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August 19, 2010

**VIA FEDERAL EXPRESS AND  
ELECTRONIC MAIL (siting.council@ct.gov)**

Mr. S. Derek Phelps  
Connecticut Siting Council  
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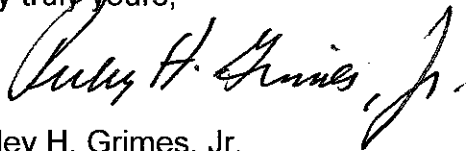
*Re: Docket No. 402  
Application By Celco Partnership d/b/a Verizon  
Wireless for A Certificate Of Environmental Compatibility  
And Public Need For The Construction, Maintenance  
And Operation Of A Telecommunications Facility Located  
At 16 Bell Road Extension, Cornwall, Connecticut*

Dear Mr. Phelps:

Please find enclosed an original and twenty (20) copies of the following documents filed on behalf of the Intervenor, Town of Cornwall: Brief and Proposed Findings of Intervenor Town of Cornwall dated August 19, 2010.

Please contact me if you have any questions.

Very truly yours,



Perley H. Grimes, Jr.

PHG/mc  
Enclosures

Cc: Service List (Via Electronic Mail and First Class U.S. Mail)

STATE OF CONNECTICUT

SITING COUNCIL

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CELLCO PARTNERSHIP  
d/b/a VERIZON WIRELESS

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AUGUST 19, 2010

APPLICATION FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND  
PUBLIC NEED FOR THE CONSTRUCTION,  
MAINTENANCE AND OPERATION OF A  
TELECOMMUNICATIONS FACILITY  
LOCATED AT 16 BELL ROAD EXTENSION,  
CORNWALL, CONNECTICUT

DOCKET NO. 402

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BRIEF AND PROPOSED FINDINGS OF FACT  
OF THE INTERVENOR TOWN OF CORNWALL

1. INTRODUCTION

The State of Connecticut Siting Council (hereinafter the "Council") received an Application from Cellco Partnership d/b/a Verizon Wireless (hereinafter "Verizon"), dated May 6, 2010, and held public hearings on said Application on July 20, 2010. At the conclusion thereof, Daniel F. Caruso, Chairman of the Council (hereinafter the "Chairman"), announced that briefs and proposed findings of fact may be filed by any Intervenor no later than August 19, 2010.

The Intervenor Town of Cornwall (hereinafter the "Town") hereby submits its Brief and Proposed Findings of Fact<sup>1</sup> regarding the Verizon Application for a cell tower located at 16 Bell Road Extension, in Cornwall, Connecticut (hereinafter the "Application").

## 2. BACKGROUND INFORMATION<sup>2</sup>

On May 6, 2010, Verizon submitted its Application to the Council for a 110' monopole wireless communications facility pursuant to CGS § 16-50a (a) and Section 16-50j-34 of the Regulations of State Agencies. Verizon proposed a 110' monopole facility at an address shown as 18 Bell Hill Road Extension (Tab 2, Drawing C-1) as shown on C-1. The site of the monopole is located on property of Ralph Gulliver, Jr., which is basically a landlocked parcel of land. The Option and Land Lease Agreement (Tab 14) dated September 29, 2008, is between Ralph J. Gulliver, Jr., of New Milford, Connecticut, as Lessor, and Verizon, as Lessee. The Option and Land Lease Agreement propose a "Land Space" parcel 100' by 100', containing 10,000 square feet for the facility and a non-exclusive 20' wide right-of-way for ingress and egress extending from the nearest public right of way, Popple Swamp Road, to the Land

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<sup>1</sup> Pertinent Findings of Fact are found within each separate Claim of Law.

<sup>2</sup> Reference to Public Hearing Transcript on the afternoon of July 20, 2010, will be referred to as "TR1" and will include subsequent page references and the evening Public Hearing of July 20, 2010, will be referred to as "TR2" with subsequent page references.

Space. The location of the proposed right of way is also shown as Exhibit A to the Lease (Tab 14).

### 3. CLAIMS OF LAW

#### A. VERIZON'S LACK OF STANDING:

The accessway proposed is 2,200' long to the base of the tower (Mr. Centore, TR2, page 9). The accessway is more particularly shown on Drawing C-1a of the Application (Tab 2). The parcel owner is reflected as Ralph Gulliver, Jr. The Drawing has the following note attached to it:

"The property boundary lines depicted hereon are compiled from other maps, deeds, and limited field survey. These lines are not to be construed as boundary opinion and are subject to change as an accurate field survey may disclose. Property may be subject to encumbrances, easements, rights of way, as a title search report may disclose."

No accurate field survey (A-2 Survey) was done with the Application, nor was any title search report furnished in the record.

As is reflected on Drawing C-1 (Tab 2), there are multiple abutters to the Gulliver property and the proposed driveway; to wit, Matthew R. and Patricia Terrell-Collins, Frederick I. Thaler, Gustav Haller, Jr., Marian A. Bell, and Patrick H. Hare. There are no consents, easements, agreements, leases, or other enforceable rights obtained by Verizon from any of those abutters in the Record.

The Lease refers to the "proposed Verizon access within existing 25' wide

easement across adjacent property from Bell Hill Road.” (Tab 14) In fact, the record does not contain proof of any 25’ wide easement at all. The note on the L1 Drawing attached to the Lease (Tab 2) states:

“This lease exhibit is diagrammatic in nature and is intended to provide general information regarding the location and size of proposed wireless communication equipment facility. Actual location of the proposed lease area will be finalized upon completion of the survey.”

Neither the Lease, nor the Application itself, establish in the Record any rights of the Lessor or the Lessee to utilize the “existing driveway” as shown on said Drawing L1 attached to the Lease or the Application’s drawings, C-1 or C-1a. (Tab 2)

First Selectman, Gordon Ridgway, testified that neither Bell Road, nor Bell Road Extension, were Town Roads. (TR1, page 82) He testified that the roadway was an old town road that was abandoned. (Mr. Ridgway, TR1, page 82) Mr. Ridgway pointed out that, generally, applications to land use agencies require an A-2 Survey. (Ridgway, TR1, page 83) When asked by Chairman Caruso if the Town claimed this abandoned road, Mr. Ridgway said no. Mr. Ridgway wanted to know who owns the road bed and asserted that, without an A-2 Survey, there is a cloud on the land title. (Mr. Ridgway, TR1, page 83)

When asked by Chairman Caruso: “Isn’t that someone else’s business?”

Mr. Ridgway responded: "It is an obvious question as to who owns the road."

(TR1, page 84)

CGS §13a-55 was enacted in 1959. It states in pertinent part that owners of property abutting a discontinued or abandoned highway have a right of way over that highway to the nearest or most accessible public highway. That Statute, however, has been repeatedly held to not apply retroactively. (Rudewicz v. Gagne, et al 22 Conn. App. 285 (1990). The Appellate Court stated that "before the enactment of Section 13a-55, discontinuance of a public highway extinguished both the public easement of travel and the private easement of access along the former road." Rudewicz, supra p. 288. The Court went on to say . . . "until 1959, title to all land to the middle of the discontinued highway reverted back to and vested in each abutting property owner whose land it crossed . . . (citations omitted). Neighboring property owners had no right of way over the former road because once it was discontinued it was considered private property to which no automatic easement attached." Rudewicz, supra p. 289.

In Rudewicz, the Appellate Court stated: "We conclude that the Trial Court correctly refused to apply Section 13a-55 retroactively and that it properly granted the Defendant's Motion for Summary Judgment." Rudewicz, supra p. 291. The Appellate Court recently in Mackie v. Hull, 69 Conn. App. 538 (2002) cited Rudewicz for the proposition that Section 13a-55 was enacted in 1959 and it

does not apply retroactively.” 69 Conn. App. 538, pages 546-547. Certiorari was denied in Mackie v. Hull by the Connecticut Supreme Court in 261 Conn. 916 (2002). More recently, on August 10, 2010, in Savalle v. Hilzinger, 123 Conn. App. 174, 210 WL 3001402 (Conn. App.), citing Mackie v. Hull, the Appellate Court stated: “Section 13a-55 does not apply retroactively.” 123 Conn. App. 174, 179 (2010).

Accordingly, as there are no private easement rights for the 2,200’ accessway to Popple Swamp Road held by the Lessee shown in the Record, Verizon has no right of access over the private drive proposed to access the cell tower. As stated in Rudewicz v. Gagne, title to the center line of the abandoned highway reverted on each side to the abutter of the abandoned highway.

This issue was raised by the Cornwall First Selectman during the Public Hearing, as cited above, and the Applicant provided no proof of any private rights of access to use the 2,200’ long strip to Popple Swamp Road over property now belonging (according to the Record) to the abutters, namely, Collins, Thaler, Haller, Bell, and Hare. Accordingly, Verizon does not have standing of record to bring the Application to the Siting Council without any Record proof of its control of the proposed right of access.

Cases discussing standing routinely rely on Richards v. Planning and Zoning Commission of Town of Wilton, 170 Conn. 318, 323-324 (1976), which states:

“From an examination of our cases and those of other jurisdictions, it is not possible to extract a precise comprehensive principle which adequately defines the necessary interest which a nonowner must possess in order to have standing to apply for a special permit or a variance. The decisions have not been based primarily on whether a particular applicant could properly be characterized as an optionee or a lessee, but, rather, on whether the applicant was in fact a real party in interest with respect to the subject property. Whether the applicant is in control of the property, whether he is in possession or has a present or future right to possession, whether the use applied for is consistent with the applicant’s interest in the property, and the extent of the interest of other persons in the same property, are all relevant considerations in making that determination.”

This Rudewicz conclusion is consistent with the public policy surrounding the standing requirement. Robert Fuller, a leading land use authority, has consistently explained the logic of the policy involved:

“Without standing, persons could apply for land use approvals who have no real interest in the subject property and make an application merely for reasons of speculation, harassment or some other improper motive. The property owner might have the value of his property reduced by the decision on the application with no effect on an applicant who has no legal or equitable interest in the property. A requirement of standing also ensures that land use agencies are not burdened with unauthorized or unnecessary applications or asked to issue approvals which are academic and will never be used.” R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice. (2007) Section 15.8, p. 472-473; See also like



comments in Section 15.8 of his 1999 Edition, p. 351 and Section 15.8 of his 1993 Edition, p. 285).

Accordingly, for this reason alone, the Application should be denied.

B. PROCEDURAL DUE PROCESS:

Concepts of Fundamental Fairness and Due Process apply to hearings before the State of Connecticut Siting Council. Rosa et al v. State of Connecticut Siting Council, 207 WL 829582 (Conn. Super). See also City of Torrington, et al v. Connecticut Siting Council, et al, 991 WL 188815 (Conn. Super). See also Concerned Citizens of Sterling, Inc., et al v. Connecticut Siting Council, 215 Conn. 474 (1990).

In Concerned Citizens, Plaintiffs claimed three violations of procedural due process. The first was that the notice was constitutionally inadequate. The second was that their request for continuance were unreasonably denied. The third was that the procedure used impaired their ability to fully participate in the administrative proceedings. Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council, 215 Conn. 474, 483 (1990). Here, the intervening Town asserts that its procedural due process rights and that of all Intervenors and the public were violated by the conduct of the public hearing.

To frame this issue of a violation of procedural due process, a synopsis of the statutory and regulatory framework of Siting Council authority is helpful.

CGS § 16-50k provides that no person shall have a right to commence construction without “having first obtained a Certificate of Environmental Compatibility and Public Need” hereinafter referred to as a “Certificate”.

CGS § 16-50l requires that for an applicant to initiate a Certificate proceeding it shall file an application in form prescribed by the council. “The application shall contain such information as the applicant may consider relevant and the Council, or any department or agency of the State may by regulations require.”

CGS § 16-50n shows that the Town of Cornwall and abutting property owners Thaler, Mooney, and Daifotis are all acknowledged as appropriate intervenors.

CGS § 16-50o (a) provides that parties, as provided in CGS § 16-50n, shall have the right to present such oral or documentary evidence and to conduct such cross examination as may be required for a full and true disclosure of the facts.

CGS § 16-50o (c) provides that the “applicant shall submit into the record the full text of the terms of any agreement” concerning construction of the facility.

CGS § 16-50p (b)(1)(c) requires that the Council examine “whether the proposed facility would be located in an area of the State which the Council, in consultation with the Department of Environmental Protection, and any effected

municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional, or statewide significance. The Council may deny an application for a Certificate if it determines that . . . "(iii) the proposed facility would substantially affect the scenic quality of its location and no public safety concerns require that the proposed facility be constructed in such a location."

CGS § 16-50x provides in pertinent part that the Council "shall consider any location preferences or criteria . . . (ii) that may exist in the zoning regulations of said municipality as of the submission date of the application to the Council."

The Council has adopted Rules of Practice for Community, Antenna, Television, and Telecommunications Towers which are reflected in Regulations of State Agencies in CGS § 16-50j-1 through 16 50b-2.

CGS § 16-50j-75 (a) titled "Requirement for a Development and Management Plan" (D&M Plan) allows the Council to require full or partial D&M Plans for proposed telecommunications towers. The regulation allows the Council to require such a plan "where the preparation of such a plan would help significantly in balancing the need for adequate and reliable utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state". The D&M Plan shall include the information described in CGS § 16-50j-76 through 16-50j-77. (CGS § 16-50j-75 (b))

Among other things, CGS § 16-50j-76 requires the plan drawings to show public roads and public lands crossing or joining the site, probable points of access to the site, including alternatives or options to the probable points of access, sensitive areas and conditions within an adjoining tower site, including but not limited to, watercourses, any areas regulated under the Inland/Wetland Act, and any locations where construction may create drainage problems, areas of high erosion potential, any known critical habitats or sites as having rare or endangered plant or animal species, and special or unusual features.

The town contends that insufficient information was provided by Verizon to allow it and the public to participate in a meaningful way in a hearing. Throughout the hearing, the Verizon representatives continually stated in response to questions raised that drainage and access issues, concerns regarding sensitive areas and conditions, protection of watercourses and concerns for high erosion potential would be addressed after the site was approved by the Council. This had the effect of "putting the cart before the horse" such that the Town, the public and the intervening parties' procedural due process rights could not have been met.

Appendix A attached hereto is a list of proposed findings that reflect Verizon's refusal to provide information during the public hearing with the explanation that such material would be furnished in a D&M plan to be prepared

after the site was approved. Unfortunately, the Council repeatedly supported Verizon's position. This cart before the horse approach violated the parties' procedural due process rights and was fundamentally unfair.

"Due process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 US 471, 481, 92 S. CT. 2593, 260, 33L. ED. 2d 484 (1972). Matthews v. Eldridge, 424 US 319, 324-325, 96 Supreme Court 893, 897-898, 47 Lawyers Ed 2d 18 (1976)." Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council, 215 Conn. 474, 484 (1990).

In Manchester Environmental Coalition v. Stockton, 184 Conn. 51 (1991) the Court was discussing the purpose of the Environmental Policy Act. It stated:

"As a guide to future conduct, agencies must recognize that the purpose of the Environmental Policy Act is to ensure the thoughtful and meaningful consideration of environmental factors. This purpose fails when, as here, the impact statement was submitted to the commissioner after he had approved the project. Moreover, the impact statement failed to consider air quality. As trustee of the environment, the state has a responsibility to see that this factor is considered."

The same rationale applies here, CGS § 16-50k requires a Certificate of "Environmental Compatibility and Public Need". The Council here, as in the Environmental Policy Act, is required to look at environmental impacts. As in Manchester Environmental Coalition, so too here, the purpose of the Council

process is to “ensure thoughtful and meaningful consideration of environmental factors”. This purpose fails when, as here, the environmental, access, erosion, protection from runoff, etc. issues are fully reviewed by the Council only after it has approved the site and Verizon submits an M&D Plan.

Here the town, the other abutters who were intervening, and the public repeatedly asked for information concerning drainage, environmental, and access issues (see Appendix A). As noted in Appendix A, on each occasion they were told that these issues would be addressed only after the site was approved. This eliminated the Town’s, abutters’, and the public’s rights to meaningfully participate in a thoughtful way in the development of necessary protections for the environment, drainage, access, and title issues. The council, by condoning the response of Verizon, therefore, conducted the hearing in a manner which violated procedural due process. For that reason alone, the application should be denied.

C. ADMINISTRATIVE FUNDAMENTAL FAIRNESS:

In addition to Constitutional due process rights, Connecticut Courts have recognized another protection for parties and the public during the administrative hearing process referred to as Fundamental Fairness. Grimes v. Conservation Commission, 243 Conn. 266 (1997). The Supreme Court stated:

"We have recognized a common-law right to fundamental fairness in administrative hearings. "The only requirement [in administrative proceedings] is that the conduct of the hearing shall not violate the fundamentals of natural justice." Miklus v. Zoning Board of Appeals, 154 Conn. 399, 406, 225 A.2d 637 (1967). Fundamentals of natural justice require that "there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary . . ." (citations omitted). "[d]ue process of law requires that the parties involved have an opportunity to know the facts on which the commission is asked to act . . . and to offer rebuttal evidence." (citations omitted) (administrative agency "cannot properly base its decision . . . upon [independent] reports without introducing them in evidence so as to afford interested parties an opportunity to meet them") (citations omitted). (administrative due process requires due notice and right to produce relevant evidence) (citations omitted). The purpose of administrative notice requirements is to allow parties to "prepare intelligently for the hearing." (citations omitted)." Grimes, *Supra* pp. 273-274.

The Town contends that it, the Intervenors and the public were denied Administrative Fundamental Fairness during the administrative public hearing process for the reasons stated in the prior claim relating to due process and based upon the proposed findings of Appendix A. Moreover, fundamental fairness was denied by virtue of the Council's Chairman's position and remarks on various issues throughout the hearing.

The remarks by the Chairman reflect a certain callousness and chilling effect upon Intervenors, abutters, and members of the public who attended the hearing. Those remarks specifically were as follows:

- “What does one call the chief elected official in Sharon and Cornwall?” (Mr. Caruso, TR1, page 34)
- “It seems some people get confused and I just wanted to make sure.” (Mr. Caruso, TR1, page 35)
- When commenting on Mr. Hayden’s letter suggesting that the driveway was not environmentally compatible, Mr. Caruso stated: “And they would want – they want asphalt – is that it?” (Mr. Caruso, TR1, page 78)
- The First Selectmen suggested that an A-2 Survey would be appropriate as is used in front of local land use boards and Chairman Caruso commented: “And what does the Town Attorney say? Is the Town making a claim for this abandoned road?” (Mr. Caruso, TR1, page 83)
- Following up on that, Chairman Caruso asked: “Mr. Ridgway, and the Town’s interest in that is what? Other than their warning them to get title insurance?” (Mr. Caruso, TR1, page 84)
- When the First Selectman said that the Town’s interest was to get an accurate representation of whose property was being used, Chairman Caruso commented: “Isn’t that someone else’s business?” (Mr. Caruso, TR1, page 84)
- After an explanation by Mr. Gaines that additions or changes to the tower would have to come back to the Council, Chairman Caruso asked: “Does that help you Mr. First Selectmen?” (Mr. Caruso, TR1, page 90)
- When speaking about the Northwest Conservation District’s letter, Mr. Caruso stated: “. . . you are the First Selectman of the Town and you prepared your letter and the letter from the Conservation was prepared at your direction?” (Mr. Caruso, TR1, page 98)
- After First Selectman responded that Mr. Hayden wrote his own letter, Chairman Caruso responded: “Okay, but he wouldn’t have done it without you.” (Mr. Caruso, TR1, page 99)
- In discussing the Planning and Zoning letter, Chairman Caruso said: “Even though you did not prepare the letter from Planning and Zoning, it was prepared at your direction and you have no changes to that letter, right?” (Mr. Caruso, TR1, page 99)
- In concluding his discussion with the First Selectman, Mr. Caruso said: “Mr. First Selectman, you . . . you didn’t expect the Spanish Inquisition, did you?” (Mr. Caruso, TR1, page 102)
- After identifying the Intervenor, Mr. Caruso said: “This evening’s session has been reserved for the public to make brief statements into the record .



. . . at the same time it does not give you the right to cross examine any other person.”

- When Elaine Labella, Director of Land Protection for the Housatonic Valley Association commenced her presentation, she commented: “Mr. Chairman you did mention brief comments. I have written testimony which I am going to give you, but at your request for brevity, I will do my best to summarize where I can and try to limit my comments.” Mr. Caruso commented: “Well I would appreciate that because you know I usually find I can finish reading before you finish speaking . . . and if it comes from the heart, it is better learned.” (Mr. Caruso, TR2, pages 11-12)
- While Ms. Labella was commenting on monies spent by travelers in the northwest, Mr. Caruso interrupted her stating: “Excuse me, how many more . . . we do have some neighbors . . . so that you know before you tell us every car that drives through.” (Mr. Caruso, TR2, pages 18-19)
- In commenting on the Northwest Conservation District letter and the Housatonic Valley Association presentation, Mr. Caruso asked Mr. Centore: “. . . and all those things, all those issues, runoff, elevation, and wetlands, and vernal pools and all that, those are all things which are dealt with later in the permit process, isn’t that correct? Mr. Centore, the final design, yes that is correct.” (Mr. Caruso, TR2, page 34)
- In discussing other sites with Mr. Gaines, Mr. Caruso stated: “And you’re looking at ways to address that situation because repeaters and such just don’t cut it?” Mr. Gaines said: “Correct, sir.” (TR2, page 36)
- During the testimony of an abutter and intervenor, Mr. Thaler asked: “You don’t have to address that issue [runoff] before this site is okayed? . . . Do I understand that correctly?” Mr. Caruso responded: “Well we don’t answer questions, but the bottom line is we won’t design a site unless we approve it.” (Mr. Caruso, TR2, page 42)
- When Mr. Thaler was discussing the development of the accessroad and that his property clips onto that road, Mr. Caruso stated: “I’m going to suggest that you contact your real estate attorney.” (Mr. Caruso, TR2, page 46) He continued on stating: “Because that is not something that we can deal with.” (Mr. Caruso, TR2, page 46)
- In responding to Mrs. Kathleen Mooney, who identified herself as Mr. Thaler’s wife after she gave the same address as Mr. Thaler, Chairman Caruso commented: “The same place. Great. And what is your question?” (Mr. Caruso, TR2, page 52)

- When Mr. Thaler was discussing the preliminary report from the soils engineer, Mr. Caruso interjected: "Stop . . . stop . . . I'm not following anything you are saying." (Mr. Caruso, TR2, page 54)
- In discussing with Mr. Thaler the contents of the soil engineer's report, Mr. Caruso stated: "They didn't say that there is toxic waste there . . . or anything else." (Mr. Caruso, TR2, page 61)
- In discussing a seasonal pond that was on Mr. Thaler's survey, and that it might contain endangered species, Mr. Caruso responded: ". . . and we did discuss that any issues of drainage would be dealt with in the next stage, if there is one, right? Okay. And you can check with your . . . the person if you are going to hire him or her, alright? Excellent. What else?" When Mr. Thaler went on to ask if he could indulge in a subject rumination, Chairman Caruso said: "I don't understand what that means - what does that mean?" He went on to say: "You are really here to ask them questions." (Mr. Caruso, TR2, page 65)
- When Mrs. Mooney suggested she did not understand why there had not been a dialogue with the Town and why there was persistent tunnel vision, Mr. Caruso interrupted: "Please . . . a cooperative dialogue is not served by words like tunnel vision. . ." (Mr. Caruso, TR2, page 70)
- After Mr. Thaler and Mrs. Mooney had completed their testimony, Chairman Caruso commented to them: "Then I am going to suggest you guys get out of here while the getting is good, how's that?" (Mr. Caruso, TR2, page 77)
- Mrs. Daifotis was commenting on whether she would submit the soil engineer's letter from CCA, but suggested she might because Mr. Thaler wants it submitted, Chairman Caruso said: "And you will get a chance later on if there is an approval . . . I mean its yours. You shouldn't do things just because other people want you to. Your mom told you that, right?" (Mr. Caruso, TR2, pages 78-79)
- When Mrs. Daifotis submitted one copy of the soil engineer's report, Chairman Caruso commented: ". . . and we'll probably get you a copy back . . . I mean apparently there is only one copy . . . existent in the world." (Mr. Caruso, TR2, page 84)
- Mrs. Daifotis went on to explain that she had shared the content of the letter with Mr. Thaler and that the letter from the soil scientist addressed issues beside her driveway. Chairman Caruso commented: "I mean it is not something personal . . . okay I wanted to know if we had to redac something . . . like a terrible story." (Mr. Caruso, TR2, page 85)

- Recognizing that Mrs. Daifotis was a resident of New Canaan, he said to her: "Anything else we should know about you? Thank you very much and you weren't in our hearing in New Canaan last week, so you must have been preparing for this one. You couldn't be lucky enough to live next to two towers at the same time." (Mr. Caruso, TR2, page 88)
- When Mrs. Daifotis responded in the negative, Chairman Caruso said: "Oh, you like that one, okay, well perhaps you will like both of them." (Mr. Caruso, TR2, page 88)

As a result of the Chairman's positions and remarks, the public, intervenors, and abutting property owners were unduly intimidated and harassed. The Chairman's condescending, and sometimes flippant, attitude made evident by those remarks, had a chilling effect on persons wishing to speak, and on those who did speak during the process to the degree that the hearing did not meet the standard of Fundamental Fairness required by Connecticut Law.

Mr. Caruso's remarks also suggest a bias or predetermination on his part that the Application should be approved.

As administrative fundamental fairness was not provided, the Verizon Application should be denied, for that reason alone.

D. ZONING REGULATIONS:

CGS § 16-50x provides that the Council "shall consider any location preferences or criteria . . . (ii) that may exist in the zoning regulations of said municipality as of the submission date of the application to the Council."

Cornwall Planning and Zoning Commission adopted Section 8.24 of its

Regulations revising requirements for antennas, towers, and wireless communications facilities on April 4, 2000. These Regulations were in effect on May 6, 2010. Attached hereto as Appendix B are sections of the Zoning Regulations as follows:

- 03.2 Regulated Facilities Allowed as a Permitted Use
- 03.3 Regulated Facilities As A Special Permit Use
- 04.1 General Standards and Requirements for Permitted and Special Permit Uses
- 04.2 Requirements for Proposed Ground Mounted Towers
- 04.2.3 Scenic Roads and Areas
- 04.4 Environmental and Safety Standards
- 05.0 Additional Standards and Requirements for Ground Mounted Towers, Special Exceptions, Uses

As noted above, CGS § 16-50x requires that the Council consider location preferences or criteria in those Regulations. Accordingly, the Appendix B Regulations need to be reviewed by the Council prior to making its decision. Council should pay particular attention to Section 0.4.2. Note that this section provides, in pertinent part, "unless adequate coverage and adequate capacity cannot otherwise be achieved, towers shall be sited off ridgelines and in as low a population density area as is possible". That Regulation goes on to state as follows:

"The following areas of special concern, and their view sheds, are the least preferred locations for free standing towers: Cornwall Plains, West Cornwall, Cornwall Bridge, The Housatonic River Overlay Zone, inner and

outer corridors, existing protected open space properties, and areas ranked for protection according to Section 1 of the Town Plan.”

According to the Zoning Regulations of the Town of Cornwall, the proposed site or its view shed are the least preferred location for the free standing tower. This must be taken into consideration by the Council, according to CGS § 16-50x.

E. SCENIC QUALITY:

CGS § 16-50p (b)(1)(c) applies as it requires the Council to examine whether the proposed facility is found to be “a relatively undisturbed area that possesses scenic quality of local, regional, or statewide significance”. The site location is in the Upper Housatonic Valley National Heritage Area (Mr. Libertine, TR2, page 89). In addition, the State of Connecticut has designated all of Cornwall as part of the Federal Forestry Legacy Program. All of the Town of Cornwall is within the Western Connecticut Forestry Legacy Area. As a result of this designation, federal funds may be used to protect the forests within Cornwall. The site location is also within the Highlands Conservation Act Region for Connecticut. The State of Connecticut has designated the area as a Highlands Focal Area known as the Shepaug River Headwaters Focal Area. While not federally designated, the area also qualified for federal designation in the Federal

Wild and Scenic River Program. Cornwall and surrounding communities, however, decided not to pursue final designation within that federal program.

Accordingly, the Town submits that the location is in a relatively undisturbed area that possesses scenic quality of local, regional, or statewide significance. According to CGS § 16-50p (b)(1)(c)(iii), the Council has the authority to deny the application should it determine that the facility would substantially affect that scenic quality at this location.

#### 4. CONCLUSION

For one or all of the above reasons, the Town submits that the Verizon Cell Tower Application should be denied by the Council. The first reason, whether or not Verizon has control over the access road, is a factual question which, while it implicates standing of Verizon to proceed with the Application, also is a factual predicate for a determination that procedural due process was not met and that the requirement of Fundamental Fairness was not met. This is because neither the Town, nor the public, nor other intervenors or abutters, had any way to know at a meaningful time in the approval process of the Application, what Verizon claims to control over the 2,200' accessway are. There is nothing in the Record that reflects Verizon's control over the accessway, and therefore the Application should be denied for its lack of standing. On appeal to Superior Court, if approved, such approval would be subject to a Motion to

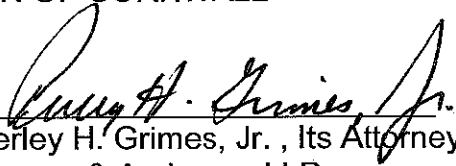
Dismiss for lack of standing. It is also apparent that the Council's deferring ownership or control access issues to the submission of a D&M Plan after approval, violates both procedural due process and fundamental fairness as articulated hereinabove.

The Record reflects that there are three or four "search areas" which Verizon is looking at in the Town of Cornwall. That would seem to indicate that future Applications are intended to be made in the Town of Cornwall by Verizon. The Town feels it is important for the Council, on this first Verizon Application, to set appropriate standards regarding these claims of lack of standing, procedural due process infirmities and Fundamental Fairness for subsequent Applications so that unnecessary Council, public, and Applicant's time would not be again committed to a process which is so fundamentally flawed as this. The Town also is concerned that its Zoning Regulations and scenic attributes be protected in any Siting Council Application process. For these reasons, as well, the Town requests that the Application be denied.

RESPECTFULLY SUBMITTED,

INTERVENOR,  
TOWN OF CORNWALL

BY:

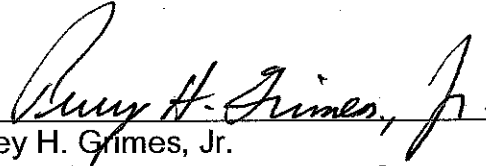


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CERTIFICATION

I hereby certify that a copy of the foregoing was sent by email to the Siting Council of the State of Connecticut at [siting.council@ct.gov](mailto:siting.council@ct.gov) on August 19, 2010, that 20 copies of the foregoing were mailed to the Siting Council for delivery to interested parties on this 19<sup>th</sup> day of August, 2010, and that copies were forwarded to those designated on the Attached Service List in the manner provided therein.



Perley H. Grimes, Jr.  
Commissioner of the Superior Court

**LIST OF PARTIES AND INTERVENORS**  
**SERVICE LIST**

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	<input checked="" type="checkbox"/> E-mail          <input checked="" type="checkbox"/> U.S. Mail	Cellco Partnership d/b/a Verizon Wireless	Kenneth C. Baldwin, Esq. Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 (860) 275-8345 (860) 275-8299 <a href="mailto:kbaldwin@rc.com">kbaldwin@rc.com</a>  Sandy Carter Regulatory Manager Verizon Wireless 99 East River Drive East Hartford, CT 06108
Intervenor (granted 06/17/2010)	<input checked="" type="checkbox"/> U.S. Mail	Town of Cornwall	The Honorable Gordon M. Ridgway First Selectman Town of Cornwall P.O. Box 97 Cornwall, CT 06753 (860) 672-4959 (860) 672-4068 <a href="mailto:cwselectmen@optonline.net">cwselectmen@optonline.net</a>
Intervenor (granted 06/17/2010)	<input checked="" type="checkbox"/> U.S. Mail	Frederic I. Thaler Kathleen Mooney 66 Popple Swamp Road Cornwall Bridge, CT 06754 (860) 672-0052 <a href="mailto:fthaler@snet.net">fthaler@snet.net</a>	
Intervenor (granted 07/15/2010)	<input checked="" type="checkbox"/> U.S. Mail	Nicholas and Caroline Daifotis 239 Brushy Ridge Road New Canaan, CT 06840 (203) 972-2820 <a href="mailto:Nicholas.daifotis@rbccm.com">Nicholas.daifotis@rbccm.com</a>	

**DOCKET NO. 402**  
**INTERVENOR TOWN OF CORNWALL**

**APPENDIX A**  
**PROPOSED FINDINGS**

1. Housatonic State Forest abuts the proposed site. (Mr. Centore, TR2, page 10)
2. The height of the trees around the tower is between 65 to 70 feet. (Mr. Centore, TR2, page 10)
3. The structure proposed is a 110- foot monopole. (Mr. Centore, TR2, page 10)
4. A 2,200-foot access drive to the base of the tower is proposed. (Mr. Centore, TR2, page 9)
5. Verizon proposes to use portions of an existing drive. (Mr. Centore, TR2, page 9)
6. Utility services are proposed to be brought underground. (Mr. Centore, TR2, page 9)
7. There are “pretty steep grades approaching the compound area.” (Applicant’s representative, Mr. Centore, TR1, page 13)
8. The average grade of the top 715’ of access road is 20 percent, with a maximum grade of 22 percent. (Mr. Centore, page 14)
9. No additional drainage features are being added along that portion of the property that abuts the Thaler property. (Mr. Centore, page 17)
10. The drainage as shown in Note 4, C-3 along the Thaler property has no rip rap swales and a proposed driveway slope of 22 percent. (TR1, page 18)
11. The entire driveway is going to be gravel. (Mr. Mercier/Mr. Centore, pages 18 and 19)
12. The existing driveway to the site is 10 feet wide and proposed to be widened to 12 feet with 1½ foot wide shoulders on either side. (Mercier/Centore, TR1, page 21)

13. 1,300 square feet of permanent impact to wetlands is associated with the driveway. (Mercier/Centore, TR1, page 21)
14. There is 400 square feet of temporary impact to wetlands and 1,000 square feet of permanent wetland fill on the south side or the downstream side of a culvert. (Gustafson, TR1, page 22)
15. There is a small vernal pool with spotted salamander egg nests found on the north side of the wetland crossing. (Gustafson, TR1, page 23)
16. Based upon the examination of the egg masses, it is assumed that spotted salamanders have been identified in the vernal pool. (Gustafson, TR1, page 25)
17. The Applicant does not know whether there are any established hiking trails along the ridge adjacent to the site. (Mr. Libertine, TR1, page 29)
18. The original site ring encompassed valley floor along Route 7. (Mercier, TR1, page 30)
19. The main objective of today's site is to cover a block on Route 7 and to integrate into future sites along Route 7. (Gaines, TR1, page 31)
20. Mr. Gaines is speculating that the applicant could not find a site in the original ring, so they shifted the ring. (Gaines, TR1, page 31)
21. It is difficult to tell whether the view from Pine Knob Loop would be obscured by the ridgeline. (Libertine, TR1, page 37)
22. It is unknown whether Bell Hill Road Extension is a town road or not. (Mr. Centore, TR1, page 40)
23. Mr. Centore did not have the information to be able to confirm the status of Bell Hill Road Extension. (Centore, TR1, page 40)
24. The proposed location is located within the Upper Housatonic Valley National Heritage Area. (Libertine, TR1, page 43)
25. Mr. Libertine did not know how being in this designated area affects the Council's decision. He said he would have to get that information. (Libertine, TR1, page 46)

26. Mr. Libertine did not know whether the State by itself has designated this area. (Libertine, TR1, page 46)
27. The 24 inch culvert with bedding around it could create a preferential pathway for water to flow out of the vernal pool. (Golembiewski & Gustafson, TR1, pages 50 and 51)
28. It is unknown whether there is ledge in the area of the compound, as the retaining walls are shown for preliminary design purposes only. (Centore, TR1, page 53)
29. Rational Method Drainage Calculations are not part of the record. (Golembiewski & Centore, TR1, page 54)
30. Due to the sensitive nature of the drainage on the site and the wetlands, an alternate site was being looked at. (Centore, TR1, page 55)
31. Drainage calculations that have been done are only "preliminary." (Centore, TR1, page 55)
32. As part of the "D & M Submission" they will be making further calculations to be sure that they comply. (Centore, TR1, page 55)
33. Use of new mesh on top of the gravel to hold the gravel has never been done in Connecticut. (Centore, TR1, page 56)
34. The proposed site would not cover the hole in coverage on Route 4 near Cornwall Bridge close to the tower site. (Wolinski & Mr. Gaines, TR1, pages 57 and 58)
35. The applicant is looking for other search areas in the Town of Cornwall. (Mr. Gaines, TR1, page 58)
36. Additional towers will be needed to cover the whole area with reliable coverage. (Mr. Gaines, TR1, page 59)
37. The road shows evidence of very fresh heavy runoff, especially at the bottom. (Mr. Ashton, TR1, page 62)

38. The easiest way to stabilize the road would be to use asphalt pavement as the surface. (Mr. Centore, TR1, page 63)
39. The Town's zoning regulations prohibit driveways containing any portion or grade greater than 15%. (Mr. Ridgway, TR1, page 76)
40. The Cornwall Planning & Zoning Commission is opposed to this application. (Mr. Ridgway, TR1, page 77 Cornwall Planning and Zoning Commission Letter of 7/17/10)
41. The Soil Conservation District looked at the site and wrote a three-page letter with pressing concerns. (Mr. Ridgway, TR1, page 77; letter of 7/15/10 from Sean Hayden)
42. The Town received the final plans of Verizon on July 20. (Mr. Ridgway, TR1, page 77)
43. The Soil Conservation District did not feel the driveway is environmentally compatible. It does not protect the surrounding wetlands and water resources. (Mr. Ridgway, TR1, page 78; letter of 7/15/10 from Sean Hayden)
44. The Soil Conservation District asked that the plan be redesigned to meet DEP standards for soil and erosion control which would better protect the site. (Mr. Ridgway, TR1, page 78)
45. The road is right along the property line and the runoff will be going onto someone else's property. (Mr. Ridgway, TR1, page 79)
46. After site approval, more detailed design would be developed as part of a development and management plan to address issues raised. (Mr. Baldwin, TR1, page 80)
47. Verizon understands that "there is impact to neighboring properties" (Mr. Centore, TR1, page 80-81)
48. Detailed drawings regarding reinforcement and stabilization will be presented in the "D&M Phase" after site approval by the council. (Mr. Centore, TR1, page 80)

49. Neither Bell Road nor Bell Road Extension are town roads. (Mr. Ridgway, TR1, page 82)
50. The only real way to tell the boundary line is through an A-2 survey which has not been done. (Mr. Ridgway, TR1, page 83)
51. It's difficult to evaluate the site and the proposal without knowing if it is proposed for leased property or not as there has been no A-2 survey. (Mr. Ridgway, TR1, page 83)
52. The issue of ownership is tricky, as well as rights of access, who actually owns the roadbed, and was this a roadbed or not absent an A-2 survey. (Mr. Ridgway, TR1, page 83)
53. The Town has an interest in making sure that there is an accurate representation of the ownership or leased status of the property in that the proposal is not on somebody else's property. (Ridgway, TR1, page 84)
54. An obvious question is does the applicant own the land on which it is planning to build the road. (Ridgway, TR1, page 84)
55. Are there other ways to access this site that are not right on the property line? (Ridgway, TR1, page 84)
56. An A-2 survey and easement map would definitely be required if this site is approved. (Mr. Centore, TR1, page 86)
57. The Siting Council does not have as part of its process a requirement for posting bonds associated with these facilities. (Mr. Baldwin, TR1, page 88)
58. There is not a master plan for cell service for the Town. (Mr. Gaines, TR1, page 90)
59. The applicant must meet its burden of proof that there is a coverage problem which cannot be solved by sharing another tower or using an existing facility. (Mr. Caruso, TR2, page 6)
60. The Council must examine whether better alternatives exist, including better available alternative sites. (Mr. Caruso, TR2, page 6)

61. Chairman Caruso stated that the evening's public hearing is reserved for the public, but does not give the public the right to cross-examine any other person. (Mr. Caruso, TR2, page 7)
62. Verizon has not indicated what practices are to be used to prevent storm water from polluting downgrade water bodies. (Ms. Labella, TR2, page 13)
63. DEP's 2004 Connecticut Storm Water Quality Manual will have a design goal of 80% pollution removal of suspended solids. No suspended solids removal calculations have been made. (Ms. Labella, TR2, page 13)
64. The applicant has submitted superficial and incomplete plans for wetland delineation construction phasing. (Ms. Labella, TR2, page 13)
65. Drawing C-A1 lacks detail about how storm water will be managed. (Ms. Labella, TR2, page 15)
66. Map C-A1 and the wetlands drawn is inadequate to fully determine what the potential impacts to the wetlands may be. (Ms. LaBella, TR2, page 14)
67. The proposed erosion control blanket has a longevity of up to 24 months. (Ms. Labella, TR2, page 15)
68. The mesh proposed is deadly to reptiles particularly snakes. The timber rattlesnake is a state listed species whose dispersal range includes this location (TR2, page 17)
69. No plans are submitted by Verizon showing how storm water erosion will be prevented from degrading wetlands and watercourses at the site. (Ms. Labella, TR2, page 20)
70. Mr. Thaler's property is downhill of the new construction and has access along the road which is an abandoned historical road. (Mr. Thaler, TR2, page 39)
71. Only a "preliminary analysis has been done for this site regarding runoff." (Mr. Centore, TR2, page 40)
72. The erosion and sedimentation control analysis has been done on a preliminary basis only. (Mr. Centore, TR2, page 41)



73. Only in the D&M Phase is it proposed to demonstrate 100% compliance with requirements with the State of Connecticut DEP. (Mr. Centore, TR2, page 41)
74. The Council doesn't answer questions and won't design a site unless we approve it. (Mr. Caruso, TR2, page 42)
75. Verizon does not have to provide full soil and erosion control information at this stage. Verizon takes the position that it can get approval and then design it later. (Mr. Centore, TR2, page 42)
76. There is no A-2 Survey on the Gulliver property that abuts the Thaler property and is the location of the Verizon proposal. (Mr. Thaler, TR2, page 45)
77. An A-2 Survey filed on the Thaler property, by a prior owner 32 years ago, shows that the Thaler property crosses onto the road at one point (Mr. Thaler, TR2, page 45).
78. Verizon will not now prepare easement maps and an A-2 Boundary Survey, but will later so that it is sure it is on the appropriate property, especially because of the relative proximity to the property line. (Mr. Centore, TR2, pages 49-50)
79. It is our intention, which they will confirm by A-2 Survey, to stay on the subject property and not do work on abutting property. (Mr. Centore, TR2, page 52)
80. The Thaler property crosses over the road at certain points, stated Mrs. Mooney, to which Mr. Centore replied: "Well, that it something that we will need to determine. And if that is the case we will need to shift the road over and get it away from your property line." (Mrs. Mooney and Mr. Centore, TR2, page 53)
81. Assuming the site gets approval, then a development and management plan will need to be submitted to the Council. (Mr. Baldwin, TR2, page 56)
82. A soil engineer was hired by Daifotis and he concurs that there are issues with the runoff that will be greater than estimated. (Mr. Thaler, TR2, pages 57 and 59)
83. The Thaler A-2 Survey chose a seasonal pond and a brook . . . the pond there was probably a vernal pool and it might contain endangered species, but there is no way of knowing without checking in the spring. (Mr. Thaler, TR2, page 64)

84. Chairman Caruso repeats that any issues of drainage would be dealt with in the next stage, if there is one. (Mr. Caruso, TR2, page 65)
85. Verizon anticipates having four search areas in and around the vicinity of Cornwall and Verizon claims that it is premature for anyone on the panel to discuss impacts of facilities for which there are not locations yet. He admits "we don't have particular locations in mind so we can't speak to the alternatives". (Mr. Gaines and Mr. Baldwin, TR2, pages 66 and 67)
86. There are no specific sites. (Mrs. Mooney and Mr. Gaines TR2, page 67)
87. Verizon disagrees with the opinion of Richard Blumenthal, Attorney General for the State of Connecticut, as set forth in his letter of July 8, 2010. (Ms. Mooney and Mr. Baldwin, TR2, pages 68 and 69)
88. Mr. Daifotis testified that his property is at the foot of Bell Road Extension and that they frequently have runoff problems onto their property. (Mr. Daifotis, TR2, page 79)
89. Mr. Daifotis retained Consulting Engineers, CCA, to get his review of the plans. (Mr. Daifotis, TR2, page 80)
90. Verizon can't assure Mr. Daifotis of the fact that it will be doing maintenance on a regular basis. (Mr. Centore, TR2, page 82)
91. The site location is in the Upper Housatonic Valley National Heritage Area. (Mr. Libertine, TR2, page 89)
92. June 1, 2010, letter from First Selectman Gordon M. Ridgway to Connecticut Siting Council.
93. Housatonic Valley Association letter of July 20, 2010, to Connecticut Siting Council signed by Elaine Labella.
94. Attorney General letter to Executive Director of Verizon dated September 23, 2009.
95. Letter signed on behalf of CCA by Richard W. Howard, PE, to Mr. and Mrs. Daifotis dated July 20, 2010.

96. Letter from Cornwall Planning and Zoning Commission to the Executive Director of the Siting Council dated July 17, 2010.
97. Northwest Conservation District letter dated July 15, 2010, signed by Sean Hayden addressed to Karen Nelson, Land Use Administrator.
98. Cornwall Inland and Wetlands Watercourses Agency letter addressed to Sandy Carter, Regulatory Manager of Verizon Wireless, dated September 10, 2009.

DOCKET NO. 402  
INTERVENOR TOWN OF CORNWALL

APPENDIX B  
ZONING REGULATIONS

**03.2 Regulated Facilities Allowed As A Permitted Use.** In addition to the requirements set forth in section 06.3 of this regulation, the following regulated facilities located on existing structures or co-located shall be permitted uses in all districts subject to site plan approval pursuant to the provisions of Article VI of these regulations as well as compliance with all of the regulations for the zoning district in which the facility is proposed to be located.

**03.2.1 Camouflaged facility.** A regulated facility which is completely camouflaged and not recognizable as part of a wireless facility such as within a flagpole, steeple, chimney, or similar structure.

**03.2.2 Existing Structure.** A regulated facility on an existing structure (whether or not it is conforming in terms of height) including but not limited to a guyed, lattice, or monopole tower, fire tower or water tower, provided it does not increase the height of the existing structure.

**03.2.3 Utility Structures.** An antenna(s) located on an electric transmission and distribution tower, telephone pole and similar existing utility structure. The installation may increase the height of the existing structure by no more than twenty feet, except in designated historic districts (or other historic or scenic areas of the town as shown on a map on file in the Planning and Zoning Office) or within 150 feet of the paved portion of a Town road or State highway proposed for or designated as a scenic road or highway.

**03.2.4 Building (roof or side) mounts** provided it does not project either above the building or the height limit of the zoning district by more than 10 feet.

**03.2.5 Building (roof or side) mounts** may locate on a building or structure legally non-conforming with respect to height, provided it does not project above the existing building or structure height, or more than 10 feet above the height limit of the zoning district.

**03.2.6 Police and Emergency Services.** A regulated facility intended solely for the purpose of Police, Fire, Ambulance and other Emergency Dispatch. A Tower may be erected as a Permitted Use for these purposes unless it is to be shared by a commercial wireless service carrier which shall require a Special Permit.

**03.3 Regulated Facilities Allowed As A Special Permit Use.** The following regulated facilities and ground mounted towers shall be Special Permit Uses in all residential districts subject to Site Plan approval:

**03.3.1** Regulated facilities located on existing structures or co-located that do not qualify as a Permitted Use as set forth in 3.2 above.

**03.3.2** All Ground Mounted Towers.

## 04.0 General Standards and Requirements for Permitted and Special Permit Uses.

04.1 **Location.** Wherever feasible, regulated facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers provided the installation preserves the character and integrity of those structures.

04.1.1 Applicants are urged to consider use of existing telephone, cable, or electric utility structures as sites for regulated facilities.

04.1.2 The preferred location for free standing towers is where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening and have the least long range visual effect. Town owned land or buildings are preferred locations where the Town has determined that such town owned land or building is appropriate for a tower or antenna. Unless adequate coverage and adequate capacity cannot otherwise be achieved, towers shall be sited off ridgelines and in as low a population density area as is possible.

The following areas of special concern, and their viewsheds, are the least preferred locations for free standing towers: Cornwall Plains, West Cornwall, Cornwall Bridge, the Housatonic River Overlay Zone (inner and outer corridor), existing protected open space properties, and areas ranked high for protection according to Section 1 of the Town Plan.

04.1.3 **Site Justification for Ground Mounted Tower.** An application for a ground mounted tower shall include a detailed site justification report, prepared according to accepted engineering practice, which:

- a. Establishes the location and defines the elevation of all proposed antenna facilities on the tower consistent with federal regulations,
- b. Demonstrates that the proposed location (which includes both tower position and antenna height) is superior to other potential locations for the proposed uses. Alternatives evaluated shall specifically include tower(s) of lesser height, the use of repeaters, and other less visible technologies.
- c. Documents that signal strength service objectives are consistent with accepted engineering practice for all proposed uses of the tower,
- d. Includes complete and accurate propagation plots in relation to scaled elevation drawings addressing all facilities to be installed on the tower,
- e. Demonstrates that for each proposed use of the tower the proposed height is the minimum necessary to provide adequate coverage. This shall specifically include, but not be limited to, an evaluation of tower height at 50% and 75% of the proposed height.
- f. Documents in writing that existing telecommunication facility sites in Cornwall, and in abutting towns, cannot reasonably be made to provide adequate coverage and/or adequate capacity to the Town of Cornwall. This shall include documentation that addresses the feasibility of repeaters in conjunction with facility sites in Cornwall and abutting towns to provide adequate coverage and/or adequate capacity to the Town of Cornwall.

**04.2.2 Requirements for Proposed Ground Mounted Towers.** Proposed ground-mounted towers shall provide a vegetated buffer of sufficient height and a depth of not less than 50' to screen the facility to the extent feasible. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. Where it is not feasible to fully buffer a facility, the applicant shall submit a landscape plan prepared by a Connecticut Licensed Landscape Architect. The landscape plan shall recommend the type of tree and plant materials and depth of buffer appropriate to the site, design, height and location of the facility. The Commission may require reasonable modifications to the landscape plan where it determines such are necessary to minimize the visual impact of the facility on the neighborhood and community character. All landscaping shall be properly maintained to ensure its good health and viability at the expense of the owner(s). The Commission reserves the right to require stealth or camouflage designs such as towers made to resemble trees or other structures.

**04.2.3 Scenic Roads and Areas.**

a. The Commission may approve a ground mounted tower located in an open area visible from a public road, recreational area, or residential development only where it has been demonstrated by the applicant to the satisfaction of the Commission that the proposed service cannot be reasonably provided in a location on an existing structure or a co-location.

b. A regulated facility located within an area ranked high for protection according to Section 1 of the Town Plan, or within 300 feet of a Town or State designated scenic road, shall not exceed the height of vegetation at the proposed location.

**04.2.4 Sight Line and Elevation Information.** Where the Commission determines that sight line and/or elevation information is necessary to determine compliance with these regulations it shall require the following:

a. Tree cover on the subject property and adjacent properties within 300 feet, by dominant species and average height, as measured by or available from a verifiable source.

b. Sight line representation. A sight line representation shall be drawn from any public road within 300 feet and the closest facade of each residential building (viewpoint) within 300 feet to the highest point (visible point) of the regulated facility. Each sight line shall be depicted in profile, drawn at one-inch equals 40 feet. The profiles shall show all intervening trees and buildings. In the event there is only one (or more) residential building within 300 feet there shall be at least two sight lines from the closest habitable structures or public roads, if any.

c. Existing (before) condition photographs. Each sight line shall be illustrated by one four-inch by six-inch color photograph of what can currently be seen from any public road within 300 feet. These photographs shall be taken when deciduous leaves are off the trees.

d. Proposed (after) condition photographs. Each of the existing condition photographs shall have the proposed regulated facility superimposed on it to show what will be seen from public roads if the proposed facility is built.

e. Sight elevations. Siting elevations, or views at-grade, from the north, south, east and west for a 50-foot radius around the proposed regulated facility plus from all existing public and private roads that serve the subject property. Elevations shall be at either one-quarter inch equals one foot or one-eighth inch equals one foot scale and show the following:

1. Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.
2. Security barrier. If the security barrier will block views of the regulated facility, the barrier drawing shall be cut away to show the view behind the barrier.
3. Any and all structures on the subject property.
4. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.
5. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours above mean sea level.

#### 04.4 Environmental and Safety Standards.

- a. Regulated Facilities shall not be located in wetlands. Locating of facilities in wetland buffer areas shall be avoided whenever possible and disturbance to wetland buffer areas shall be minimized.
- b. No hazardous waste shall be discharged on the site of any Regulated Facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.
- c. Stormwater run-off shall be contained on-site.
- d. Equipment for regulated service facilities shall not generate noise in excess of that allowed under the regulations of the Torrington Area Health District.
- e. No signal lights or illumination shall be permitted unless required by the FCC or FAA, except for manually operated emergency lights for use only when operating personnel are on site.
- f. Radiofrequency Radiation (RFR) Standards and Requirements. The applicant shall provide documentation that all equipment proposed for a regulated facility is authorized according to FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines) or its successor publication.

**05.0 Additional Standards and Requirements for Ground Mounted Tower Special Exception Uses.**

- 05.1 Feasible Alternative.** Where a ground mounted tower is proposed, the applicant shall have the burden of proving that there are no feasible existing structures or co-location sites upon which to locate.
- 05.2 Lot Size.** All ground mounted towers and their equipment shelters shall be considered a principal structure and use and shall comply with all of the requirements for the zoning district in which the facility is to be located except that the height of the tower may exceed the maximum height dimension specified in Article IV of the zoning regulations.
- 05.3 Fall Zone.** In order to ensure public safety, the minimum distance from the base of any new proposed ground-mounted tower to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be equal to 110% of the height of the tower including any antennas or other appurtenances. Provision shall be made that no new road, habitable dwelling, business or institutional use, or public recreational area be located within the fall zone. The Commission may allow the required fall zone to be measured into a neighboring property where the neighboring property is not developed and will be subject to a legally binding agreement preventing development during the time the tower is in place.