

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 CANAAN, : AUGUST 31, 2022
 CONNECTICUT :

New Canaan Neighbors (“NCN”) Motion to Strike

NCN hereby moves the Connecticut Siting Council (“Council”) to strike those portions of the record that refer to the Town of New Canaan’s (“Town’s”) public safety antenna. As admitted by Applicant, information pertaining to the Town’s public safety antenna is outside the scope of these proceedings.

In order for the Council to properly evaluate the public health and safety benefits of the Town’s public safety antenna, cross examination of the Town would be necessary. Applicant has made clear that the Town will not be available for cross-examination. As such, a proper investigation cannot be conducted that would allow a full disclosure of the alleged public safety benefits the antenna will afford the Town.

NCN respectfully requests that the Town’s public safety antenna be removed from Council consideration and stricken from these proceedings.

Background

The site plan for the proposed facility includes two municipal dishes and two 12-foot antennas on the monopine structure. (Application, Attachment 4, p. 9.) The Town's antennas have been subject to Council consideration in regards to the public safety benefits the antennas are purported to bestow. (*See*, Applicants' Responses to Council Interrogatories, A24, p. 6; Hearing Transcript 06/28/22, at 94:8-9, and 95:18-96:2; Hearing Transcript 08/16/22, at 128:13-129:25, 135:2-10.)

At an evidentiary hearing for the instant matter, Attorney Chiochio, counsel for the Applicant, confirmed that the public safety antennas included in the Application are outside the scope of these proceedings. (Hearing Transcript 08/16/22, at 114:6-14; *See also*, Applicants' Response to Buschmanns Motion to Strike.) Several documents have been submitted by Applicant that include information concerning the Town's public safety antennas. (*See*, Narrative, p. 13; Attachment 3, p. 1; Attachment 4, p. 9; Technical Report, ps. 462-468; Applicants' Responses to Council interrogatories, A24, p. 6; Applicants' Supplemental Submission, dated June 21, 2022; Applicants' Response to Buschmanns Interrogatories, A6; Resume of Eric Fine.) Testimony as to the alleged public safety benefits the antenna will provide has been repeatedly reiterated by Applicant throughout the evidentiary hearings for this matter. (Hearing Transcript 06/28/22, at 78:22-24, 86:5, 91:15, 102:17, 123:11-15, and 124:8-11; Hearing Transcript 08/16/22 at 129:14-130:16.)

Even though the public safety antennas are not relevant to these proceedings since the Town is not a party and the antennas are outside the jurisdiction of the Council, Ray Vergati, the Applicants' Regional Manager, provided templates to the Town for the Town's public safety letters. (NCN Admin Notice, Public Record 27; Hearing Transcript 08/16/22, at 113:21-114:9, and 127:17-128:3.) Mr. Vergati perceives the proposed tower as a "joint venture with the Town," recognizing that the "Town is driving this project for their public safety needs." (NCN Admin. Notice, Public Record 27, p. 9: "Since the Town is driving this project for their public safety needs, I need Norcom to provide me an inventory of the Town's antenna specs and mounting heights.")

During an evidentiary hearing, when Mr. Vergati's hearsay discussions with Town public safety officials was objected to by NCN, Mr. Vergati referred the Council to the Town's public safety letters filed by the Applicant and to the Applicants' comments concerning the Town's public safety needs. (Hearing Transcript 08/16/22, at 130:1-16; *See also*, Technical Report, ps. 462-468.)

Argument

Provisions in the Connecticut General Statutes require that the Council's determination of a certification be based on the established record. (§ 16-50p.) 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." Cross-examination, however, is limited to "all issues to be considered by the council."

(R.C.S.A. § 16-50j-25; See also, *Corcoran v. Connecticut Siting Council*, 934 A. 2d 870 (2006), at 874, stating that any information within a carrier’s application is considered by the Council.)

Here, the Town is not a party nor available for cross-examination. NCN is precluded from inquiry into the basis for the Applicants’ claim that there is a public safety need. (Hearing Transcript 08/16/22, at 114:6-14.) Information pertaining to the public safety needs of the Town has been identified by the Applicant as an issue that should not be considered by the Council for this Application. (*Ibid.*) If the Applicant is permitted to submit testimony as to the Town’s public safety needs without the NCN’s ability to cross-examine witnesses as to that need, NCN will be deprived of a process by which to cross-examine witnesses “as may be required for a full and true disclosure of the facts” under § 16-50o.

Conclusion

NCN respectfully requests that the Applicants’ filings pertaining to the Town’s public safety antenna and references to the Town’s public safety needs be stricken from the record since such information is outside the scope of these proceedings.

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 August 31, 2022.

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