

**STATE OF CONNECTICUT
SITING COUNCIL**

DOCKET NO. 488 - Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at one of two sites: Kent Tax Assessor ID #M10, Block 22, Lot 38 Bald Hill Road or 93 Richards Road, Kent, Connecticut.

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MARCH 2020

APPLICATION TO INTERVENE UNDER CEPA, §22a-19, §4-177a AND §16-50n

Planned Development Alliance of Northwest Connecticut, Inc. ("PDA") is a nonprofit, tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code and its members and supporters include real property owners in the Town of Kent, Connecticut and within the visual corridor of the facilities proposed in this proceeding.

PDA hereby moves and petitions the Connecticut Siting Council ("the Council") to become a party intervenor in so that it may submit evidence and have it considered by the Council. The purpose of the intervention is to participate in these proceedings to prevent unreasonable impact to the natural resources of the State including impacts to scenic resources and the scenic vistas surrounding the ridgelines overlooking North and South Spectacle Lakes, Lake Waramaug, the Appalachian Trail, and numerous other public recreational and boating areas, so many so that the impact to scenic resources may be unprecedented in the siting of a single facility.

Pursuant to Conn.Gen.Stat. §22a-19 ("CEPA"), §16-50n and §4-177a, PDA seeks party status as an entity which has a direct interest in the proceedings which will be specifically and substantially affected as it its members and supporters own, use and enjoy the land surrounding the proposed facilities being considered by the Council. The purpose of PDA is to promote sensible, planned development in northwest Connecticut

in order to protect the integrity of the natural surroundings and the quality of life enjoyed by the residents of the region.

PDA seeks party status in the above proceedings for the purpose of submitting testimony, briefs and other evidence relevant to the consideration of the application under consideration; specifically the mitigation of environmental impact to scenic and natural resources.

PDA's participation will be in the interests of justice and is proper under CEPA in that the evidence and testimony to be given will tend to show that the proposed activity for which Applicant seeks permission is likely to unreasonably harm the public trust in the air, water or other natural resources of the State of Connecticut in that, if granted, the proposed facility will, inter alia, unreasonably impair the visual quality of pristine ridgeline scenic vistas where there are feasible and prudent alternatives to the coverage using alternative locations and/or smaller facilities that do not impair the scenic views.

In support of this application, the movant states the following:

1. PDA of CT is a duly constituted Connecticut corporation with supporters who enjoy the scenic views in and about the area of the proposed alternative facilities on Treasure Hill (Richards Road Site) and Bald Hill (Bald Hill Road Site).
2. The proposed communications facilities will have a negative impact on the scenic vistas and natural resources in Kent and the surrounding areas by placing a tower structure that rises significantly above pristine ridgelines currently with unobstructed views from abutting public and private recreational and boating areas.
3. PDA intends to submit evidence to the record which has not been previously considered in the form of expert testimony which will substantiate the feasibility of available alternatives to the proposed facilities of lesser visual impact which will assist the Council in complying with its mandate to minimize impact as required by C.G.S §16-50g and 16-50p(3)(G)(b)(1).

4. The design does not incorporate the best available technology for reducing the visual impacts of the facilities in that it fails to fully consider impacts to scenic views, natural habitats and neighboring property uses, including nearby scenic trails, waterbodies and nearby homes.

DISCUSSION OF LAW

The CSC must be mindful of the statutory requirements which apply to interventions under CEPA. The bar is quite low for filing an intervention and thus §22a-19 applications should not be lightly rejected. *Finley v. Town of Orange*, 289 Conn. 12 (2008) (an application need only allege a colorable claim to survive a motion to dismiss) citing *Windels v. Environmental Protection Commission*, 284 Conn. 268 (2007).

CEPA clearly and in the broadest terms indicates that any legal entity may intervene. This includes municipal officials, *Avalon Bay Communities v. Zoning Commission*, 87 Conn. App. 537, 867 A.2d 37 (2005).

An allegation of facts that the proposed activity at issue in the proceeding is likely to unreasonably impair the public trust in natural resources of the State is sufficient. See, *Cannata v. Dept. Of Environmental Protection, et al*, 239 Conn. 124 (1996) (alleging harm to floodplain forest resources).

The Connecticut Appellate Court has noted that statutes "such as the EPA are remedial in nature and should be liberally construed to accomplish their purpose." *Avalon Bay Communities, Inc. v. Zoning Commission of the Town of Stratford*, 87 Conn.App.537 (2005); *Keeney v. Fairfield Resources, Inc.*, 41 Conn. App. 120, 132-33, 674 A.2d1349 (1996). In *Red Hill Coalition, Inc. V. Town Planning & Zoning Commission*, 212 Conn. 7272, 734, 563 A.2d 1347 (1989) ("section 22a-19[a] makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded"); *Polymer Resources, Ltd. v. Keeney*, 32 Conn. App. 340, 348-49, 629 A.2d 447 (1993) ("[Section] 22a-19[a] compels a trial court to permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is therefore not discretionary.") See Also, *Connecticut Fund for the Environment*,

Inc. v. Stamford, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984).

In *Mystic Marinelife Aquarium v. Gill*, 175 Conn. 483, 490, 400 A.2d 726 (1978), the Supreme Court concluded that one who filed a verified pleading under § 22a-19 became a party to an administrative proceeding upon doing so and had "statutory standing to appeal for the limited purpose of raising environmental issues." "It is clear that one basic purpose of the act is to give persons standing to bring actions to protect the environment." *Belford v. New Haven*, 170 Conn. 46, 53-54, 364 A.2d 194 (1975).

The Intervenor is entitled to participate as a §22a-19 intervenor which allows for a right of appeal under that statute. *Committee to Save Guilford Shoreline, Inc. v. Guilford Planning & Zoning Commission*, 48 Conn. Sup. 594, 853 A.2d 654(2004) once any entity has filed for intervention in an administrative proceeding, it has established the right to appeal from that decision independent of any other party. *Mystic Marinelife Aquarium v. Gill*, 175 Conn. 483 (1978) stated quite clearly that "one who files a §22a-19 application becomes a party with statutory standing to appeal." *Branhaven Plaza, LLC v Inland Wetlands Commission of the Town of Branford*, 251 Conn. 269, 276, n.9 (1999) held that a party who intervenes in a municipal land use proceeding pursuant to §22a-19 has standing to appeal the administrative agency's decision to the Superior Court. The Court cited as support for this proposition, *Red Hill Coalition, Inc. v. Conservation Commission*, 212 Conn. 710, 715, 563 A.2d 1339 (1989)("because the [appellants] filed a notice of intervention at the commission hearing in accordance with §22a-19(a), it doubtless had statutory standing to appeal from the commission's decision for that limited purpose.")

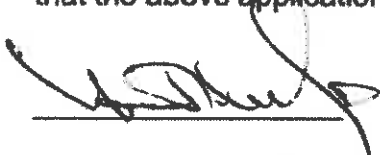
In *Keiser v. Zoning Commission*, 62 Conn. App. 600, 603-604 (2001) our Appellate Court stated that the *Branhaven Plaza* case is directly on point and held "the plaintiff in the present case properly filed a notice of intervention at the zoning commission hearing in accordance with §22a-19(a). Accordingly, we conclude that he has standing to appeal environmental issues related to the zoning commission's decision."

The rights conveyed by CEPA are so important and fundamental to matters of public trust that the denial of a 22a-19 intervention itself is appealable. See, *CT Post Limited Partnership v. New Haven City Planning Commission*, 2000 WL 1161131 Conn. Super. (Hodgson, J. 2000)(§22a-19 intervenors may file an original appeal for improper denial of intervenor status).

PDA's application for intervenor status should be granted so that it may participate by presenting evidence for the record and meaningfully assist the CSC in reaching a decision which minimizes impact to natural resources of the state while balancing the public need for responsible telecommunications facilities siting as required under the Council's enabling legislation.

VERIFICATION

The undersigned, NIRAMP WILLIAMS, PRESIDENT, duly authorized PRESIDENT of Planned Development Alliance of Northwest Connecticut, duly sworn, hereby verifies that the above application is true and accurate to the best of his knowledge and belief.

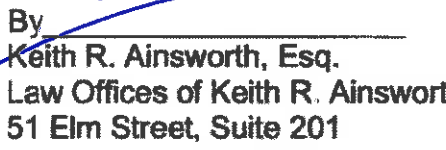


Sworn and subscribed before me this 3rd day of March 2020.

Dolores R. Schiesel
Dolores R. Schiesel, Commissioner of the Superior Court
Notary Public; My Commission Expires NA

Respectfully Submitted,

Planned Development Alliance of Northwest Connecticut, Inc.

By 
Keith R. Ainsworth, Esq.
Law Offices of Keith R. Ainsworth, Esq., L.L.C. #403269
51 Elm Street, Suite 201
New Haven, CT 06510-2049
(203) 435-2014
keithrainsworth@lvo.com (Intervenor requests service by email)

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 3rd day of March 2020 and addressed to:

Ms. Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, 15 copies, plus 1 electronic) (US Mail/electronic).

And electronic copies to the service list as attached:

LUCIA Ciocchio, Esq., Cuddy & Feder, LLP, 445 Hamilton Ave, 14th Flr, White Plains New York, 10601


Keith R. Ainsworth, Esq.