

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF HOMELAND TOWERS, LLC AND NEW
CINGULAR WIRELESS PCS, LLC d/b/a AT&T FOR A
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE,
AND OPERATION OF A TELECOMMUNICATIONS FACILITY AT
ONE OF TWO SITES IN THE TOWN OF KENT, CONNECTICUT

DOCKET NO. 488

August 6, 2020

**APPLICANT'S RESPONSE TO PARTY/ INTERVENOR BALD HILL ROAD
NEIGHBORS' OBJECTION TO THE PROTECTIVE ORDER AND NON-DISCLOSURE
AGREEMENT AND MOTION TO IMPLEAD A NECESSARY AND INDISPENSABLE
PARTY**

Applicant Homeland Towers, LLC hereby submits this response to the July 28, 2020 Objection to Protective Order and Non-Disclosure Agreement; Motion to Implead a Necessary and Indispensable Party (“the Motion”), received from Party/Intervenor the Bald Hill Road Neighbors (“BHRN”), regarding the Application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the construction, maintenance and operation of a telecommunications facility at one of two sites in the Town of Kent (the “Proposed Facility”). This response addresses the second objection to the protective order related to the May 9, 2019 Phase I Environmental Site Assessment completed by All-Points Technology Corporation, P.C. (“Phase I”) and the Motion to Implead InSite Towers Development 2, LLC, as the owner of Site A, a 2-acre unimproved wooded lot on the western side of Bald Hill Road.

I. The Council Granted the Applicant's Motion for Protective Order and Therefore the Second Objection to the Protective Order is Moot.

On July 16, 2020, the Applicants submitted a Motion for Protective Order related to the disclosure of the Phase I along with a hard copy of the unredacted Phase I, in response to the Council's May 26, 2020 Order.¹ On July 17, 2020, the BHRN filed an Objection to the Applicants' Motion for Protective Order (“Objection”) and a Motion to Compel. At the July 23, 2020 evidentiary hearing session, the Council granted the Applicant's Motion for Protective Order related to the full Phase I and scheduled a closed evidentiary hearing specifically limited to the Site A Phase I. Participation in the closed evidentiary hearing is available to parties and intervenors who sign the Non-Disclosure Agreement in connection with the Protective Order. Despite the availability of participation in the closed evidentiary hearing, yet again, on July 28, 2020, the BHRN submitted a duplicative Objection to the Protective Order based on the same grounds in its July 17, 2020 Objection.

We respectfully submit that the duplicative nature of this Objection, coupled with the Council's July 30, 2020 correspondence to the BHRN regarding same render this Objection moot. BHRN's Objection was previously considered by the Council and a decision was rendered by the Council at

¹ The Applicants July 16, 2020 Motion for a Protective Order was not a “renewed” motion as described by BHRN.

the July 23, 2020 hearing. BHRN's duplicative Objection does include any new facts or circumstances for the Council's consideration and as such, the duplicative Objection is moot.

II. As the Applicant, Homeland Towers, LLC Has Standing to Invoke Privilege and There is No Need to Implead the Property Owner.

As the Applicant in this proceeding, and the potential Certificate Holder and developer of the proposed Facility, Homeland Towers, LLC ("Homeland") has standing to invoke privilege to prevent the disclosure of the full Phase I for Site A. Homeland has a legal interest in the area proposed for the Site A facility pursuant to its Option and Ground Lease agreement with InSite. Moreover, the Phase I for Site A was commissioned by and prepared for Homeland, not InSite, as noted in the Applicants' Responses to the BHRN Interrogatories dated May 15, 2020. Thus, disclosure of proprietary information directly affects Homeland.

Furthermore, pursuant to Connecticut General Statutes ("C.G.S.") Section 16-50p(g), the Council is not limited by the Applicant already having acquired an interest in the land for the purpose of constructing the facility. Indeed "Section 16-50p (g) specifically forbids the council from allowing a property interest to influence its decision." Corcoran v. Connecticut Siting Council, 50 Conn. Supp. 443, 452, 934 A.2d 870, 875 (Super. Ct. 2006), aff'd, 284 Conn. 455, 934 A.2d 825 (2007).

As such, InSite Towers Development 2, LLC is not a necessary party and the BHRN motion to implead should be denied.

III. Conclusion

Based on the foregoing, the Applicant respectfully requests that the Council overrule the BHRN's Objection to the Protective Order and deny the Motion to Implead Insite Towers Development 2, LLC.

Respectfully Submitted,



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CERTIFICATION OF SERVICE

I hereby certify that on this day the foregoing was sent to the Connecticut Siting Council electronically with a hard copy via first class mail in accordance with Siting Council directives to prevent the spread of the corona virus and electronically to:

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