

Testimony to Environmental Committee, State of Connecticut

Regarding Bill 206

Monday, March 1, 2010

By Wayne Jervis

I have collected 384 signatures from residents of Greenwich, CT who desire that cell phone towers be located one mile from schools, daycare facilities, and elderly living facilities. These petitioners also desire that siting authority for cell phone towers be returned to municipal authorities. The signers responded in an overwhelmingly supportive ratio estimated to be 85%. They are concerned about the health and safety of their schools and children. Moreover, they desire to end the centralized tyranny of the Connecticut Siting Council which has perniciously ignored the requests of municipalities to site towers. These local authorities understand local needs due to their local presence and constituency which elects them. Moreover, the Connecticut Siting Council has repeatedly employed tactics which are designed to abuse those who might oppose cell phone tower sites for valid reasons.

Municipal officials in Greenwich, CT have repeatedly stated that all of the power resides with the FCC because of TCA Section 704 and thereafter with the CSC. These officials include selectmen and Representative Town Meeting members. Officials are afraid that perfunctory reviews by CSC (which were first required by 2008 law) end up with overturned municipal decisions after expensive legal battles. Therefore local officials are cowed into submission. It is also well known that CSC is populated with several industry veterans, and that CSC shares an all-to-cordial relationship with those that they regulate. Moreover, the CSC application process is laden with cognitive dissonance.

For example, in the 2005 case of Nextel's application for approval in Fall Village, CT, the CSC did not consider whether the applicant had legal right to build on the property of Dr. Carl Bornemann despite municipal government complaints. CSC assumed that the sublease from CL&P to Nextel for space on a high-tension pylon included a right to build a facility on the land. It did not consider that the original lease to CL&P was one-time and prohibited the addition of new buildings. Since the application was granted regardless, Dr. Bornemann was required to hire counsel to sue CSC to invalidate the license. Moreover, CSC's legal defense was required to be handled by the AG office, which was a considerable waste of tax payer money. This is not to mention the injustice of Dr. Bornemann's legal bills.

For example, in Docket 378 CSC ignored the issue of right to build when SBA Communications' applied for telecommunications facilities in Warren, CT on land which development rights were held by the Department of Agriculture since 1996. The Town of Warren and neighboring Town of Washington were forced to put together defenses for two sites under consideration. One site was protected as a scenic vista under a Plan of Conservation and Development, and the other site was environmentally sensitive because it was used by migratory birds. The AG was required to represent the DoA instead of CSC for the greater good, and the application was eventually withdrawn. The wasted

time and resources of state and local authorities as well as residents could have been avoided by CSC with a proper examination of the applicant's rights to build.

For example, Docket 366, in 2009 the CSC overruled Danbury, CT's municipal government's opposition to the placement of a cell phone tower at 52 Stadley Rd. by T-Mobile. CSC supported T-Mobile's rationale for that location because they said that that location offered the best coverage and the lowest cost. Danbury Planning Commission had ruled in 2000 that a location in the same area, on Great Plain Rd. was denied for Sprint. T-Mobile was able to ignore considerations such as alternative locations, alternative network topographies including DAS networks and DAS-cellular tower hybrid networks because of cost. The issue of the transfer of millions of dollars in lost real estate value from local residences to T-Mobile over a facility that cost approximately \$360,000 was never considered by T-Mobile or CSC. Several obstacles were no more onerous than cutting back vegetation and adding fill to the location. Looking at T-Mobile's coverage maps at the proposed alternative sites does not provide convincing analysis that this decision by CSC holds greater merit than that of Danbury municipal government. Again CSC chose industry interests and ignore the majority of Danbury's municipal interests.

For further example of adverse behavior, CSC has ignored testimony from interveners, as in the 2005 cell tower case for Salisbury, CT, Docket 305. Environmental groups pointed out the nearby location of female Bobolink nests on an adjoining property, but were repeatedly ignored. The Bobolink is a migratory bird which is listed as a species of special concern by Connecticut DEP.

Therefore it is important to transfer power from the CSC, and to municipalities which are governed by elected officials directly responsible to residents. These locally elected officials are by nature less inclined to adverse behavior because they have a much tighter linkage to the impacted communities. The CSC capricious behavior is emboldened by an ability to fall back on AG-supplied legal defense, at significant cost to taxpayers. Ironically, CSC claims to be funded by industry application fees yet it fails to incorporate the its legal expenses borne by the AG's office. Moreover the CSC is appointed not elected and five of the appointments originate from a more-remotely situated Governor. The CSC is too insulated to serve constituents' interests adequately. The current governance leaves citizens with no legal representation or due process.