

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.

: August 27, 2020

Submission of the Nondisclosure Agreement and Protective Order by the Attorneys for the Bald Hill Road Neighbors, Under Protest and Exception

Counsel for the Bald Hill Road Neighbors hereby submit signed Nondisclosure Agreements and Protective Orders under protest in order for counsel to participate fully in the closed hearing on September 3, 2020 specifically dealing with the Phase 1 Environmental Site Assessment (“Phase 1”).

At the last hearing on August 11, 2020, the Siting Council permitted counsel for the Bald Hill Neighbors to commence cross-examination of the available witnesses for Homeland Towers, LLC. Very early in this attempted cross-examination, the Chairman of the Council informed counsel for the Bald Hill Road Neighbors that any questions as to contamination, debris and the contents of the barrels on Site A were prohibited because said questions were subject to a standing Protective Order over the Phase 1 Environmental Site Assessment.


The result of such action was that in order to proceed further with cross-examination on the subject of site conditions and debris, counsel for the Bald Hill Neighbors would have to sign both the Nondisclosure Agreement and the Protective Order, which subject any signatory to these documents to potential civil action on the part of Applicant Homeland. The Council did not differentiate between debris and areas of environmental contamination revealed by publicly available evidence already of record in this case (e.g., photos contained in the Bald Hill Road Neighbors’ Response to the Applicant’s Interrogatories and photos contained in the Applicants’ Responses to Siting Council Interrogatories Set II) and the evidence contained within the four corners of the Phase 1 report under the Protective Order.

Thus, the combination of the Council's foreclosing of meaningful cross-examination of the Applicants' witness on Site A conditions, along with the Protective Order and Nondisclosure Agreement shifted the entirety of cross-examination on those subjects to a closed hearing.

Therefore, counsel for the Bald Hill Road Neighbors have signed and filed the Council's requested Nondisclosure Agreement and Protective Order under protest. The Bald Hill Road Neighbors individually have been consulted by counsel and have declined to sign the Non Disclosure Agreement. Hence, none of the neighbors personally will participate in the closed session on September 3. Attorneys DiPentima and Rybak will do so on behalf of their clients under protest. Counsel for the Bald Hill Road Neighbors request their exception to the rulings of Council at the August 11 hearing be noted in the administrative record of this matter.

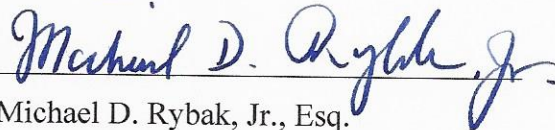
Respectfully Submitted,

The Bald Hill Neighbors.

By 
Anthony F. DiPentima, Esq.

August 27, 2020

Date

By 

Michael D. Rybak, Jr., Esq.
Guion, Stevens & Rybak, LLP
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PO Box 338
Litchfield, CT 06759
(860) 567-0821
Juris No. 025673
Their Attorneys

CERTIFICATE OF SERVICE

I hereby certify that a true, original copy, of the foregoing was placed in the U.S. Mail on this 27th day of August 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:

Lucia Chiochio, Esq.
Cuddy & Feder, LLP
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14th Floor
White Plains, NY 10601
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Anthony F. DiPentima, Esq.
Commissioner of the Superior Court

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF HOMELAND TOWERS, LLC AND
NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T FOR
A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE, AND OPERATION
OF A TELECOMMUNICATIONS FACILITY AT ONE OF
TWO SITES IN THE
TOWN OF KENT, CONNECTICUT

DOCKET NO. 488

August
~~July~~ 27, 2020

PROTECTIVE ORDER

WHEREAS, Applicant, Homeland Towers LLC ("Homeland") was requested to provide the Phase I Environmental Site Assessment ("Phase I") for property located on Bald Hill Road in Kent, Connecticut, which is proposed Site A in this proceeding, and details contained in the Phase I, in the opinion of Homeland, are proprietary, confidential and commercially valuable information ("Confidential Information");

WHEREAS, the Confidential Information qualifies as "trade secrets" as defined by Connecticut Law;

WHEREAS, Homeland is willing to provide the Confidential Information to the Siting Council subject to a protective order;

NOW, THEREFORE, it is hereby ordered that a protective order enter with respect to the Confidential Information and that the following is adopted for the protection of the Confidential Information:

1. The Confidential Information shall be governed by the terms of this Order.
2. The Confidential Information made available pursuant to this Order shall be given to Members and Staff of the Siting Council, upon execution of the Acknowledgement referenced below (each a "Signatory" and collectively, the "Signatories"). Any parties or intervenors in Docket No. 488 will separately be provided the Confidential Information upon 1) consent of Homeland and 2) execution of the Nondisclosure Agreement in the form attached hereto as Exhibit 1 (each also a "signatory" and collectively the "Signatories").

3. Upon execution of the Nondisclosure Agreement, Confidential Information will be marked as such and delivered in sealed envelopes to the Council. A statement in the following form shall be placed prominently on each envelope:

CONFIDENTIAL – PROPRIETARY : DOCKET NO. 488

This envelope is not to be opened nor the contents to be displayed or revealed except pursuant to the Protective Order issued in Docket No. 488.

4. In the alternative, upon execution of the Nondisclosure Agreement, the Siting Council Executive Director will provide the password for the password protected electronic version of the Confidential Information along with the statement that the Confidential Information is subject to the terms of the Protective Order issued in Docket No. 488.

5. Any Confidential Information made available pursuant to this Order shall be part of the record in this Docket, subject to the same relevancy and other evidentiary considerations as non-confidential information and subject to the conditions stated in Paragraphs Six and Seven of this Order.

6. If the Confidential Information is used in any manner in any interrogatory, letter, petition, brief or other writing (each a "Document"), all reference to the Confidential Information in the Document shall be either:

a) in a separate document, prominently labeled "Proprietary Information", which document shall be safeguarded in accordance with the Order and distributed only to Members and staff of the Council, and to Signatories; or

b) solely by title or exhibit reference in a manner reasonably calculated not to disclose the Confidential Information.

7. If the Confidential Information is used in any manner in any Council proceeding or during the course of a public hearing before the Council (a "Hearing"), the Hearing shall be held before, nor any record of it made available to, any party or other person or entity not a Signatory, other than the appropriate representatives of the Council. No record shall be disclosed, nor any communication made, of use of the Confidential Information in the Hearing to any person or entity not a Signatory, Member of the Council or Council staff. Any transcript or other recording of the Hearing that relates to the Confidential Information shall be placed in sealed envelopes or containers and a statement in the following form shall be placed prominently on such envelope or container:

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This envelope is not to be opened nor the contents to be displayed or revealed except pursuant to the Protective Order issued in Docket No. 488.

8. Nothing herein shall be constructed as a final determination that any of the Confidential Information will be admissible as substantive evidence in this Council proceeding or at any hearing or trial. Further, nothing herein shall be considered a waiver of any party's right to assert at a later date that the Confidential Information is or is not proprietary or privileged. A party seeking to change the terms of this Order shall by motion give every other party five (5) business days' prior written notice. No information protected by this Order shall be made public until the Council rules on any such motion to change the terms of this Order. Confidential Information otherwise properly discovered, even though also subject to the terms of this Order, shall be considered protected by this Order.

9. All copies of such Confidential Information shall be returned to Homeland no later than thirty (30) days after the expiration of all appeal periods applicable to the final decision rendered in this proceeding.

CONNECTICUT SITING COUNCIL

By: Melanie Bachman

Dated: July 23, 2020

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledge that he or she has reviewed this Protective Order, and hereby agrees to abide by the terms thereon in exchange for receipt of the Confidential Information from Homeland.

RECIPIENT: Michael D. Ryback, Jr.

REPRESENTING: Bald Hill Road Neighbors

DATE: _____

RECIPIENT: _____

REPRESENTING:

DATE: _____

RECIPIENT: _____

REPRESENTING:

DATE: _____

RECIPIENT: _____

REPRESENTING:

DATE: _____

RECIPIENT: _____

REPRESENTING:

DATE: _____

RECIPIENT: _____

REPRESENTING:

DATE: _____

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

EXHIBIT 1

DOCKET NO. 488
HOMELAND TOWERS LLC

NONDISCLOSURE AGREEMENT

Homeland Towers LLC ("Homeland") agrees to make available to Michael D. Ryfshin, Jr. ("Recipient") confidential and proprietary information filed in Connecticut Siting Council Docket No. 488 ("Confidential Information") subject to restrictions stated herein:

1. Any information provided to Recipient and labeled "Confidential Information" by Homeland shall be Confidential Information subject to this Nondisclosure Agreement.
2. The Confidential Information is received by Recipient in confidence.
3. The Confidential Information shall not be used or disclosed by the Recipient except in accordance with the terms contained herein and in the Company's Motion for Protective Order in Docket No. 488.
4. Only individuals, and not entities, may be Recipients of Confidential Information under this paragraph. The Recipient must be an attorney or independent expert witness for a party or intervenor in this proceeding. The Recipient acknowledges that disclosure of confidential or proprietary information of Homeland could adversely affect Homeland. By executing this Nondisclosure Agreement, each Recipient certifies that he/she meets the requirements of this paragraph.
5. The following conditions shall apply to each Recipient:
 - a. Each Recipient shall receive one (1) numbered, controlled copy of the Confidential Information. The Recipient shall not make any copies thereof or provide the Confidential Information to any individual or entity.
 - b. The Recipient shall maintain a log of all persons granted access to the Confidential Information.
 - c. The Recipient, by signing this Nondisclosure Agreement acknowledges that he/she 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.

- d. The Recipient acknowledges that any violation of this Nondisclosure Agreement may subject the Recipient to civil actions for violation hereof. Additionally, any Recipient who is an attorney acknowledges his/her ethical obligations under the Rules of Professional Conduct to abide by this Nondisclosure Agreement and to handle properly confidential information that is subject to a protective order.
- e. Within thirty (30) days of the final decision in this Proceeding, Recipient shall return the Confidential Information to Homeland.

RECIPIENT:

By: Michael D. Rylander Jr.
Date: August 27, 2020

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF HOMELAND TOWERS, LLC AND
NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T FOR
A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE, AND OPERATION
OF A TELECOMMUNICATIONS FACILITY AT ONE OF
TWO SITES IN THE
TOWN OF KENT, CONNECTICUT

DOCKET NO. 488

August 27
July _____, 2020

PROTECTIVE ORDER

WHEREAS, Applicant, Homeland Towers LLC ("Homeland") was requested to provide the Phase I Environmental Site Assessment ("Phase I") for property located on Bald Hill Road in Kent, Connecticut, which is proposed Site A in this proceeding, and details contained in the Phase I, in the opinion of Homeland, are proprietary, confidential and commercially valuable information ("Confidential Information");

WHEREAS, the Confidential Information qualifies as "trade secrets" as defined by Connecticut Law;

WHEREAS, Homeland is willing to provide the Confidential Information to the Siting Council subject to a protective order;

NOW, THEREFORE, it is hereby ordered that a protective order enter with respect to the Confidential Information and that the following is adopted for the protection of the Confidential Information:

1. The Confidential Information shall be governed by the terms of this Order.
2. The Confidential Information made available pursuant to this Order shall be given to Members and Staff of the Siting Council, upon execution of the Acknowledgement referenced below (each a "Signatory" and collectively, the "Signatories"). Any parties or intervenors in Docket No. 488 will separately be provided the Confidential Information upon 1) consent of Homeland and 2) execution of the Nondisclosure Agreement in the form attached hereto as Exhibit 1 (each also a "signatory" and collectively the "Signatories").

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CONFIDENTIAL – PROPRIETARY : DOCKET NO. 488

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5. Any Confidential Information made available pursuant to this Order shall be part of the record in this Docket, subject to the same relevancy and other evidentiary considerations as non-confidential information and subject to the conditions stated in Paragraphs Six and Seven of this Order.

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REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledge that he or she has reviewed this Protective Order, and hereby agrees to abide by the terms thereon in exchange for receipt of the Confidential Information from Homeland.

RECIPIENT: _____
REPRESENTING: _____
DATE: _____


Anthony F. DiPentima EJ
Bald Hill Road Neighbors

RECIPIENT: _____
REPRESENTING: _____
DATE: _____

RECIPIENT: _____
REPRESENTING: _____
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STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

EXHIBIT 1

DOCKET NO. 488
HOMELAND TOWERS LLC

NONDISCLOSURE AGREEMENT

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1. Any information provided to Recipient and labeled "Confidential Information" by Homeland shall be Confidential Information subject to this Nondisclosure Agreement.
2. The Confidential Information is received by Recipient in confidence.
3. The Confidential Information shall not be used or disclosed by the Recipient except in accordance with the terms contained herein and in the Company's Motion for Protective Order in Docket No. 488.
4. Only individuals, and not entities, may be Recipients of Confidential Information under this paragraph. The Recipient must be an attorney or independent expert witness for a party or intervenor in this proceeding. The Recipient acknowledges that disclosure of confidential or proprietary information of Homeland could adversely affect Homeland. By executing this Nondisclosure Agreement, each Recipient certifies that he/she meets the requirements of this paragraph.
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 - b. The Recipient shall maintain a log of all persons granted access to the Confidential Information.
 - c. The Recipient, by signing this Nondisclosure Agreement acknowledges that he/she may not in any manner disclose the Confidential Information to any person, and that he/she may not use the Confidential Information for the

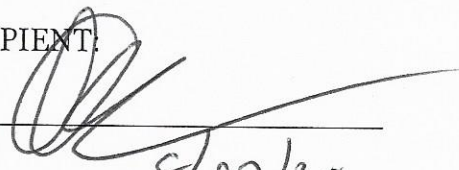
benefit of any person except in this Council proceeding and in accordance with the terms of this Protective Order.

- d. The Recipient acknowledges that any violation of this Nondisclosure Agreement may subject the Recipient to civil actions for violation hereof. Additionally, any Recipient who is an attorney acknowledges his/her ethical obligations under the Rules of Professional Conduct to abide by this Nondisclosure Agreement and to handle properly confidential information that is subject to a protective order.
- e. Within thirty (30) days of the final decision in this Proceeding, Recipient shall return the Confidential Information to Homeland.

RECIPIENT:

By: _____

Date: _____


8/27/20