

State of Connecticut Siting Council

DOCKET NO. 488 —

Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for Certificate of Environmental Compatibility and Public Need for construction, maintenance, and operation of a telecommunications facility located at one of two sites: Kent Assessor ID #M10, Block 22, Lot 28 “Bald Hill Road” or 93 Richards Road, Kent, Connecticut.

: July 28, 2020

OBJECTION TO PROTECTIVE ORDER AND NON-DISCLOSURE AGREEMENT; MOTION TO IMPEAD A NECESSARY AND INDISPENSIBLE PARTY

The Bald Hill Road Neighbors hereby object to the Applicants’ Protective Order and Non-Disclosure Agreement as to the Phase 1 Environmental Study of the Site A property. Furthermore, the Bald Hill Neighbors move to implead the record owner of Site A, InSite Towers Development 2, LLC as a necessary and indispensable party to this Application for the following reasons. Without that necessary and indispensable party, the Council lacks jurisdiction over this application.

On July 16, 2020, the Applicants filed a renewed Motion for Protective Order as to the Phase 1 environmental study of the Site A property. The following day, the Bald Hill Road Neighbors (the “Neighbors”) filed an objection to the Motion for Protective Order and a Motion to Compel production of the full Phase 1. The Siting Council granted the Applicants’ Motion for Protective Order at the July 23, 2020 remote hearing and ordered the holding of a closed evidentiary hearing as to the Phase 1, provided that the parties to this matter execute the Non-Disclosure Agreement attached to the Council’s Protective Order.

The grounds for the Council’s Protective Order were, “trade secrets” and, “proprietary”, confidential, and commercially valuable information”. The Council’s Non-Disclosure Agreement requires that each signatory, “may not in any manner disclose the Confidential Information to any person, and that he/she may not use the Confidential Information for the benefit of any person except in *this Council proceeding* and in accordance with the terms of this Protective Order.” [emphasis added] Violations of the Agreement’s terms may subject a party to civil action. These onerous requirements are at the core of the proposed Agreement, despite the fact that potential

contamination does not actually constitute a trade secret or proprietary information, and that the evidence demonstrates debris and indicia of contamination to be widespread on the Site A property, both in and outside construction areas. (See Applicants' Response to Siting Council Interrogatories Set 2, Attachment 5; see also Neighbors' Responses to Applicants' Interrogatories; see also Neighbors' Interrogatories to Applicants Set 1).

The Applicants are not the record owners of the property and thereby lack standing in this proceeding to assert any privilege as a basis for withholding the Phase 1 study. The Applicants' response to the Neighbors' Interrogatories Set II reflect that InSite Towers Development 2, LLC purchased the Site A property in 2019. Although Applicant Homeland Towers has leased the Site A property since 2012, Insite Wireless Group's July 15, 2020 letter to the Siting Council explains that Homeland is developing the proposed project, "on behalf of Insite" and that Homeland, "will transfer ownership of the Telecommunications Facilities to Insite upon the completion of the construction thereof."

To invoke any privilege, a party must have standing to do so. Homeland Towers, LLC et al, as shown by the Insite letter of July 15, are mere temporary lessees of the Bald Hill Property, who will turn over the entire project to Insite upon completion. "The requirements of directness between the injuries claimed... is expressed in our standing jurisprudence by the focus of whether the plaintiff is the proper party to assert the claim at issue". (*Burton v. Comm. of Environmental Protection*, 291 Conn.789 (2009)). Standing calls for a two part showing: first a party must demonstrate a specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest; and second, the party must show that an agencies decision has specially and injuriously affected that specific personal or legal interest. *Id.* at 803. In this matter, the confidential information tied to the property attaches to Insite Towers Development 2, and to the admitted future owner, Insite Wireless Group.

Rather, any alleged harm in the disclosure of the Phase 1 Environment Survey inures more to Insite than to AT&T and Homeland. Neither AT&T nor Homeland Towers have standing to invoke any Privilege as it pertains to the Bald Hill property, whereas the Applicants have only a short-term interest in the property. As shown by the July 15 Insite letter, Insite, as the current owner and as the admitted future owner, is a necessary and indispensable party to this proceeding. Unlike a passive landlord who merely leases ground space, as may be the case with Site B, InSite is a corporate developer partnering with the Applicants in the development of the site and it is

InSite who will become the ultimate owner of the project on Site A at the conclusion of Applicant Homeland's development of the site. Therefore, InSite should be impleaded, or these proceedings suffer a serious jurisdictional defect.

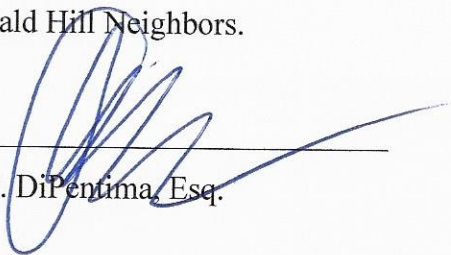
The Neighbors also object to the Non-Disclosure Agreement (the "Agreement") posed by the Council and the Applicant. The Agreement requires that each party, "may not in *any* manner disclose the Confidential Information to any person, and that he/she may not use the Confidential Information for the benefit of any person except *in this Council proceeding* and in accordance with the terms of this Protective Order." [emphasis added]

The effect of the Non-Disclosure Agreement is to allow counsel and, potentially, expert witnesses to see the Phase 1, but apparently precludes counsel from disclosing the contents to their clients and from using the contents of the Phase 1 in any public hearing/session of the Siting Council and any court appeal from this matter. Connecticut Rules of Professional Conduct for attorneys 1.4 (Communication) and 1.3 (Diligence) provide that counsel must keep their clients reasonably apprised of material information and pursue this matter, including any appeal therefrom, on behalf of their clients, and to take whatever lawful and ethical measures are required to vindicate a client's cause endeavor. Allowing counsel to review the Phase 1, but not to disclose it to their clients, or use it in a public hearing, or employ it in an appeal are outweighed by the duties imposed by Rules 1.3 and 1.4. The proposed Agreement renders any use by the parties meaningless.

Wherefore the Bald Hill Neighbors respectfully object to the Protective Order of July 23, object to the Non-Disclosure Agreement attached to said Order, and move to implead InSite Tower Development 2, LLC as a necessary and indispensable party to this matter.

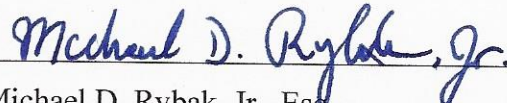
Respectfully Submitted,

The Bald Hill Neighbors.

By 
Anthony F. DiPentima, Esq.

July 28, 2020

Date

By 
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CERTIFICATE OF SERVICE

I hereby certify that a true, original copy, of the foregoing were placed in the U.S. Mail on this 28th day of July 2020 and addressed to:

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

I further certify that an electronic copy of the foregoing was sent to:

siting.council@ct.gov

And I certify that electronic copies of the foregoing were sent to:

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