

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 16 COOTE HILL ROAD,
TOWN OF SHERMAN, CONNECTICUT

DOCKET NO. 499

June 18, 2021

MOTION ON THE SCOPE OF INTERVENOR STAN GREENBAUM'S PARTICIPATION IN
DOCKET 499, TO COMPEL THE DISCLOSURE OF ANY WITNESSES HE INTENDS TO
CALL, AND FOR THE EXCLUSION OF CERTAIN DOCUMENTS OR TESTIMONY
AS PART OF MR. GREENBAUM'S INTENDED EVIDENTIARY CASE

I. Intervenor Greenbaum

On May 18, 2021, Mr. Greenbaum requested to participate as an intervenor in this contested case, a week before the evidentiary hearing commenced in Docket 499. In his filing Mr. Greenbaum explained how he has been a community advocate in this matter since 2013, was well aware of the application and its procedural status and has been opposed to the tower project from its inception. In his request to participate in Docket 499, he specifically stated that he qualified as an intervenor, as opposed to a party, because he is a "person whose participation is in the interest of justice and will not impair the orderly conduct of the proceedings." The Council admitted Mr. Greenbaum as an intervenor in Docket 499 in this capacity. Notably, Mr. Greenbaum himself has not asserted that he or his property at 9 Peace Pipe Lane will be adversely impacted by the tower project, he does not have any known legal interest in Coote Hill Road nor would he himself be aggrieved by any Council decision in Docket 499.

II. Participation in Contested Cases by Intervenor

As part of admitting any intervenor, the Council may "take into account whether such participation will furnish assistance to the Council in resolving the issues of the case, is in the interests of justice, and will not impair the orderly conduct of the proceedings." R.C.S.A § 16-50j-15. Additionally, once admitted as an intervenor the "Council may limit the intervenor's participation pursuant to Section 4-177a of the Connecticut General Statutes, to designated issues in which the intervenor has

a particular interest; to defined categories of records, physical evidence, papers and documents; to introduce evidence; and to cross examine on designated issues. The presiding officer may further limit the participation of an intervenor in the proceedings so as to promote the orderly conduct of the proceedings.” R.C.S.A. § 16-50j-15a.

III. Uniform Administrative Procedures Act and Siting Council Evidentiary Rules in Contested Cases

We recognize that Mr. Greenbaum is participating pro se. Nonetheless, this motion is respectfully submitted to request that the Council address the scope of Mr. Greenbaum’s participation, his obligations related to documentary evidence that may be admitted for hearing purposes and the disclosure of witnesses as required to specifically ensure an orderly and fair proceeding for the Council and Applicants. Additionally, that testimony on various topics that are outside the Council’s jurisdiction or not relevant to the proceeding be limited by the Council. For the benefit of Mr. Greenbaum, the following Uniform Administrative Procedures Act and Siting Council Regulations are reprinted here and form the basis of certain Applicants objections and requests related to Mr. Greenbaum’s various submissions intended to be part of his case in chief in Docket 499.

Sec. 4-178. Contested cases. Evidence. In contested cases: (1) Any oral or documentary evidence may be received, but the agency shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence; (2) agencies shall give effect to the rules of privilege recognized by law; (3) when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form; (4) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, and upon request, parties and the agency conducting the proceeding shall be given an opportunity to compare the copy with the original; (5) a party and such agency may conduct cross-examinations required for a full and true disclosure of the facts; (6) notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency’s specialized knowledge; (7) parties shall be notified in a timely manner of any material noticed, including any agency memoranda or data, and they shall be afforded an opportunity to contest the material so noticed; and (8) the agency’s experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence.

Sec. 16-50j-25(c) Pre-Filed Evidence and Testimony.

At the discretion of the Council, any evidence or testimony may be required to be pre-filed by a date specified by the Council. All pre-filed evidence and testimony shall be received in evidence with the same force and effect as though it were stated orally by the witnesses, provided that each such witness shall be present at the hearing at which such prepared written testimony is offered,

shall adopt such written testimony under oath, and shall be made available for cross-examination as directed by the Council.

Sec. 16-50j-28. Rules of evidence

In accordance with Section 4-178 of the Connecticut General Statutes, the following rules of evidence shall be followed in contested cases:

(a) Rules of privilege.

The Council shall give effect to the rules of privilege recognized by law in Connecticut. Subject to these requirements and subject to the right of any party or intervenor to cross examine, any testimony may be received in written form.

(b) Relevance.

The Council may exclude evidence that is not probative or material and that tends not to prove or disprove a matter in issue.

(c) Testimony.

Pursuant to Section 16-50j-25 of the Regulations of Connecticut State Agencies, in its discretion, the Council may accept any oral or written testimony.

(d) Documentary Evidence.

Pre-filed testimony and other documentary evidence shall be produced under oath. Such evidence shall be received by the Council in written form to expedite the public hearing.

(e) Cross examination.

Cross examination may be conducted by any party or intervenor if it is required by the Council for full and true disclosure of the facts. Witnesses may be cross-examined on any pre-filed testimony and documents submitted as evidence. If the Council proposes to consider a limited appearance statement as evidence, the Council shall give all parties and intervenors an opportunity to challenge or rebut the statement and to cross-examine the person who makes the statement.

(f) Administrative Notice.

The Council may take administrative notice of facts in accordance with Section 4-178 of the Connecticut General Statutes, including prior decisions and orders of the Council and any exhibit admitted as evidence by the Council in a prior hearing of a contested case.

IV. Applicants' Specific Objections and Requests Related to Mr. Greenbaum's Filings

A. Request for Disclosure of Witnesses

We anticipate that Mr. Greenbaum will be appearing as a witness. His June 17, 2021 pre-hearing filing nevertheless failed to identify any other witnesses he intends to call as required by Council regulations and orders. To avoid prejudice to the Applicants while at the same time seeking to efficiently proceed at next week's hearing, we respectfully request that Mr. Greenbaum provide the Council and Applicants with a list of any other witnesses, their role and the subject matter of their intended oral testimony on his behalf no later than Monday June 21, 2021. Further that they appear and be made available for cross-examination.

B. Request to Exclude Publication of Proprietary/Privileged Information from the Council's Public Record

Item 1 in Mr. Greenbaum's June 17, 2021 filing includes an unredacted copy of an agreement which the Applicant Homeland has filed with the Council in a redacted form and made part of the proceedings subject to a pending motion for a protective order. Homeland has asserted in communications with Mr. Jones and his counsel its rights under real property law and further sought to protect any disclosure of financial terms of an agreement to relocate pillars at the entrance to Coote Hill Road. As such, regardless of the fact that Mr. Jones has apparently shared this document with others, Applicant Homeland continues to assert that certain financial information is privileged and requests it be excluded from the Council's public publication in Docket 499 and that Mr. Greenbaum refer to Applicant Homeland's filings as needed.

C. Request to Limit the Scope of Mr. Greenbaum's Evidentiary Case to Matters of Relevance and Exclude Certain Documents

There are several documents filed by Mr. Greenbaum that are objectionable for various reasons as set forth in Uniform Administrative Procedures Act and the Council's Regulations. Set forth below are Applicants' objections, the basis for same and a request to limit or exclude testimony and/or documents in Docket 499:

1. The Council Should Preclude Testimony and Exclude Information Mr. Greenbaum Intends To Raise Related to Coote Hill Road Real Property Rights and Any Homeowner's Deeds

The Siting Council does not have statutory jurisdiction to consider or arbitrate any arguments made by Mr. Greenbaum or others related to real property rights the Applicants or other property owners enjoy including access and utilities over Coote Hill Road. Nor is any such documentary evidence relevant to the criteria set forth in Section 16-50p and Council decisions on tower applications which are regulatory and related to the need for a new tower and its environmental effects. As such, the Applicants move to exclude items 1-3 in Mr. Greenbaum's June 17, 2021 filing from being admitted as evidence and to preclude testimony and cross examination on these topics.

2. The Council Should Exclude Certain Irrelevant Information Involving a Tower in Patterson New York

The Applicants are aware that the Town of New Fairfield purchased a tower in Patterson New York and would like to further monetize its cost with collocation by tenants like AT&T. AT&T has

evaluated that tower previously and has noted to all interested parties at various points in time dating back to 2013 consultations that it is not a technically viable alternative site for serving southern Sherman, even if extended to heights above 200'. Of course, to the extent AT&T has any future interest in collocation on the Town's tower in New York to potentially serve other geographies, AT&T will certainly contact the New Fairfield First Selectman. Regardless, leases on that tower site location are not relevant to this proceeding at all and should be excluded from Mr. Greenbaum's documentary evidence. Similarly, the letters from First Selectman Del Monaco offering space as a landlord on that tower are not relevant, and while we have no objection to the Council generally being aware of collocation opportunities on towers in New York, these letters are not germane and should also be excluded. As such, the Applicants object to exhibits 5, 7 and 15 from being admitted into evidence and reserve the right to cross examine any witnesses Mr. Greenbaum may attempt to present to the Council on these topics.

3. SVFD, LCD and the Town Are Not Parties or Intervenors and Mr. Greenbaum's Demand That They Pursue Public Safety Communication Alternatives to Collocation on the Proposed Cellular Tower Is Not Relevant to the Council's Statutory Criteria

Mr. Greenbaum appears to be making an argument about the Town, Sherman Volunteer Fire Department and Litchfield County Dispatch with respect to sites they should explore for public safety communications purposes instead of collocation on the proposed tower in Docket 499. SVFD, LCD and the Town are not, however, parties to this proceeding and arguments about their municipal procurement options belong in the Town's forum, not at the Siting Council. Mr. Greenbaum as much as acknowledges same by filing a copy of a petition for a special town meeting that is included in Exhibit 8. The Applicants filed evidence of the SVFD and LCD interest in collocating on the proposed tower for public safety communications as required by Section 16-50p(b)(1)(B) and importantly, none of the documents Mr. Greenbaum filed present evidence that collocation on this proposed tower by SVFD or LCD is not a feasible option. Regardless, for purposes of cellular tower siting, all of the sites referenced by Mr. Greenbaum that he is demanding the Town, SVFD and LCD explore again, including land in Timber Trails, on Wanzer Mountain, and Aquarion Water Company lands, were thoroughly evaluated by the Applicants and ruled out as cellular tower alternatives for various reasons as set forth in the Application. As such, and further because Mr. Greenbaum does not appear ready to present witnesses to verify exhibits 6, 8, 9, and 14, we respectfully request that they be placed into the public comment file as opposed to being

admitted as evidence in Mr. Greenbaum's case. Further, that the scope of any testimony on this topic be focused on the proposed tower's capability to support SVFD and LCD public safety communications in furtherance of the statutory criteria within the Council's consideration. Additionally, we request that exhibit 13 and the FOI requests submitted to the Town be excluded in Docket 499 as irrelevant, unnecessary and not directly related to the issues before the Council in Docket 499.

4. Applicants Reserve the Right to Voir Dire (Question) Witnesses Prior to Admission of Any Other Documents Presented by Mr. Greenbaum as filed May 18 or June 17, 2021

We are notifying Mr. Greenbaum and the Council of our reservation of and consideration of further objections on relevancy or the lack of a proper foundation for any other documents filed by Mr. Greenbaum as an intervenor in Docket 499 at the continued hearing next week. To the extent any document is an official Town of Sherman document, we note it may be the subject of administrative notice under Council rules. However, all other documents require witness testimony for both evidentiary submission and cross-examination purposes and to the extent no such witness is identified by Mr. Greenbaum and made available, Applicants will move for exclusion of such documents from being admitted in the official record in Docket 499.

Dated: June 18, 2021



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CERTIFICATE OF SERVICE

I hereby certify that on this day one original and 15 hard copies and one electronic version of the foregoing were sent to the Connecticut Siting Council and one electronic copy was sent to:

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Dated: June 18, 2021



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