

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE: :

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APPLICATION OF HOMELAND : DOCKET NO. 509  
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 : JULY 6, 2022  
CANAAN, CONNECTICUT :

MOTION TO STRIKE OF PARTIES MARK BUSCHMANN, TRUSTEE AND JAMIE  
BUSCHMANN, TRUSTEE, AND MARK BUSCHMANN, INTERVENOR

Parties Mark Buschmann, Trustee and Jamie Buschmann, Trustee, and Mark Buschmann, intervenor under C.G.S. § 22a-19, move, pursuant to the Uniform Administrative Procedure Act, C.G.S. §§ 4-166 et seq., C.G.S. §§ 16-50g et seq., Regs., Conn. State Agencies §§ 16-50j-1 et seq. and applicable law, to strike the testimony of the following witnesses at the public comment session held on June 28, 2022, at 6:30 p.m., from the record of the captioned matter:

1. The Honorable Kevin Moynihan, New Canaan First Selectman
2. Stuart Sawabini, former Chair of New Canaan Police Commission,  
Executive Director of New Canaan Community Emergency Response  
Team
3. John DiFederico Deputy Chief of New Canaan Police
4. Albert Basset, New Canaan Fire Chief

In the alternative, movants request that the Siting Council compel the

appearance of these witnesses at the next public hearing session on July 14, 2022, place them under oath, and make them available for cross examination.<sup>1</sup>

This proceeding is a contested case as defined in C.G.S. § 4-166 (2) and Regs., Conn. State Agencies § 16-50j-2a (8). According to Regs., Conn. State Agencies § 16-50j-25 (a), “[t]he purpose of the hearing in a contested case or a petition for a declaratory ruling shall be to provide all parties an opportunity to present evidence and cross-examine all issues to be considered by the Council and to provide all intervenors an opportunity to present evidence and cross-examine such issues as the Council permits.” This purpose cannot be fulfilled if the individuals listed above are not available for cross-examination.

C.G.S. § 16-50m provides as follows:

(a) The council shall promptly fix a commencement date and location for a public hearing on an application for a certificate complying with section 16-50l not less than thirty days after receipt of an application or more than one hundred fifty days after such receipt. At least one session of such hearing shall be held at a location selected by the council in the county in which the facility or any part thereof is to be located after six-thirty p.m. for the convenience of the general public. After holding at least one hearing session in the county in which the facility or any part thereof is to be located, the council may, in its discretion, hold additional hearing sessions at other locations. If the proposed facility is to be located in more than one county, the council shall fix the location for at least one public hearing session in whichever county it determines is most appropriate, provided the council may hold hearing sessions in more than one county.

C.G.S. § 16-50m does not distinguish between “evidentiary” and “public comment” public hearing sessions.<sup>2</sup> The 6:30 session was a “public hearing” session under the

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1 The presiding officer of the Siting Council has the authority to issue subpoenas under Regs., Conn. State Agencies § 16- 50j-22a (c) (“The presiding officer may subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in a contested case pursuant to Section 4-177b of the Connecticut General Statutes.”)

2 Regs., Conn. State Agencies § 16-50j-15b (a) provides that “[p]ursuant to Section 4-177 and Section 16-50n of the Connecticut General Statutes, prior to, during or not later than 30 days after the close of a hearing, any person may make a limited appearance.” Regs., Conn. State Agencies § Sec. 16-50j-15b (b) provides that “[a] limited appearance may be made in the following forms. . . (2) an oral statement made during the public comment session of a hearing held after 6:30 PM pursuant to Section 16-50m of the Connecticut General Statutes.” However, neither C.G.S. § 4-177 nor C.G.S. § 16-50n authorize a “public comment session of a hearing” at which the witnesses are not subject to cross-examination.

statute. C.G.S. § 16-50o (a) provides, “A record shall be made of the hearing and of all testimony taken and the cross-examinations thereon. Every party or group of parties as provided in section 16-50n shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.”

The witnesses listed above testified as to the alleged public need for a telecommunications facility at the proposed site at 1837 Ponus Ridge Road. Under C.G.S. § 16-50g et seq., a Siting Council certificate is required to build a variety of energy and telecommunications facilities, including cell phone towers, in any location. The stated legislative purpose of this law is to balance the need for adequate and reliable utility services at the lowest reasonable cost to consumers with the need to protect the State's environment and minimize damage to scenic, historic, and recreational values. Another stated purpose is to avoid unnecessary proliferation of telecommunications towers, particularly where they are reasonably likely to harm watershed lands. The law specifically allows the Siting Council to deny a certificate application if a proposed tower would substantially affect the scenic quality of its location and no public safety concerns require that it be built there. The testimony of the witnesses listed above is therefore critical to the applicants' case with respect to public safety concerns and to sequester them from cross examination therefore is grossly unfair to opponents of this application.

For the foregoing reasons, parties Mark Buschmann, Trustee and Jamie Buschmann, Trustee, and Mark Buschmann, intervenor, move to strike the testimony of

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Further, none of the four witnesses in question were placed under oath. See C.G.S. § 16-50n (f) (“At the discretion of the council any person may make a limited appearance at any such hearing to present an oral statement under oath.”)

the four witnesses listed above, or, in the alternative, request that the Siting Council compel the appearance of these witnesses at the next public hearing session on July 14, 2022 so that they may be available for cross-examination.

In the event that the Executive Director prepares a response to this motion, the undersigned requests the opportunity to file a reply to her response and to present oral argument at the Siting Council's consideration of this motion.

PARTIES MARK BUSCHMANN, TRUSTEE  
AND JAMIE BUSCHMANN, TRUSTEE, AND  
MARK BUSCHMANN, INTERVENOR

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion to strike was electronically mailed to the following service list on July 6, 2022.

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S/ David F. Sherwood  
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