

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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CONNECTICUT
SITING COUNCIL

In Re:

APPLICATION OF NEW CINGULAR WIRELESS 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
8 BARNES ROAD IN THE TOWN OF CANAAN
(FALLS VILLAGE), CONNECTICUT

DOCKET: 409

Feb. 15, 2011

**MOTION OF THE INLAND WETLANDS/CONSERVATION COMMISSION OF THE
TOWN OF CANAAN (FALLS VILLAGE) TO STRIKE THE APPLICATION**

The Inland Wetlands/Conservation Commission of the Town of Canaan (Falls Village) ("IW/CC") hereby respectfully moves the Siting Council: (1) to strike the application, and, (2) to deny the applicant an opportunity to present any evidence in this proceeding on the ground that IW/CC's ability to cross examine has been blocked and prevented by the applicant's failure and refusal to provide responsive answers to the Commission's interrogatories.

Siting Council Regulations

The rules of the Connecticut Siting Council ("CSC") provide:

Sec. 16-50j-25. General provisions

(a) **Purpose of hearing.** The purpose of the hearing in a contested case shall be to provide to all parties an opportunity to present evidence and cross-examine all issues to be considered by the council and to provide intervenors an opportunity to present evidence and cross-examine such issues as the council permits.

(Emphasis added.)

At the Pre-Hearing Conference held in the Siting Council offices on January 19, 2011, IW/CC was directed to advance the time of service of its interrogatories at the request of AT&T. The Commission did so.

On February 10, the applicant served its responses which contained a number of failures to provide requested information and asserted invalid legal grounds to support its refusal. The following interrogatory answers illustrate these failures by applicant AT&T:

IW/CC Interrogatory Number 4:

4. Page 6 of the application narrative states: "Utilities to serve the proposed facility would extend underground from pole number 2942 on Barnes Road and generally follow the existing access drive to be improved up to the tower compound location." Please provide specifications for the placement, accommodation and routing of said utilities and all hydrologic analyses of the effects from ground disturbance for their installation.

AT&T response:

A.4. Detailed plans will be included in a Development and Management ("D&M" plan) after any approval of the facility which may be issued by the Siting Council. Access road drainage calculations are provided in Attachment 5 of AT&T's Application.

IW/CC Interrogatory Nnumber 6:

6. Please state if the property deed says that this logging trail is a public highway. If so, please describe the steps that will be taken to comply with the Town's zoning regulations relating to "public highways."

AT&T response in pertinent part:

A.6. * * * Pursuant to Section 16-50x of the Connecticut General Statutes, no local land use, zoning, wetlands or other permits are required for a cellular tower facility including a driveway serving it. Rather, the State Siting Council exclusively regulates such facilities through a Certificate application process.

IW/CC Interrogatory Number 7:

7. Will any blasting be necessary for (a) site development? (b) access road development? (c) drainage development? If so, please provide details of where blasting will take place and any analysis of potential harm to surrounding areas and steps to be taken to mitigate such harm.

AT&T response:

A7. Please see response no. 7 of AT&T's Responses to Siting Council Interrogatories, dated January 26, 2011.

That response was the following:

A7. The presence of ledge will be confirmed upon completion of a geotechnical investigation which would be prepared as part of any Development & Management Plan for the project. If ledge is encountered, chipping is preferred to blasting. If blasting were required, an appropriate protocol would be followed in accordance with State law.

IW/CC Interrogatory Number 10:

10. Please describe (a) the precise location and construction details of the two proposed dams and the assurance that they will contain the anticipated maximum flow, and (b) the process by which accumulated soil/sedimentation will be removed.

AT&T response:

A10. Detailed plans will be included in a Development and Management ("D&M" plan) after any approval of the facility which may be issued by the Siting Council. Please see attachment 5 of AT&T's Application for access road drainage calculations and confirmation that the design of all drainage improvements was done in accordance with the ConnDOT Drainage Manual and meets the requirements specified therein.

IW/CC Interrogatory Number 16:

16. In light of the narrative statement at page 8, "With respect to wireless communications services, the Telecommunications Act of 1996 expressly preserved State and/or local land use authority over wireless facilities, placed several requirements and legal limitations on the exercise of such authority and preempted State or local regulatory oversight in the area of emissions as more fully set forth in 47 USC 332(c)(7)." Please describe the steps the applicant will take to comply with Conn. Gen. Stat. §22a-32. (Formerly Sec. 22-77). "Regulated activity permit. Application. Hearing. Waiver of hearing." which provides in pertinent part, "No regulated activity shall be conducted upon any wetland without a permit."

AT&T response:

A16. Pursuant to Section 16-50x of the Connecticut General Statutes, no local land use, zoning, wetlands or other permits are required for a cellular tower facility. The State Siting Council exclusively regulates such facilities through a Certificate application process.

(Emphasis added in all cases.)

The applicant uses two devices to justify AT&T's refusal to provide responsive answers:

(1) delay in responding until after the hearing has concluded and the certification has been granted;

(2) an unfounded assertion that Siting Council certification replaces all local regulatory functions.

Fundamental Misinterpretation of Siting Council's Function and Authority

Conn. Gen. Stat. §16-50x provides that the Council:

* * * shall give such consideration to other state laws and municipal regulations as it shall deem appropriate. Whenever the council certifies a facility pursuant to this chapter, such certification shall satisfy and be in lieu of all certifications, approvals and other requirements of state and municipal agencies in regard to any questions of public need, convenience and necessity for such facility. * * *

(Emphasis added.)

Many of the interrogatories propounded by IW/CC relate to questions unrelated to "public need, convenience and necessity for such facility." The statute does not provide any justification for refusing to answer these interrogatories.

AT&T consistently misstates the law by asserting that the Siting Council "regulates":

A16. Pursuant to Section 16-50x of the Connecticut General Statutes, no local land use, zoning, wetlands or other permits are required for a cellular tower facility. The State Siting Council exclusively regulates such facilities through a Certificate application process.

(Applicant's Responses to Falls Village Inland Wetlands and Conservation Commission's Interrogatories, Feb. 10, 2011, A16, page 4) (Emphasis added.)

The only effect of the certification is to eliminate independent demonstration of "public need, convenience and necessity for such facility." All other regulatory requirements remain intact and in force and require compliance.

AT&T further asserts erroneously (at A6, page 2) that

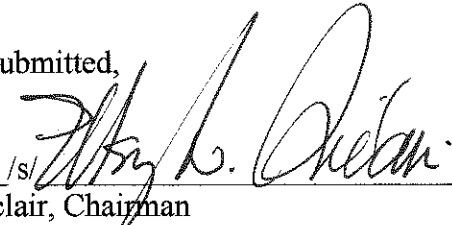
A.6. * * * Pursuant to Section 16-50x of the Connecticut General Statutes, no local land use, zoning, wetlands or other permits are required for a cellular tower facility including a driveway serving it. Rather, the State Siting Council exclusively regulates such facilities through a Certificate application process.

There is no support for that assertion in Conn. Gen. Stat. §16-50x.

CONCLUSION

Wherefore, the Inland Wetlands/Conservation Commission of the Town of Canaan moves the Siting Council to strike the application and to direct the applicant not to present any evidence concerning issues as to which it has refused to provide responsive answers to the IW/CC's Interrogatories.

Respectfully submitted,


/s/ Ellery W. Sinclair

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CERTIFICATE OF SERVICE

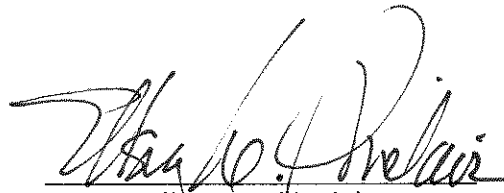
I hereby certify that on this day, an original and twenty copies of the foregoing was served by hand by me on the Connecticut Siting Council at the Connecticut Siting Council Hearing on Docket 409 at the Lee H. Kellogg School in Falls Village, Connecticut and that a copy of same was served by hand on all parties as follows:

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Ellery W. Sinclair

Dated: February 17, 2011