

TOWN OF ROXBURY CONNECTICUT

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First Selectman

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August 1, 2012

State of Connecticut
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051
Attention: Linda Roberts, Executive Director

RE: DOCKET NO. 428 – Pursuant to Connecticut Gen. Stat. § 16-50gg, the Town of Roxbury submits Location Preferences for New Cingular Wireless PCS, LLC (AT&T) application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at one of two sites: Roxbury Tax Assessor Parcel ID #32-008 off of Route 67, Roxbury, Connecticut (“Southbury Road Site”), or 126 Transylvania Road, Roxbury, Connecticut (“Transylvania Road Site”).

Dear Mrs. Roberts:

Pursuant to Connecticut Gen. Stat. § 16-50gg the Town of Roxbury hereby provides the Connecticut Siting Council with location preferences and other criteria for siting of the telecommunications tower proposed under Docket 428. See attached.

We thank you for your consideration.

Very truly yours,

Barbara Henry
First Selectman

Attachment

cc: R. Dirienzo, Selectman
R. Lowe, Selectman

**Town of Roxbury
Town Hall
29 North Street
Roxbury, CT 06783
Barbara Henry, First Selectman
bhenry@roxburyct.com**

**State of Connecticut
Connecticut Siting Council (CSC)
Ten Franklin Square, New Britain, CT 06501
e-mail siting.council@ct.gov; fax (860) 827-2950
Attention: Linda Roberts, Executive Director**

RE: DOCKET NO. 428 – Location Preferences and criteria for siting of telecommunications tower proposed in New Cingular Wireless PCS, LLC (AT&T) application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at one of two sites: Roxbury Tax Assessor Parcel ID #32-008 off of Route 67, Roxbury, Connecticut (“Southbury Road Site”), or 126 Transylvania Road, Roxbury, Connecticut (“Transylvania Road Site”).

Dear Director Roberts:

The purpose of this letter is to outline pursuant to Conn. Gen. Stat. §16-50gg, the Town of Roxbury **location preferences and criteria for siting of the telecommunications tower proposed in DOCKET NO. 428** by New Cingular Wireless PCS, LLC (AT&T) at 126 Transylvania Road, Roxbury CT or Roxbury Tax Assessor Parcel ID #32-008 off of Route 67, Roxbury, Connecticut. As spelled out below, neither of these locations meet the priorities for siting set out in the Town of Roxbury Zoning Regulations and Plan of Conservation and Development.

The Siting Council application requirements include the following:

(K) A statement explaining mitigation measures for the proposed facility including:

- (1) Construction techniques designed to specifically minimize adverse effects on natural areas and sensitive areas;
- (2) Special design features made specifically to avoid or minimize adverse effects on natural areas and sensitive areas, including but not limited to a yield point, if applicable;
- (3) Establishment of vegetation proposed near residential, recreation, and scenic areas; and

(4) Methods for preservation of vegetation for wildlife habitat and screening; and

(5) Other environmental concerns identified by the applicant, the Council, or any public agency, including but not limited to where applicable: . . . Ridgeline Protection Zones, . . . Agricultural Lands, . . . Endangered, Threatened or Special Concern Species

(L) A description of the proposed site and any alternative sites, including the zoning classification, planned land uses and surrounding areas;

(M) A description of the scenic, natural, historic, and recreational characteristics of the proposed sites and any alternative sites and surrounding areas including but not limited to officially designated nearby hiking trails, nature preserves and scenic roads;

(N) Visibility Analyses of the proposed site area and any alternative site areas including, but not limited to: (1) A view shed analysis consisting of a two-mile radius from visually impacted areas such as residential developments, recreational areas, and historic sites;

(P) A description of efforts to share existing towers, including but not limited to installations on electric transmission poles, or to consolidate telecommunications antennas of public and private services onto the proposed facility including efforts to offer tower space, where feasible, at no charge for space for municipal antennas;

(X) Such information as any department or agency of the state exercising environmental controls may, by regulation, require including (in relevant part) :

1. . . . State Department of Environmental Protection; and local conservation, inland wetland, and planning and zoning commissions with which reviews were conducted concerning the facility, including a copy of any agency position or decision with respect to the facility; and

2. The most recent conservation, inland wetland, zoning, and plan of development documents of the municipality, including a description of the zoning classification of the site

Although the CSC has exclusive jurisdiction over the location of new telecommunication towers, the CSC may take into consideration Roxbury's policies for the location of such towers as evidenced by its zoning regulations. Section 5.11 of the Roxbury Zoning Regulations ("Z Regs") sets out the guidelines for the location of Telecommunication Towers in Roxbury. Z Regs. § 5.11.21 provides in relevant part:

Siting Council. If any or all of the Towers and Facilities and related structures regulated by this Section 5.11 become subject to the jurisdiction of the Connecticut Siting Council, this regulation shall remain in effect to the extent it is not pre-empted by the statutory Siting Council jurisdiction and even to the extent pre-empted shall serve as a guide to the siting Council as to the factors important

to the Town in the location of Towers and related facilities defined under this Section 5.11.

Z Regs. § 5.11.12 ranks the following locations in order of preference for Tower sittings in Roxbury:

- a. The use of municipal lands, with the approval of the Town, which comply with other requirements of this Section 5.11 and where visual impact can be minimized and mitigated, shall be encouraged.
- b. Shared use (co-location) of existing Personal Wireless Service Facilities shall be encouraged.
- c. The use of Repeaters to provide Adequate Coverage without requiring new Tower(s) shall be encouraged.
- d. Clustering of Towers: Applications for Towers adjacent to Existing Towers shall be encouraged, providing the location is suitable (based on the criteria of this Regulation) for such an impact.

Z Regs 5.11.1 sets a tower siting criteria as follows:

- i. Require Tower sharing and the clustering of Personal Wireless Service Facilities where possible; maximize the use of existing communications towers, water towers, silos and other similar buildings, if available, to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community;
- f. Minimize the total number and height of Towers throughout the community;

The application materials do not adequately address the alternatives and criteria set out above. For example, why can't repeaters accomplish the coverage without adding a new Tower. Why can't the applicant locate with shared use on the Town's tower as do other providers. There is insufficient information in the application as to why the applicant has not been able to provide for "sharing and the clustering of Personal Wireless Service Facilities . . . [to] maximize the use of existing communications towers, water towers, silos and other similar buildings . . . to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community."

It is general knowledge among the residents of the Town that certain providers (i.e. Verizon) are able to provide adequate service within the Town using the existing location at the Town Transfer Station. The application report states that this station cannot serve the area involved in the application, but there is inadequate evidence as to why this Town Tower could not also serve the applicant and meet the guidelines set out in the Zoning Regulations. The application merely states "There are fifteen (15) existing communications facilities in Roxbury, Southbury and Woodbury. AT&T already uses a number of these sites. Other existing sites are outside of the site search area and would not provide reliable coverage to the area identified in this Application." It does not say that another shared location could not suffice. See page 12.

Also the applicant states that the area involved does not provide feasible locations for repeaters that are better suited to urban environments. However at the intersection of 67 and 172, the very area involved in this application, there are two churches on two corners, both with steeples.

In addition to subsection Z Regs 5.11.1 i above, Z Regs §5.11.1 in relevant part, provides the following criteria for evaluation of the location of new towers in Roxbury:

a. Preserve the character and appearance of the Town while simultaneously allowing adequate Personal Wireless Services to be developed;

* * *

e. Preserve property values;

* * *

h. Require owners of Towers and Personal Wireless Service Facilities to configure them so as to minimize and mitigate the adverse visual impact of the Towers and Facilities;

* * *

k. Provide Consistency with Roxbury's Plan Conservation and Development with respect to preserving the rural, historic and agrarian character of the land use including protection of the landscape and scenic views consisting of hills, historic settings, streams, trees, meadows, and other natural features;

The Roxbury Zoning Regulation guidelines at §5.11.1 are not anti-tower. These regulations squarely require consistency with Federal Law including The Telecommunications Act of 1996 so as not to unreasonably discriminate among providers of functionally equivalent Services, to not regulate on the basis of the environmental effects of radio frequency emissions to the extent that the regulated Services and Facilities comply with the FCC's regulations concerning such emissions, and to "facilitate" the provision for wireless communication services to residents and businesses in Roxbury.

However, the very concerns required to be addressed by the Siting Council requirements, are also part of the Roxbury zoning guidelines. For example, Z Regs §5.11.1, Towers and Personal Wireless Service Facilities, shall be located so as to minimize the following potential impacts:

a. Visual / Aesthetic: Towers shall, when possible, be sited where their visual impact is least detrimental to areas that possess scenic quality of local, regional or state-wide significance such as:

1. Ridge lines;
2. Connecticut State Forests, Connecticut Natural Area Preserves, Natural Area Inventory Sites
3. Areas permanently preserved by land trusts and similar organizations.

4. Areas marked as "rural" on the State Plan of Conservation and Development set forth at Conn. Gen. Stat. Section 1Sa-24 et. seq.
5. Roads designated as Scenic Roads pursuant to Connecticut Gen. Stat. Section 7-149a and 13b-31b through 13b-31e.

The area involved in these applications poses many of the same concerns that the Zoning regulation guidelines and POCD address in order to protect the character of the rural-areas of Roxbury proposed for this tower. One of the conservation strategies in the POCD page 8 is to "Preserve key scenic views and areas within Roxbury." As set out above, The Siting council guidelines provide for a description of the scenic characteristics of the proposed sites and any alternative sites and surrounding areas including . . . nature preserves and scenic roads. The application report illustrates some areas where the tower may be visible but fails to discuss the preservation of scenic roads, view and conservation areas. The visibility studies indicate that the tower will be seen from the Bronson Conservation Subdivisions and from other roads that Roxbury has designated as Scenic Roads pursuant to Connecticut Gen. Stat. § 7-149a and the Town's ordinances. A photograph provided by the Applicant illustrates a substantial visual impact.

The CSC application must include: "E. A description of the proposed site and any alternative sites, including the zoning classification, planned land uses and surrounding areas;" The application at pages 17-19, states:

Pursuant to the Council's Application Guide, included in this section is a narrative summary of the consistency of Candidates A and B with the local municipality's zoning and wetland regulations and plan of conservation and development. A description of the zoning classification of each site and the planned and existing uses of each proposed site location are also detailed in this Section.

See Connecticut Siting Council Application Guide for Community Antenna Television and Telecommunication Facilities, Page 5. The application fails to adequately describe the zoning, planned uses and surrounding areas and the incompatibility of the use of both sites on this basis; it does not reflect the zoning guidelines for location of towers other than physical and dimensional requirements.

The application reports exclude most of the above described guidelines as the planned uses in the area (other than a general description that the proposed sites are in residential Zone C). For example, the report does not consider that the Southbury Road site adjoins on one side the only "Conservation Subdivision"¹ ("Bronson Mountain") development in Roxbury and on the other side one of the only Interior Residence Zones ("High Meadow") --the precursor of the current Large Lot Interior Zone. Both of these zones provide incentives (allow an increased number of interior lots) where the lots developed are large lots on private roads with substantial conservation/agricultural permanently preserved areas. For example, the Conservation Subdivision requires both subdivision and special permit approval; according to Z Regs. § 16.2, the purpose for this regulation is to provide pursuant to Conn. Gen. Stat. §§ 8.2 and 8.18, cluster development to "assure the conservation of land by taking advantage of the natural

¹ 2005 Revision to Z Regs. §6.2.5, changed "Cluster Subdivision" to Conservation Subdivision).

features of the tract so as to leave substantial unfragmented areas (at least 33.3% of the 30-50 acres) as permanently preserved open space area/agricultural lands that are free of building lots.

Z Regs. § 16.3 sets the conservation purposes for this development as follows, to:

- a. Permanently conserve and preserve land to assure that its development will best maintain or enhance the appearance, character, natural beauty and scenic views of an area;
- b. Preserve land for park and passive recreation purposes;
- c. Preserve or create prime farmland and unique agricultural features such as orchards and vineyards;
- d. Protect streams, rivers, ponds, and their associated stream belts, and other wildlife habitats, wetlands as natural resources and environments, and to avoid flooding, erosion and water pollution, and/or;
- e. Preserve natural features along roadways so as to maintain their existing rural character and the rural character of the community.

The very purposes of these special rural residential conservation protected zones are jeopardized with the advent of a commercial tower. The tower site in the Southbury Road location is sandwiched between two specially approved large interior lot/conservation developments. The visibility/viewshed analysis submitted with the application concludes that the 170' tower is visible year round from Bronson Mountain Road cul-de-sac in the heart of the Conservation subdivision on the adjoining property to the power property (See attachment 3c, page 5, and Photographic Simulation View 9 showing the Tower clearly in view from the end of Bronson Mountain Road.) This would impair the very rural character and scenic views that the conservation subdivision development was approved to permanently maintain. We see nothing in the application that deals with or substantially mitigates the impact on the special preservation scheme in the Roxbury area where Southbury Road tower is proposed.

The Zoning guidelines for telecommunication towers provides areas where towers should not be located: The habitat of any State-listed Rare or Endangered Wildlife or Rare Plant Species Within five hundred (500') feet of a local state or federally designated scenic road; and on property designated as a scenic ridgeline pursuant to the Planning Commission approved Plan of Conservation and Development. These provisions are parallel to application requirements of the CSC.

The supporting materials confirm that the Connecticut Natural Diversity Data Base prepared by the CT DEEP shows the Eastern Box turtle, a State Species of Special Concern located in the vicinity of both the proposed Southbury Road tower site and the Transylvania Road site ((Attachment 3d, VHB Memorandum from Dean Gustafson, Senior Environmental Scientist, Attachment 4d DEEP letter to Dean Gustafson)..

See Connecticut Siting Council Application Guide for Community Antenna Television and Telecommunication Facilities, Page 5 provides for the application to provide:

- F. A description of the scenic, natural, historic, and recreational characteristics of the proposed site and any alternative sites and surrounding areas including but not limited to officially designated nearby hiking trails, nature preserves and scenic roads;

G. Visibility Analyses of the proposed site area and any alternative site areas including, but not limited to: 1. A viewshed analysis consisting of a two-mile radius from visually impacted areas such as residential developments, recreational areas, and historic sites;

The "Study" in the visibility reports, indicates that East Flagg Swamp road and Flag Swamp Road in Roxbury are locally-designated scenic roads that are contained within the two-mile radius visibility "study area;" there is also seasonal visibility to Upper Grassy Hill, a locally designated scenic road as documented in the Attachment 4 VHB Visibility Study.

The Transylvania Road Tower Site is located off of Transylvania road, a rural dirt road, maintained by the Town for rural residential use. The VHB Visibility Study in Attachment 4c, indicates that there are six locally designated scenic roads that extend into the 2 mile radius Study Area, including Flag Swamp Road, Grassy Hill Road, Lower Country Road, Tophet Road and Welton Road. Documented year-round visible locations are designated Scenic Grassy Hill Road in Roxbury, "open fields" in the vicinity of Grassy Hill Road and Squire Road, 3 residences on Squire Road, 3 residences on Grassy Hill road, 4 other residences in Roxbury, as well as private properties to Northwest and South. The report states that the photos of the balloon test were taken from "public roads" but there are obviously impacted private roads to the South in the location of the Southbury Road site, as discussed above

The Z Regs Tower guidelines reference and require consistency with The Plan of Conservation and Development (POCD) for tower locations. An integral theme to the Roxbury POCD is "Protecting the rural character of Roxbury, its neighborhoods, and valued natural and open space resources." POCD, Amendment, Section 3 "Vision." These are not idle words in Roxbury, but rather the very essence of what attracts people to live and stay in Roxbury. The POCD has a section entitled "TELECOMMUNICATIONS Tasks" that looks to CSC approvals to require "co-location by other service providers to the extent technically feasible;" this applies to the existing town owned tower and "a Town-wide plan demonstrating the need for any new telecommunications facility at any proposed location."

The POCD at page 56, references the then proposed and now existing town-owned tower at the transfer station on Lower County Road which was paid for by the Town to provide "reasonable service throughout Roxbury." The Plan predicts that that additional facilities are not likely to be warranted within the planning period; the 2010 amendment to the POCD did not amend this statement; the town's tower complies with the POCD by providing for the allowance of co-location by other service providers. AT & T should show that it has exhausted all technologically feasible improvements to allow co-location on the shared tower, before clearing and erecting a 170' tower at another site in a residential area; at all times, efforts to protect Roxbury's rural character, ridgelines, and vistas should be a major consideration. The conclusory statement at page 11 of the application does not do this.

The zoning discussion in the application mentions the requirement at Section 5.11.10d that Equipment shelter and accessory buildings shall be no more than 12' in height but fails to discuss the remainder of the Section 5.11.10d requirement that:

Whenever possible, the buildings shall be joined or clustered so as to appear as one building. Any building shall be designed to be in harmony with the surrounding neighborhood properties on the site and impact that the tower will have on these resources. If located in a residential zone, the buildings shall be designed to appear residential. The buildings shall be no larger than necessary to accomplish the functions required.

Although the above requirements do not prevent the location of a tower, but rather deal with the external impact, the application does not provide compliance with the standard to make the building as small as possible and to be designed to appear residential in this rural residential zone. The Plans included show a rectangular box that does not even attempt to comply with the guidelines.

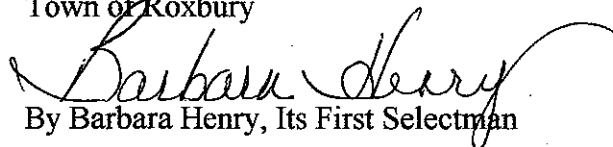
Similarly, the application discussion fails to mention Section 5.11.1i that provides:

If primary coverage (greater than fifty percent (50%) from proposed Personal Wireless Service Facility is outside Roxbury then permit may be denied unless the Applicant can show that they are unable to locate within the Town which is primarily receiving service from the proposed Facility.

The application materials indicate that the proposed tower locations will serve only 232 to 370 more people in Roxbury (population 2374- 2008 census) and only a gain in coverage area of 3.4 square miles (Transylvania Road Tower) and 2.13 square miles (Southbury Road Tower) See A T & T Radio Frequency engineering Report dated June 27, 2012 by SAI. Thus the Towers are not poised primarily to service eve up to 50 % of Roxbury.

The Northwestern Council of Governments (regional planning agency) 2009 Plan of Conservation and Development observes that "Cell phones operate on a line of sight basis. The Region with its many narrow valleys and steep sided hills does not lend itself to line-of-sight technology." Page 17 This Plan identifies the very concerns that Roxbury has regarding the "visual impact on the Region" of telecommunication towers. "The challenge is to accommodate the towers without degrading the Region's scenic quality. Ways of meeting this challenge include camouflaging the towers, requiring multiple antennas on a single tower, lower towers and careful site selection. Tower location is intrinsically site specific. A tower location that may provide excellent coverage to an underserved area may also mar one of the Region's many iconic vistas." Id. Page 18. We welcome this discussion.

Town of Roxbury


By Barbara Henry, Its First Selectman

Cc: Attached service list.

This is to certify that a copy of the attached correspondence was sent to all parties on the Service List for Docket 428 on August 1, 2012.

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"/> U.S. Mail	New Cingular Wireless PCS, LLC	Daniel M. Laub, Esq. Christopher B. Fisher, Esq. Cuddy & Feder LLP 445 Hamilton Avenue, 14 th Floor White Plains, NY 10601 (914) 761-1300 (914) 761-5372 fax cfisher@cuddyfeder.com dlaub@cuddyfeder.com Michele Briggs AT&T 500 Enterprise Drive Rocky Hill, CT 06067-3900 michele.g.briggs@cingular.com
<i>Intervenor (Approved on July 26, 2012)</i>	<input checked="" type="checkbox"/> U.S. Mail	Bronson Mountain Farm Homeowners Association	John W. Knuff, Esq. Hurwitz, Sagarin, Slossberg & Knuff, LLC P.O. Box 112 Milford, CT 06460 203-877-8000 JKnuff@hssklaw.com