STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:	:	
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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	:	DOCKET NO. 509
	:	NOVEMBER 17, 2022

Identification of Errors and Inconsistencies in the Council's Draft Findings of Fact and the Record

NCN submits to the Connecticut Siting Council ("Council") errors and inconsistencies between the Council's draft findings of fact and the record. Also identified are material omissions from the Council's findings relating to legal mandates applicable to the present application.

Draft Finding 33 states that "[t]he Council's evaluation criteria under C.G.S. § 16-50p does not include the consideration of property ownership . . ." This finding of fact is contrary to the plain language of § 16-50p which states that if a facility is "proposed to be installed on land owned by a water company, as defined in section 25-32a, and which a new ground-mounted telecommunications tower, that such land owned by a water company is preferred over any alternative telecommunications tower sites provided the council, pursuant to clause (iii) of this

paragraph, consult with the Department of Public Health to determine potential impacts to public drinking water supplies in considering all the environmental impacts identified pursuant to subparagraph (B) of this subdivision." (§16-50p(a)(3)(F).) Thus, the evaluation criteria of the Council must consider whether the property is owned by a water company as defined by Connecticut General Statutes section § 25-32a ("§ 25-32a"). Such evaluation of property ownership is mandated by statute, and is not evaluated in the Council's draft of findings of fact.

Draft Finding 42 states that information concerning the property owner "is irrelevant to the Council's evaluation of the proposed facility." This inaccurate legal claim is contrary to the plain language of § 25-32 and § 25-32a, which states that water companies, as defined by § 25-32a, are subject to Department of Public Health oversight and require a permit from the Department of Public Health prior to construction.

Draft Finding 47 states that "parties and intervenors were provided opportunities to cross examine Applicants' witness panel on the exhibits." As exhibited numerous times in the evidentiary hearing on August 16, 2022, NCN was denied the ability to cross examine the applicant on several relevant issues, including investigation into ownership of the property and whether the owner constitutes a water company as defined by § 25-32a, and whether Applicant adhered to the mandates of § 25-32. (Hearing Transcript, 08/16/22, at 117:1-119:13; See also, *Ibid*., at 101:4-15, at 103:2-16, 105:16-106:4, at 111:16-112:6, at 113:21-114:14, at 142:17-143:16, and at 146:2-147:15.)

Draft Finding 121 states that the Council is not "limited in any way by the applicant having already acquired land or an interest therein for the purpose of constructing a facility." This is contrary to the plain language of § 25-32 and § 25-32a which states that a "water company" must receive a permit from the Department of Public Health for the lease or change of use of Class I and II watershed land.

Draft Finding 123 states, contrary to evidence in the record, that the proposed parcel is "not Class 1 or Class 2 watershed land," citing Applicant's statement in the evidentiary hearing that "this is a privately-owned parcel" and that "it's not owned by Aquarion or any other water company." (Hearing Transcript, 08/16/22, at 116:19-25.) No evidence in the record supports that assertion, nor did the Council allow adequate cross examination of that statement by NCN. (Hearing Transcript, 08/16/22, at 117:1-119:13.) Contrary to the Council's draft finding here, some indication is given that the Applicant does not know whether the property is owned by a water company. When Applicant was asked if it knew that the members of 1837 LLC were not water company members, the Applicant responded "So I don't . . ." From what we can glean from the testimony, Applicant denies, or intends on denying having knowledge of whether, in actuality, the owner is a water company. The Applicant witness was then cut off by Applicant's attorney, Ms. Chiocchio, who then misrepresented to the Council the definition of "water company." (*Ibid.*, at ps.117-118.) However, based on this limited testimony, the record suggests that the

witness does not know whether the property owner is a water company. Such testimony cannot be ignored nor substituted by the Council.

In Draft Finding 123, the Council also cites Buschmann Adminitrative Notice Item 6 for a basis of its claim that the "residentially-developed" land "is not Class 1 or Class 2 watershed land." Nothing in the Buschmann's Administrative Notice Item 6 asserts that residentially-developed land cannot constitute Class 1 or 2 watershed lands. To the contrary, Buschmann Administrative Notice Item 6 states that "[a]ll water company land (whether private or publicly owned) falls under the three-tier classification system." (Buschmann Admin. Notice Item 6.) It continues in stating that "[f]or land classification purposes, a 'water company' is any individual, corporation, municipality or other entity (or lessee thereof), that manages or uses any body of water, distributing plan, or system to supply water to two or more consumers." (*Ibid*.) Again, the record does not show that the owner of the parcel does not constitute a "water company" as defined by statute, but rather, there are multiple examples in the record suggesting that the owner of the property is a water company under § 25-32a because of the multiple "consumers" the owner supplies regular water service. (*See*, NCN Post-Hearing Brief, p. 2-9.)

Omissions of Material Findings of Fact

The Draft Findings of Fact make no mention that under § 16-50g, the Council is mandated "to avoid the unnecessary proliferation of towers in the state

particularly where installation of such towers would adversely impact class I and II watershed lands."

The Draft Findings of Fact make no mention that "water company," as defined by § 25-32a, "means any individual, partnership, association, corporation, municipality or other entity, or the lessee thereof, who or which owns, maintains, operates, manages, controls or employs any pond, lake, reservoir, well, stream or distributing plant or system that supplies water to two or more consumers or to twenty-five or more persons on a regular basis."

The Draft Findings of Fact make no mention that 1837 LLC is an "individual, partnership, association, corporation, municipality or other entity, or the lessee thereof."

The Draft Findings of Fact make no mention that under § 25-32a a "consumer means any private dwelling, hotel, motel, boardinghouse, apartment, store, office building, institution, mechanical or manufacturing establishment or other place of business or industry to which water is supplied by a water company."

The Draft Findings of Fact make no mention that Thomas Nissley, a member of 1837 LLC, owns multiple private dwellings, or consumers, that are not his principal place of residence, including the subject property, which has "residents" residing at the property. (NCN Fourth Supp. Admin. Notice Items 3 and 4; Applicants' Response to NCN Motion to Compel, 06/24/22.)

The Draft Findings of Fact make no mention that under C.G.S. § 47a-7(6), landlords are required to provide tenants "running water."

The Draft Findings of Fact make no mention that NCN was precluded from adequately cross-examining the Applicant as to the applicability of § 25-32 and § 25-32a. (Hearing Transcript, 08/16/22, at 117:1-119:13.)

The Draft Findings of Fact make no mention of *Samperi v Inland Wetlands Agency*, 226 Conn. 579 (1993) or *Komondy v. Zoning Board of Appeals*, 127 Conn. App. 669, stating that "[i]t is an elementary rule that whenever the existence of any fact is necessary in order that a party may make out his case or establish his defense, the burden is on such party to show the existence of such fact." (*Samperi*, *supra*, at 593; See also, *Komondy*, *supra*, at 678.)

Furthermore, several facts presented by NCN concerning environmental compatibility are not present in the Draft Findings of Fact. (*See*, NCN Post-Hearing Brief.) NCN, accordingly, reiterates the importance of all the facts it presented in its Proposed Findings of Fact and Post-Hearing Brief.

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 November 17, 2022.

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