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November 15, 2022

Attorney Melanie Bachman, Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Reference: Connecticut Siting Council Docket No. 509 -Application of Homeland Towers, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Telecommunications Facility at 1837 Ponus Ridge Road, New Canaan, Connecticut

Dear Attorney Bachman:

I am writing in response to your Memorandum dated November 10, 2022 and the accompanying "Draft Findings of Fact" dated November 4, 2022 and reviewed by the Siting Council at its regular business meeting on November 10, 2022.

On behalf of parties Mark Buschmann, Trustee, and Jamie Buschmann, Trustee, and Mark Buschmann, CEPA intervenor (the "JMB parties"), we offer comments on and proposed modifications to the following "Draft Findings of Fact."

"Draft Finding of Fact" nos. 9, 10, 11, 13, 14, 21, 22, 25, 29, 31, 32, 33, 46, 49, 58, 63, 78-83, 85, 88, 91, 121, 122, 129, 139, 159, 171, 172, 183-185, 187, 193, 194, 198, 199, 209, 210, 216, 218, 219 – 221, 243, 302, 304, 305, and 331 are conclusions of law or mixed statements of law and fact. They are not findings of fact.

"Draft Finding of Fact" no. 30 states that the applicants submitted photographs in response to the Council's interrogatory no. 32. No photographs of "wetlands, watercourses and vernal pools" and "clearing limits/property lines," which were requested by the Council, were submitted by the applicant.

"Draft Finding of Fact" no. 35 fails to indicate that the parties and intervenors were informed at the pre-hearing conference that all individuals responsible for preparation of the application and its exhibits would be available at the public hearing for cross examination.¹

¹ See the "Connecticut Siting Council Information Guide to Party and Intervenor Status" which requires that all individuals responsible for the preparation of application materials be made available for cross examination at the public hearing on the application. ("For example, if a party or intervenor presents a

“Draft Finding of Fact” no. 42 (a) incorrectly implies that the JMB parties requested that the Council provide them with access to the proposed site, which is not the case. The JMB parties’ June 14, 2022 “Motion for Site Inspection” requested “a viewing of the property involved in this application *by the Siting Council*.” The JMB parties did not request that the Siting Council grant them access to the site.

“Draft Finding of Fact” no. 141 omits reference to a second and third discrepancy between the site plan and the survey in the Town records, neither of which did the applicant purport to address or resolve. See JMB Parties Ex. 6, Testimony of Todd Hesketh, L.S.; Transcript, 9/8/2022, Burns Cross, pp. 25-28.

“Draft Finding of Fact” no. 182 is misleading because it omits reference to NCN Administrative Notice Item 60 (dd) (Public Record 30, Town of New Canaan and 1837 LLC Option Agreement (February or March 2021)) and the significant amount of State revenue provided to the Town of New Canaan.

“Draft Finding of Fact” no. 223 states that “[a] formal wetlands functions and values assessment was not conducted.” *No* wetlands functions and values assessment of any kind was conducted and the applicant offered no evidence that any such assessment was performed.

“Draft Finding of Fact” no. 245 erroneously states that “Buschmanns compared the proposed telecommunications facility LOD to the limits of disturbance associated with two solar electric generating facility sites.” The JMB parties’ cross examination of the applicants’ witnesses with respect to the two facilities mentioned related to failures of sedimentation and erosion control measures at both sites and the emission of pollutants during the construction of the Sprague facility, not limits of disturbance. See Transcript, 8/16/2022, Gustafson Cross, pp. 39-41.

“Draft Finding of Fact” no. 249 erroneously implies that bedrock may be “excavated.”

“Draft Finding of Fact” no. 261, to be consistent with “Draft Finding of Fact” no. 257, should indicate that the telecommunications facility in Council Docket 380 at 47 Garrett Ridge Drive in New Hartford is more than 3,000 feet away from Nepaug Reservoir.

“Draft Finding of Fact” no. 262, to be consistent with “Draft Finding of Fact” no. 257, should indicate that the telecommunications facility in Council Docket 223 at 484 Meriden Road in Middlefield is more than 1,000 feet away from Mount Higby Reservoir.

“Draft Finding of Fact” no. 192, which states that “[t]he proposed facility would provide service for recreational users within Centennial Watershed State Forest,” is inconsistent with “Draft Finding of Fact” no. 318, which states that Centennial Watershed State Forest is not accessible

land survey in their pre-filed testimony, the author or engineer that prepared the land survey must be present at the hearing, sworn in and available to answer questions pertaining to the land survey that are asked by the Council and the other participants in the proceeding.” Connecticut Siting Council Information Guide to Party and Intervenor Status, p.2)

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to the public. "Draft Finding of Fact" nos. 299, 300 and 318 also imply a distinction with respect to public access between Class 1 and Class 2 watershed land, which is not supported by the Centennial Watershed Natural Resources Management Agreement. (JMB Administrative Notice Item 25, § 5.4).

Thank you for the opportunity to comment.

Very truly yours,

MORIARTY, PAETZOLD & SHERWOOD



David F. Sherwood

/mds

cc: Service List
Mark Buschmann
Jamie Buschmann