

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
 :
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 CANAAN, : JUNE 25, 2022
CONNECTICUT :

Reply to Applicant’s Response to New Canaan Neighbors (“NCN”) Motion to Compel Applicant Responses to Interrogatories

The Applicant was asked straightforward questions. Twice now, it has refused to provide answers. This is instructive. Applicant tacitly appears to now recognize that it is impossible to support its previous assertions and mitigate the serious environmental hazards posed by the selected site. NCN’s Motion to Compel (“Motion”) is met with Applicant’s claims that 1) the statute prohibits discovery into telecommunications alternatives such as small cells, and 2) that relevant information cannot be gained from third-party sources. These assertions, however, do not align with applicable statute.

NCN Reply to Response to Interrogatory 14

NCN needs only to reiterate what it stated in its Motion to overcome the arguments made by Applicant regarding its refusal to provide small cell costs. Section 16-50o(a) states that “every party or group of parties . . . 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.” One of the facts for the Council to determine is the “need for adequate and reliable public utility services at the *lowest reasonable cost* to consumers with the need to protect the environment and ecology of the state.” (C.G.S. § 16-50g, emphasis added; See also, *Citizen Against Overhead v. Siting Council*, 57 A. 3d 765, at 777, Conn: Appellate Court 2012: “PUESA, therefore, sets policy and procedures for the process by which the state responds to efforts by utility companies to provide services within the state. In doing so, the legislation attempts to strike a balance between the need for the availability of cost effective and technologically efficient utility services and protection of the environment and the ecology.”.) Again, the Council is vested with the authority to consider small cell costs, particularly when a serious threat is presented by a site located on a vital drinking water Class I watershed, such as here.

Moreover, the Council itself, in asking the Applicant CSC Interrogatory 18, indicates that a breakdown of the costs to install small cells is relevant to its consideration of the matter. Telecommunications facility alternatives that have significantly less environmental impact than large tower facilities, such as small cells on utility poles, can assist the Council in its balancing of public need. Small cells can provide the Council, and parties, a path forward that both addresses coverage needs that will not harm essential drinking water sources. We simply need a breakdown of those costs, which Applicant refuses to provide.

NCN Reply to Response to Interrogatory 20

The Applicant's claim that the Council lacks the legal authority to compel discovery of non-parties is incorrect. The Siting Council, despite Applicant's assertions, has the ability to compel production of evidence concerning non-parties. The Connecticut Agencies Regulations § 16-50j-22a(c) provides this authority:

(c) Discovery. The purpose of discovery is to provide the Council, parties and intervenors access to *all relevant information* in an efficient and timely manner to ensure that a complete and accurate record is compiled. *Parties and intervenors may serve written information requests* only during the time specified by the Council. The Council may serve written information requests on any party or intervenor to the proceeding at any time. *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. Responses to information requests shall be separately and fully answered* under the penalties of perjury by the witness who shall testify during the hearing as to the content of the response. Objections to information requests may be submitted in lieu of a response.
(Emphasis added.)

The information requested about the parcel's residents does not request information about their property interest or the signed lease, but rather information relevant to an assessment of the selected site, as shown in NCN's Motion. (See, NCN Motion, pg. 4-5, discussing the benefits of having additional information about the amount of activity on the parcel, state-listed species sightings, stormwater runoff, ice and snow conditions, contaminants, dangers of ingress and egress into the parcel, geological hazards, and conflicts checks.)

Thus, the Council has the authority to enforce NCN's right to information concerning the residents and mandate that the Applicant provide a response.

Conclusion

The goal of these proceedings is to find adequate solutions to the telecommunications needs of the State. And we all have this same goal. Everyone wants the same thing, for the Council to appropriately address the telecommunications needs of an area based on a case-by-case analysis, and to balance costs with impacts to important environmental resources.

But impracticable solutions do not assist this process. Plans for the selected site have been revised at the 11th hour. Applicant sees the unsuitability of the site it selected. It now attempts to squeeze a square peg into a round hole. As described in the Motion, NCN's requested interrogatory information is relevant to the proceedings. Such information is helpful in finding a suitable telecommunications solution that serves the needs of this specific geographic area in Connecticut.

NCN respectfully requests that the Siting Council grant NCN's Motion to Compel and require the Applicant to provide responses to Interrogatories 14 and 20. Or in the alternative, because of the procedural posture of the proceedings, NCN requests for the Council to 1) strike Applicants response to Question 18 of the CSC Interrogatories and rely on the sources identified in NCN's Motion that provide actual costs of installing small cells onto existing infrastructure, and 2) to limit the evidence that Applicant can provide as to biological resources on or near the parcel,

stormwater flows and runoff, geological hazards, possible contaminants, and the dangers of ingress and egress into the driveway of the selected site.

RESPECTFULLY SUBMITTED,
NEW CANAAN NEIGHBORS,

By /s/Justin Nishioka
Justin Nishioka, NCN Representative

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically mailed to the following service list on June 25, 2022.

Attorney Lucia Chiocchio
Attorney Kristel Motel
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601
LChiocchio@cuddyfeder.com
KMotel@cuddyfeder.com

Raymond Vergati
Manuel Vicente
Homeland Towers, LLC
9 Harmony Street, 2nd Floor
Danbury, CT 06810
rv@homelandtowers.us
mv@homelandtowers.us

Brian Leyden
Harry Carey
AT&T
84 Deerfield Lane
Meriden, CT 06067
bl5326@att.com
hc3635@att.com

Attorney Kenneth C. Baldwin
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
(860) 275-8200
KBALDWIN@rc.com

Attorney David F. Sherwood
Moriarty, Paetzold & Sherwood
2230 Main Street, P.O. Box 1420
Glastonbury, CT 06033-6620
dfsherwood@gmail.com

/s/Justin Nishioka
Justin Nishioka, NCN Representative