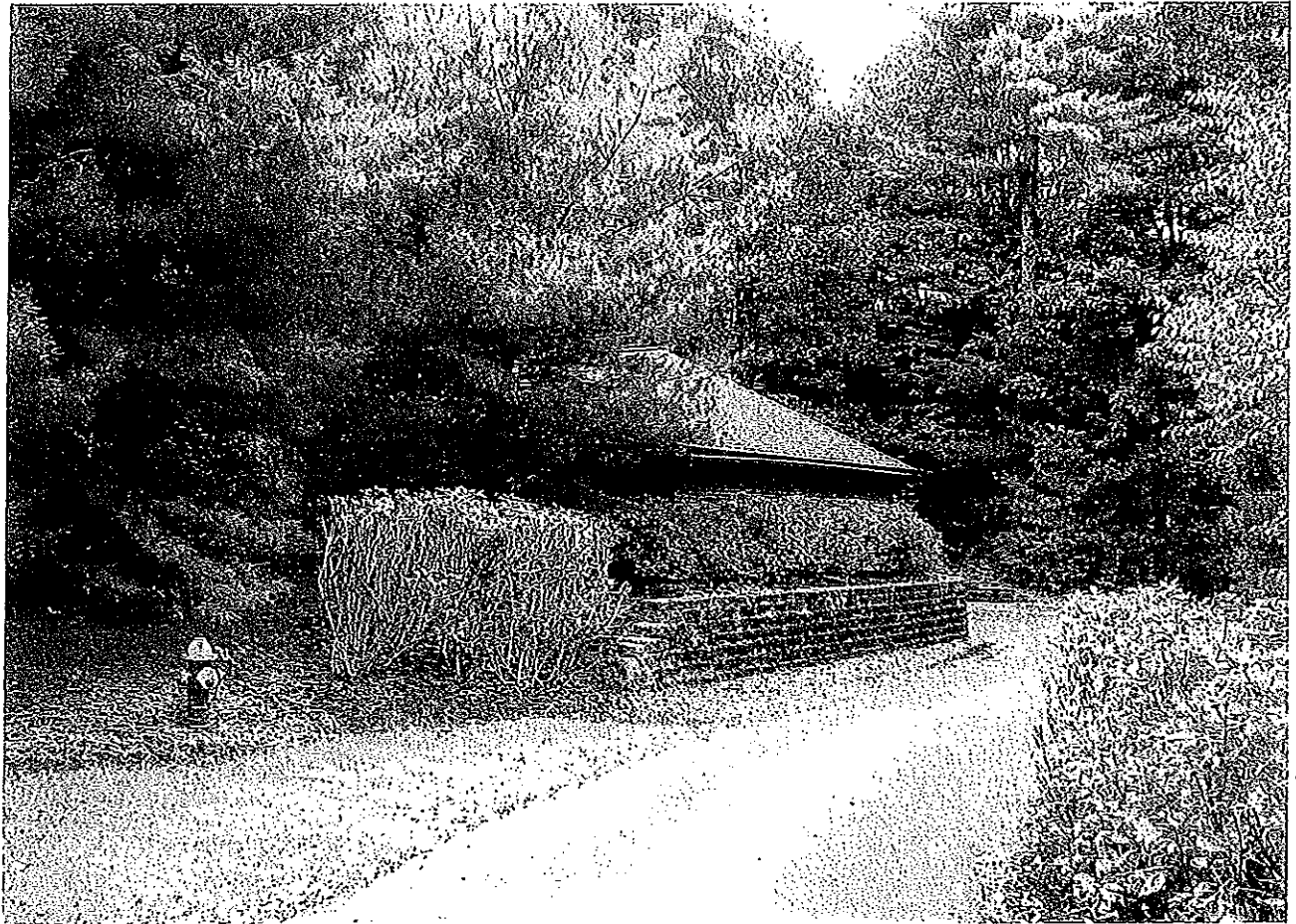
Brandon Robertson  
Town Manager

Enclosures

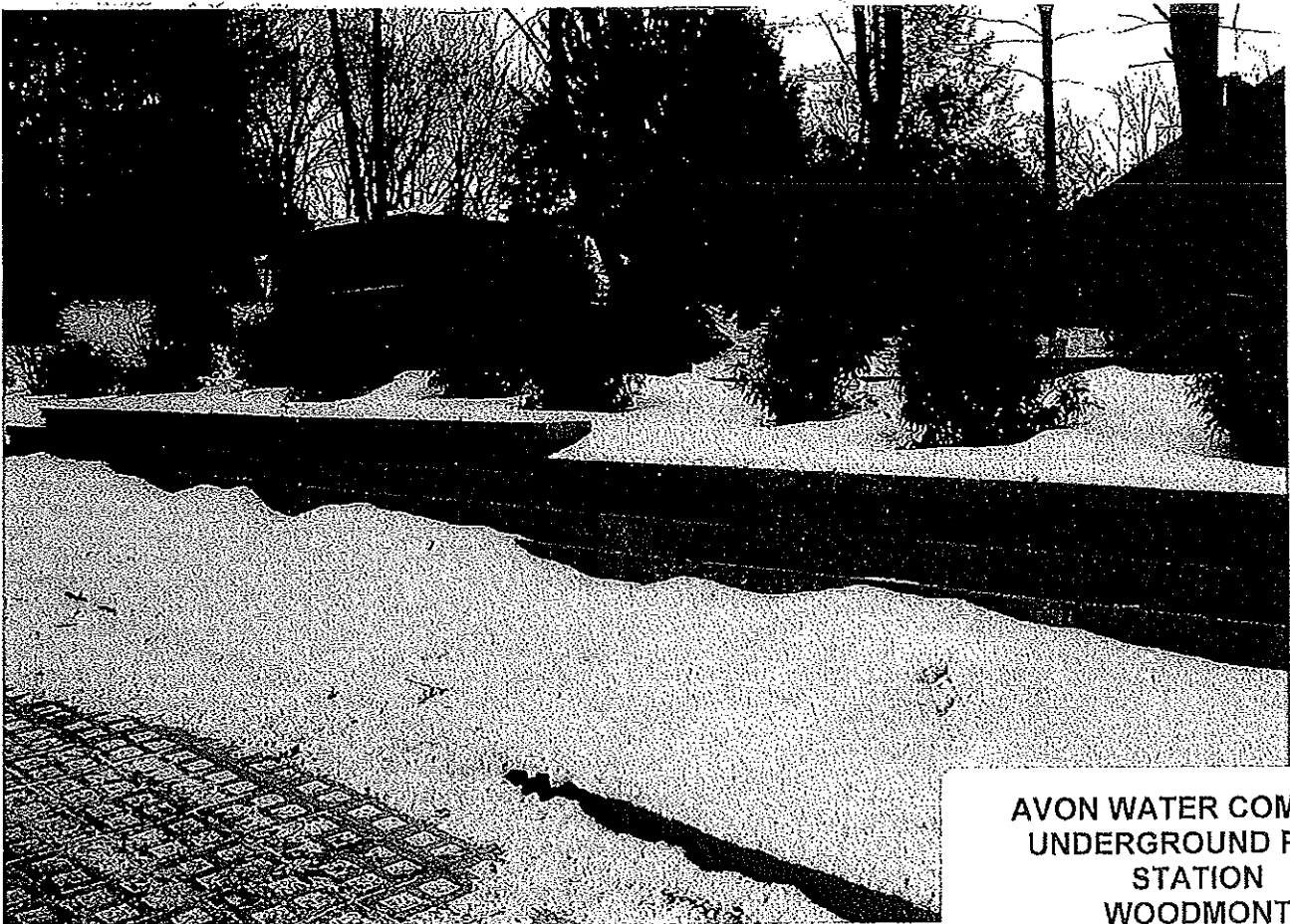
Cc: Robert Mercier, CT Siting Council  
Steven Kushner, Director of Planning  
Blythe Robinson, Assistant Town Manager  
Avon Town Council  
Avon Planning and Zoning Commission  
Christopher Fisher, Cuddy & Feder LLP



**BOOSTER PUMP STATION  
AVON WATER CO  
HUNTERS RUN**



WELL #8  
AVON WATER COMPANY  
MEADOW RIDGE



AVON WATER COMPANY  
UNDERGROUND PUMP  
STATION  
WOODMONT





TOWN  
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*"Exhibit B"*

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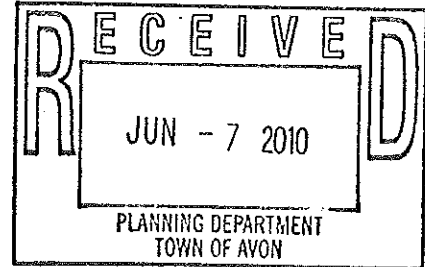
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June 3, 2010

Mr. S. Derek Phelps  
Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051



RE: Docket 373 - New Cingular Wireless (AT&T) at 224 Lovely Street, Avon

Dear Mr. Phelps:

The Town recently received a copy of a letter submitted by Attorney Christopher Fisher on behalf of AT&T relating to Docket 373 and the filing of a D & M Plan. This plan has been submitted in accordance with an earlier decision on October 9 by the Siting Council to approve this application with certain conditions. The Town of Avon has been an active participant as a result of concerns expressed by neighboring property owners to this site and, as such, sought and received status as an intervener. The plan proposes a change to the approved location. After reviewing the D & M Plan and the proposed location change, I would like to take this opportunity to note the Town's disappointment in AT&T's lack of communication with the Town; failure to comply with the Siting Council's decision; and discuss objections to several key aspects of the proposed site plan.

It is our opinion that AT&T has communicated very poorly with the Town of Avon since the decision in October. In fact, there has only been one instance where AT&T invited Town Staff to meet at the location on December 8, 2009. Since that time, AT&T has not communicated with the Town on any issues by way of a letter, email, phone call, or offers to again meet in the field. As a result, this is the first opportunity the Town has had to react to and comment on changes which now appear in this "final" D & M Plan. In particular, the Town of Avon objects to the following:

1. The proposed tower location is approximately 131 feet from the corner of the parsonage. Testimony presented during the public hearing phase of this application indicated that the approved Option #3 was 55 feet from the parsonage building. AT&T states that the new site is 50 feet north of

Location #3. In fact, the change is a move of 76 feet to the north of the approved location. The Town wrote to the Council and addressed this issue on January 13, 2010. This change results in impacts which are substantially different to property owners located to the east on Cold Spring Road. As a result, the Town asked the Siting Council to require that AT&T construct a tower utilizing a "flagpole" design. During the public hearing the Town made it clear that this design was preferred over the proposed monopole. In fact, the approved monopole was ranked lowest by the Avon Town Council.

The proposed monopole, as shown in the D & M Plan, is substantially wider at the base, as compared to drawings presented during the public hearing to the Siting Council leading up to the decision in October. Most importantly, the tower is now designed in a manner such that it can accommodate a 20-foot expansion in height over what was approved by the Siting Council to a height of 130 feet. Drawings proposed by AT&T show a total of 4 carriers whereas only 3 carriers were approved by the Siting Council. It was acknowledged by the Siting Council during the public hearing phase of this application that it was likely that one or more additional towers would need to be constructed to service the needs of all carriers in this area of Avon. The Town feels strongly that, at a minimum, AT&T should be required to construct the tower approved by the Siting Council in October. In addition, as expressed in our letter of January 13, as a result of the changed location and substantially different impacts to property owners on Cold Spring Road, the Town urges the Siting Council to require that AT&T construct a 110-foot-tall tower of a flagpole design with all antennas concealed within the tower.

2. The approval issued by the Siting Council in October required that AT&T install flush-mount antennas in an effort to improve the aesthetics of this tower. The Town does not have experts in the area of cell phone tower antenna design; as such, we would appreciate the Siting Council's review of these drawings to ensure that with respect to different flush-mount options that the one chosen by AT&T presents the least impact to adjoining properties. In addition, we would ask the Siting Council to ensure that with regard to the two future carriers that those carriers utilize the same type of installation, flush-mount installation.
3. The cover letter prepared by Cuddy & Feder makes reference to two landscaped drawings prepared by BL Companies. The Town has not received these drawings and, as such, we have no ability to comment on them.
4. The wood frame proposed equipment building is an improvement over the initial proposed concrete box. However, the October order made it clear that AT&T's D & M Plan was to also make provision for the other two future carriers. As stated earlier, we ask that AT&T construct a below-grade structure sufficient in size to accommodate their needs as well as two other carriers.

Siting Council/Phelps  
Page 3  
June 3, 2010

In summary, the Town of Avon appreciates the need by AT&T and other cell phone carriers to enhance their network by placing additional antennas in weak spots, such as this area of Avon. We understand that these new installations have a benefit to customers and may also be of benefit in emergency situations. However, we believe that it is incumbent upon the CT Siting Council to balance these needs with the rights of other private property owners who may be adversely impacted from this installation. The proposed D & M Plan, in our opinion, does not achieve this balance equitably. The Town provided testimony during the public hearing concerning a ranked order of preferences concerning tower design; AT&T has opted for the least preferred. AT&T is now moving the tower location and, in the Town's opinion, this presents adverse impacts to adjoining property owners. In addition, AT&T is not in compliance with the approval granted by the Siting Council in that they are proposing a tower of 130 feet in height as opposed to the 110-foot limit set by the Siting Council.

Thank you for the opportunity to comment on this D & M Plan.

Sincerely,

  
Brandon Robertson  
Town Manager

Cc: Avon Town Council  
Steven Kushner, Director of Planning and Community Development  
Avon Planning and Zoning Commission  
Andrew Lord, Partner, Murtha Cullina LLP

## CERTIFICATE OF SERVICE

This is to certify that on the 18<sup>th</sup> day of June, 2010, one original and twenty-five (25) copies of the foregoing Pre-filed Testimony of Steven Kushner was hand delivered to the Connecticut Siting Council, 10 Franklin Square, New Britain, Connecticut 06051 and one copy of the foregoing will be sent via U.S. mail, postage prepaid, on the 21<sup>st</sup> day of June, 2010, to:

PLEASE SEE ATTACHED LIST.

**LIST OF PARTIES AND INTERVENORS  
SERVICE LIST**

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	<input type="checkbox"/> E-mail  <input checked="" type="checkbox"/> U.S. Mail	New Cingular Wireless PCS, LLC	Christopher B. Fisher, Esq. Cuddy & Feder LLP 445 Hamilton Avenue, 14 <sup>th</sup> Floor White Plains, NY 10601 (914) 761-1300 (914) 761-5372 fax <a href="mailto:cfisher@cuddyfeder.com">cfisher@cuddyfeder.com</a>
Party (granted on February 19, 2009)	<input type="checkbox"/> E-mail  <input checked="" type="checkbox"/> U.S. Mail	Patricia & Thomas McMahon 21 Greenwood Drive Avon, CT 06001 860-673-3747	
Party (granted on February 19, 2009)	<input type="checkbox"/> E-mail  <input checked="" type="checkbox"/> U.S. Mail	Sheridan & Mark Toomey 9 Greenwood Drive Avon, CT 06001 860-404-1741 <a href="mailto:markctoomey@msn.com">markctoomey@msn.com</a>	
Party (granted on February 19, 2009)	<input type="checkbox"/> E-mail  <input checked="" type="checkbox"/> U.S. Mail	Jane Garrett 15 Greenwood Drive Avon, CT 06001 860-673-2729	
Party (granted on February 19, 2009)	<input type="checkbox"/> E-mail  <input checked="" type="checkbox"/> U.S. Mail	Peter Emmett Wiese 240 Lovely Street Avon, CT 06001 860-673-5098 860-508-7951 <a href="mailto:Peter.wiese@jud.ct.gov">Peter.wiese@jud.ct.gov</a>	

<p><b>Party (granted on March 31, 2009)</b></p>	<p><input type="checkbox"/> E-mail</p> <p><input checked="" type="checkbox"/> U.S. Mail</p>	<p>Town of Avon</p>	<p>Andrew W. Lord Murtha Cullina LLP 185 Asylum Street Hartford, Connecticut 06103 203-772-7705 860-240-5962 fax</p> <p>Steven Kushner Town of Avon Director of Planning and Community Development/Zoning Enforcement Officer</p> <p>Avon Town Hall 60 West Main Street Avon, CT 06001 860-409-4328 <a href="mailto:skushner@town.avon.ct.us">skushner@town.avon.ct.us</a></p>
<p><b>Intervenor (granted on March 31, 2009)</b></p>	<p><input type="checkbox"/> E-mail</p> <p><input checked="" type="checkbox"/> U.S. Mail</p>	<p>Juan Fernandez 246 Lovely Street Avon, CT 06001 860-673-8837 <a href="mailto:Fermar13@yahoo.com">Fermar13@yahoo.com</a></p>	
<p><b>Intervenor (granted on March 31, 2009)</b></p>	<p><input type="checkbox"/> E-mail</p> <p><input checked="" type="checkbox"/> U.S. Mail</p>	<p>David Lampert 4 Clearwater Court Avon, CT 06001 860-352-2462 <a href="mailto:stalflampert@yahoo.com">stalflampert@yahoo.com</a></p>	
<p><b>Intervenor (granted on March 31, 2009)</b></p>	<p><input type="checkbox"/> E-mail</p> <p><input checked="" type="checkbox"/> U.S. Mail</p>	<p>Michael Pastore 80 Wildwood Drive Avon, CT 06001 860-673-3911 <a href="mailto:Michael.Pastore@kaman.com">Michael.Pastore@kaman.com</a></p> <p>Stuart Noyes 3 Clearwater Court Avon, CT 06001 860-673-3147 <a href="mailto:amstunoyes@aol.com">amstunoyes@aol.com</a></p> <p>Mary Ann Keenan 24 Quail Ridge Drive Avon, CT 06001</p>	

		860-673-8542 <u><a href="mailto:makeenan823@comcast.net">makeenan823@comcast.net</a></u>	

<b>Intervenor (granted on March 31, 2009)</b>	<input type="checkbox"/> E-mail  <input checked="" type="checkbox"/> U.S. Mail	Youghiogeny Communications- Northeast, LLC (Pocket)	Carrie L. Larson, Esq. Pullman & Comley, LLC 90 State House Square Hartford, CT 06103-3702 860-424-4312 860-424-4370 fax
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