

## State of Connecticut Siting Council

DOCKET NO. 488 —

**Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for Certificate of Environmental Compatibility and Public Need for construction, maintenance, and operation of a telecommunications facility located at one of two sites: Kent Assessor ID #M10, Block 22, Lot 28 “Bald Hill Road” or 93 Richards Road, Kent, Connecticut.**

### I. APPLICATION TO BE DESIGNATED AS PARTIES

The following individuals (hereinafter the “Bald Hill Road neighbors”) hereby move that the State of Connecticut Siting Council (the “Siting Council” or the “Council”) designate each as parties in the above-captioned matter:

- Peter Fitzpatrick, owner of 15 Bald Hill Road, Kent, Connecticut.
- Alexandra DiPentima, owner of 22 Bald Hill Road, Kent, Connecticut.
- Melanie Ough, owner of 25 Bald Hill Road, Kent, Connecticut.

These abutting Bald Hill Road neighbors are jointly represented by the undersigned attorneys in this Siting Council matter.

#### Applicable Law

At least five days prior to the commencement of the hearing in a Siting Council matter, any person may request that the Council permit that person to participate as a party. Pursuant to General Statutes § 4-177a(a) and Regulations of Connecticut State Agencies (hereinafter “Regulations”) § 16-50j-14, the presiding officer shall grant a person status as a party in a contested case if that officer finds that: (1) such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency's decision in the contested case.

The Council shall name as parties those persons enumerated in and qualifying under Section 16-50n(a), subdivisions (1) to (3), inclusive, of the Connecticut General Statutes.<sup>1</sup> Pursuant to General Statutes § 16-50n(a)(2), each person entitled to receive a copy of the application or

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<sup>1</sup> Regulations § 16-50j-13.

resolution under § 16-50l may request party status in a Siting Council matter where such person files with the Council a notice of intent to be a party.

In turn, General Statutes § 16-50l provides that notice of such an application for a certificate for a facility described in subdivision (3), (4), (5) or (6) of subsection (a) of section 16-50i shall also be sent, by certified or registered mail, to each person appearing of record as an owner of property which abuts the proposed primary or alternative sites on which the facility would be located. Cellular telecommunications service towers fall under General Statutes § 16-50i(a)(6). Notice of such an application to abutting property owners is statutory rather than constitutional.<sup>2</sup>

The Council will name or admit as a party any person whose legal rights, duties, or privileges will be determined by the decision of the Council, or whose participation as a party is necessary to the proper disposition of the case.<sup>3</sup>

Where individuals are admitted as parties or allowed to participate as intervenors in a Siting Council proceeding, the Council may, in its discretion, group parties and intervenors together where those individuals have the same interests and in order to avoid redundant testimony and unnecessary delays in the proceeding.<sup>4</sup>

A written request to participate as a party must include the name and address of the proposed party; the manner in which the proposed party claims to be affected by the matter; the contentions to be made and relief sought; the statutory basis for making the individual a party; and the nature of the evidence to be presented by the individual petitioning to become a party.<sup>5</sup>

Although abutting neighbors to a proposed site are not automatically given party status in a *court appeal* of a Siting Council decision of an application, General Statutes § 16-50l requires that notice of certain Siting Council applications be sent to abutting landowners because of the unique interests of those property owners in the Council's proceedings.

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<sup>2</sup> See *Mobley v. Metro Mobile CTS of Fairfield County, Inc.*, 216 Conn. 1, 3 (1990) (noting that the foundation for the requirement that notice of certain Siting Council applications be sent to abutting landowners is statutory and based on §16-50l rather than the due process clause of the Connecticut or United States constitutions.). Public Act 86-187 amended Subsection (b) of § 16-50l to require notice of certain applications to abutting property owners.

<sup>3</sup> CGS §4-177a; Regulations § 16-50j-14(c).

<sup>4</sup> Regulations § 16-50j-16a.

<sup>5</sup> Regulations § 16-50j-14.

## Discussion

The Bald Hill Road neighbors are the owners of properties abutting the proposed Bald Hill Road cellular tower site. Each received mailed notice of the Application in the above-captioned matter by mail.

- Mr. Fitzpatrick owns 15 Bald Hill Road, which borders the proposed Bald Hill Road tower site to the south. Mr. Fitzpatrick has owned this property since March 2019.
- Ms. Ough owns 25 Bald Hill Road, which borders the proposed Bald Hill Road tower site to the north. Ms. Ough has owned this property since May 2018.
- Mrs. DiPentima owns 22 Bald Hill Road, which borders the proposed tower site to the east, across Bald Hill Road. Mrs. DiPentima has owned this property since December 1996.

These property owners received notice of the application and their properties about the proposed Bald Hill Road cell tower site and should be admitted as parties to this proceeding under Regulations § 16-50j-13, which under General Statutes §§ 16-50n and 16-50l, grants party status.

The Bald Hill Road neighbors will ask the Council to reject the Bald Hill Road site as inappropriate under the General Statutes and Regulations of State Agencies. The neighbors' close-proximity property, environmental (if applicable), and recreational interests are directly affected by the outcome of this proceeding. Indeed, the General Assembly has concluded that, "telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, scenic, historic and recreational values of the state."<sup>6</sup> Certainly such interests become all the more weighty in the immediate vicinity of the proposed tower site.

The Bald Hill Road neighbors will assert that as their properties border the proposed Bald Hill Road cell tower site, the ecological, scenic, and recreational value and resources of their immediate neighborhood and of the surrounding land would be unreasonably reduced by a telecommunications cell tower. The neighbors contend that because their properties border the proposed site, their interests are directly and uniquely affected by the tower than the more generalized interests of other property owners and residents of the Town of Kent. For example, the Application in Docket No. 488 notes that the proposed tower is only 67 feet from the site's

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<sup>6</sup> CGS § 16-50g.

southern border, and that there is only 25 feet between the telecommunications compound and that border (this is the border with Mr. Fitzpatrick's property).<sup>7</sup> Mr. Fitzpatrick's house is only about 151 feet from the proposed cell tower compound.<sup>8</sup>

The Bald Hill Road neighbors will present evidence of a broad range of unique harms to property interests in the immediate area. This will include effects on the ridgeline view, alterations to forest, effects of construction, and effects on neighboring property values in the immediate Bald Hill Road area. This will include documentation and expert testimony. The Bald Hill Road neighbors may also present evidence as to safety concerns, particularly as to properties with houses situated closest to the proposed tower. The Bald Hill Road neighbors may cross-examine witnesses and partake in discovery. The procedural protections afforded to parties in Siting Council proceedings are necessary for these interests to be fully raised, heard, and adjudicated.

Indeed, the Siting Council has previously recognized the unique interests of neighbors to proposed telecommunications tower sites by admitting those neighbors as parties. In *Neighbors Opposed to Tower v. Connecticut Siting Council*, the Superior Court noted in its review of the procedural history of the relevant Siting Council hearing that a group of neighbors opposed to a cellular service tower had been admitted as a party to the Siting Council's proceedings.<sup>9</sup> Such precedent recognizes that neighbors in close proximity to a proposed cellular tower have unique individual rights, duties, and interests at stake in Siting Council proceedings. The Regulations and Statutes' singling out of abutting property owners for personalized notice of applications also supports the unique legal interests of abutting owners, such as the Bald Hill Road neighbors.<sup>10</sup>

### Conclusion

For the foregoing reasons, the abutting Bald Hill Road neighbors — Peter Fitzpatrick, Melanie Ough, and Alexandra DiPentima should be admitted and allowed to participate as parties in Docket No. 488.

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<sup>7</sup> Siting Council Docket No. 488, Application, Attachment 4, "Site A".

<sup>8</sup> *Ibid.*

<sup>9</sup> *Neighbors Opposed to Tower v. Connecticut Siting Council*, No. CV 960557602S, 1996 WL 409320, at 1-2 (Conn. Super. Ct. June 18, 1996).

<sup>10</sup> Regulations § 16-50j-13; CGS § 16-50n(a); CGS § 16-50l.

## II. APPLICATION TO INTERVENE

In the alternative that the Bald Hill Road neighbors are not designated parties by the Siting Council, then the Bald Hill Road neighbors apply to be intervenors in this matter.

Additionally, Melissa Holcombe and Peter Kirkiles, owners and residents of 26 Bald Hill Road (the “26 Bald Hill Road intervenors”), apply for intervenor status<sup>11</sup> in Docket No. 488. Although the 26 Bald Hill Road intervenors do not abut the proposed tower site, their home is around 470 feet<sup>12</sup> from the proposed site.

### Applicable Law

An administrative agency in Connecticut may admit an individual or entity as an intervenor in a proceeding where the petition to intervene states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceeding.<sup>13</sup> Such petition shall provide a summary of the petitioner's contentions concerning the issues in the proceeding; the relief sought by the petitioner in the proceeding and the legal authority therefor; and the nature of the evidence, if any, that the petitioner intends to present in the event that the petition is granted.<sup>14</sup>

However, the standard to show that the interests of justice favor granting intervenor status is not a high bar — the petitioner need only make a colorable claim.<sup>15</sup> Consistent with that standard, the Siting Council has previously allowed a wide variety of persons and groups to be made intervenors to its proceedings, including environmental protection and conservation groups; residents of the town where the project is to take place; and neighbors to the proposed project site.<sup>16</sup>

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<sup>11</sup> The 26 Bald Hill Road intervenors will also be represented by the undersigned.

<sup>12</sup> See Docket No. 488, Application of Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T at Section 3, Tab A.

<sup>13</sup> CGS § 4-177a(b); Regulations § 16-50j-15.

<sup>14</sup> Regulation 16-50j-15.

<sup>15</sup> *Finley v. Town of Orange*, 289 Conn. 12 (2008); *Windels v. Environmental Protection Comm'n*, 284 Conn. 268 (2007).

<sup>16</sup> See *e.g.*, Siting Council Docket No. 458; Docket No. 461; Docket No. 463; Docket No. 470.

Turning to environmental matters generally, in an administrative hearing, the Connecticut Environmental Protection Act (“CEPA”) favors intervention by a wide variety of entities, in order to protect the weighty public interest in protection of the environment.<sup>17</sup> It is sufficient if a petitioner can show that the proposed activity or application is *likely* to impair the public trust in natural resources of Connecticut.<sup>18</sup> General Statutes § 22a-19(a) makes intervention a, “matter of right” once a verified pleading is filed, *regardless* of whether the allegations of environmental harm ultimately prove to be unfounded.<sup>19</sup> The Connecticut Supreme Court has clarified that, “one basic purpose of the act [CEPA] is to give persons standing to bring actions to protect the environment.<sup>20</sup> CEPA is “liberally construed” and “remedial in nature” in accomplishing its purpose of protecting the environment and natural resources in Connecticut.<sup>21</sup>

The fact that a petitioner need only make a colorable claim to warrant intervenor status encompasses a wide variety of safety, environmental, and property value concerns that can be raised by neighboring property owners and residents.

### Discussion

The Bald Hill Road neighbors — Peter Fitzpatrick, Melanie Ough, and Alexandra DiPentima hereby incorporate the above Discussion in Section I of this filing as the owners of properties abutting the proposed Bald Hill Road cell tower site.

The abutting Bald Hill Road neighbors, along with Ms. Holcombe and Mr. Kirkiles own property, including residential, single family homes, close to the proposed tower site<sup>22</sup>:

- Mr. Fitzpatrick at 15 Bald Hill Road: his house is 151 feet from proposed compound.
- Ms. Ough at 25 Bald Hill Road: her house is 215 feet from proposed compound.
- Mrs. DiPentima at 22 Bald Hill Road: her house is 379 feet from proposed compound.

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<sup>17</sup> See *Avalon Bay Communities v. Zoning Comm’n*, 87 Conn. App. 537 (2005).

<sup>18</sup> See *Cannata v. Dept. of Environmental Protection, et al.*, 239 Conn. 124 (1996).

<sup>19</sup> *Red Hill Coalition, Inc. v. Town Planning and Zoning Comm’n.*, 212 Conn. 727, 734 (1989).

<sup>20</sup> *Belford v. New Haven*, 170 Conn. 46, 53-54 (1975).

<sup>21</sup> *Avalon Bay Communities*, 87 Conn. App. at 548 (citing *Keeney v. Fairfield Resources, Inc.*, 41 Conn. App. at 432-33).

<sup>22</sup> See Docket No. 488, Application of Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T at Section 3, Tab A.

- Ms. Holcombe and Mr. Kirkiles at 26 Bald Hill Road: their house is 470 feet from proposed compound.

Given that these property owners live within 500 feet of the proposed tower compound, each has a unique, personal legal interest in the preservation of the natural resources on Bald Hill Road. Where natural resources, such as a ridgeline view; scenic view; rural setting; and forest are threatened, such a loss foreseeably reduces the value of the neighboring properties in a manner that is proportional to the distance from the proposed site. CEPA provides broad standing for persons to bring actions in defense of the environment and the state's natural resources. This standing is enhanced where the person bringing such action is closely situated to the project potentially resulting in a harm to such natural resources.

Therefore, the abutting Bald Hill Road neighbors, along with the 26 Bald Hill Road intervenors, will provide the Council with evidence of a broad range of harms to their interests in the ecological, scenic, recreational, and economic values of the immediate, surrounding area, and of their own properties. This will include effects on the ridgeline view, alterations to the forest landscape, effects of construction, and effects on economic value in the immediate Bald Hill Road area. This will include documentation and expert testimony and may include cross-examination of witnesses and discovery. The neighbors may also present evidence as to safety concerns, particularly as to properties with houses situated closest to the proposed tower. The presentation of such evidence is in the interests of justice to be heard and will not unduly burden or delay the Council's proceedings.

### Conclusion

For the foregoing reasons, the 26 Bald Hill Road intervenors should be admitted as intervenors and allowed to participate as such in Docket No. 488. Furthermore, in the alternative that the Siting Council does not allow the abutting Bald Hill Road neighbors — Peter Fitzpatrick, Melanie Ough, and Alexandra DiPentima — to be admitted as parties in Docket No. 488, then the Council should allow the abutting Bald Hill Road neighbors to participate as intervenors.

Respectfully Submitted,

Peter Fitzpatrick, 15 Bald Hill Road, Kent, Connecticut.

Alexandra DiPentima, 22 Bald Hill Road, Kent, Connecticut.

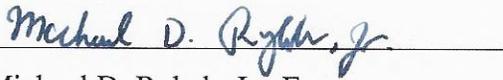
Melanie Ough, 25 Bald Hill Road, Kent, Connecticut

Melissa Holcombe, 26 Bald Hill Road, Kent, Connecticut.

Peter Kirkiles, 26 Bald Hill Road, Kent, Connecticut.

By   
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3/20/20  
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## CERTIFICATE OF SERVICE

I hereby certify that a true, original copy, and fifteen (15) photocopies of the foregoing were placed in the U.S. Mail on this 20<sup>th</sup> day of March 2020 and addressed to:

Ms. Melanie Bachman  
Executive Director  
Connecticut Siting Council  
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New Britain, CT 06051

I further certify that an electronic copy of the foregoing was sent to:

[siting.council@ct.gov](mailto:siting.council@ct.gov)

And I certify that electronic copies of the foregoing were sent to:

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