

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

RECEIVED  
JUN 23 2009

In Re:

APPLICATION OF SBA TOWERS II, LLC ("SBA") FOR A  
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY  
AND PUBLIC NEED FOR THE CONSTRUCTION,  
MAINTENANCE AND OPERATION OF A  
TELECOMMUNICATIONS FACILITY AT ONE OF TWO  
ALTERNATE SITES AT RABBIT HILL ROAD IN  
WARREN, CONNECTICUT

CONNECTICUT  
SITING COUNCIL  
DOCKET: 378

June 23, 2009

**CROWW'S BRIEF IN FURTHER SUPPORT OF ITS MOTION TO REJECT  
SBA'S VOLUNTARY WITHDRAWAL AND TO DISMISS SBA'S  
APPLICATION WITH PREJUDICE AND COSTS**

This brief is submitted at the direction of the Connecticut Siting Council to provide the legal basis for dismissing the SBA application with prejudice and with a direction to SBA to reimburse all parties and intervenors for their reasonable out-of-pocket costs and expenses.

The general rule in judicial proceedings is that a party may not voluntarily withdraw a complaint or similar initiating document after the opposing party has appeared. At that point, the matter can only be withdrawn with the opposing party's consent, or on approval by the court with appropriate terms.

In common parlance, the rule is simply stated:

"You get one bite at the apple."

SBA has had its bite, and now the SBA proceeding should be dismissed with prejudice and with payment of appropriate costs and expenses incurred by the other parties.

## Governing Law

SBA and its prospective telecom lessees are licensed and regulated by the Federal Communications Commission. The Siting Council's siting proceedings are subject to the Federal Telecommunications Act. The Council is also required to comply with Federal constitutional due process standards under the Fourteenth Amendment.

28 U.S.C. Section 1927 provides for the award of costs, expenses and attorneys fees for unreasonable and vexatious multiplication of court proceedings. The provision sets the appropriate standards for purposes of this proceeding instituted by federal licensees for their own financial benefit and gain. That statute provides:

### **§ 1927. Counsel's liability for excessive costs**

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

This language sets appropriate due process guidance for state agencies implementing wireless licenses granted by the FCC, and carrying out the provisions of the Telecom Act of 1996. The Connecticut Siting Council acts as a quasi-judicial body in exercising control over the conduct of parties appearing before it and has a duty to sanction abusive conduct by parties invoking and abusing its jurisdiction.

Acting as an adjudicative body, the Siting Council is not only authorized to sanction attorneys and parties who act in bad faith, it is expected to do so sua sponte, even without motion by those injured or prejudiced. The applicable principles are set forth in the United States Supreme Court decision in Chambers v. Nasco, 501 U.S. 32 (1991).

This case requires us to explore the scope of the inherent power of a federal court to sanction a litigant for bad-faith conduct. Specifically, we are asked to determine whether the District Court, sitting in diversity, properly invoked its inherent power in assessing as a sanction for a party's bad faith conduct attorney's fees and related expenses paid by the party's opponent to its attorneys. We hold that the District Court acted within its discretion, and we therefore affirm the judgment of the Court of Appeals.

\* \* \*

It has long been understood that "[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution," powers "which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." United States v. Hudson, 7 Cranch 32, 34 (1812); see also Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980) (citing Hudson). For this reason, "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." Anderson v. Dunn, 6 Wheat. 204, 227 (1821); see also Ex parte Robinson, 19 Wall. 505, 510 (1874). These powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Link v. Wabash R. Co., 370 U.S. 626, 630-631 (1962).

\* \* \*

The Court's prior cases have indicated that the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct.

\* \* \*

There is, therefore, nothing in the other sanctioning mechanisms or prior cases interpreting them that warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct. This is plainly the case where the conduct at issue is not covered by one of the other sanctioning provisions. But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the rules. A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees, see Roadway Express, supra, at 767. Furthermore, when there is bad faith conduct in the course of litigation that could be adequately sanctioned under the rules, the court ordinarily should rely on the rules rather than the inherent power. But if in the informed discretion of the court, neither the

statute nor the rules are up to the task, the court may safely rely on its inherent power.

Chambers v. Nasco, 501 U.S. 32, 35-50 (1991)

(See also The Jolly Group, Ltd. v. Medline Industries, Inc., 435 F.3d 717 (2006))

Similar principles are found in Connecticut law. Uniform Administrative

Procedure Act Section 4-184(b) provides:

**Sec. 4-184a. Award of reasonable fees and expenses to certain prevailing parties in appeals of agency decisions. \* \* \*(b)** In any appeal by an aggrieved person of an agency decision taken in accordance with section 4-183 and in any appeal of the final judgment of the Superior Court under said section taken in accordance with section 51-197b, the court may, in its discretion, award to the prevailing party, other than the agency, reasonable fees and expenses in addition to other costs if such prevailing party files a request for an award of reasonable fees and expenses within thirty days of the issuance of the court's decision and the court determines that the action of the agency was undertaken without any substantial justification.

Connecticut Criminal law has a similar corollary recognizing the authority of a Connecticut court to impose costs for false assertions by legal counsel<sup>1</sup>.

Based on these standards in Federal and State law, it is clear that the Connecticut Siting Council as a quasi-judicial body has the inherent power to order payment of attorneys fees and expenses in cases of bad faith conduct by a party.

### **SBA's Bad Faith Conduct**

1. SBA deliberately set out to circumvent the development restrictions on the Tanner Farm without consulting the Attorney General or the Department of Agriculture.

---

<sup>1</sup> Sec. 52-245. False statement concerning defense. Costs. In any case in which an affidavit has been filed by the defendant, or a statement that he has a bona fide defense has been made to the court by his attorney, and the plaintiff recovers judgment, if the court is of the opinion that such affidavit was filed or statement made without just cause or for the purpose of delay, it may allow to the plaintiff, at its discretion, double costs, together with a reasonable counsel fee to be taxed by the court.

SBA's obvious plan was to get the jump on the state officials and hope to catch them off guard.

This was done with full knowledge that the Attorney General and Department of Agriculture were opposed to any development. (See Exs A-C to Town of Washington Conservation Commission Brief in Response to Invitation to Further Brief, June 9, 2009)

All of SBA's consultants admitted during the hearing on Docket 378 that they did not consult with the Department of Agriculture [Transcript of June 2, 2009, page 50, lines 6-23.]

Consultant Reiger said "that would be a conversation that either the client or the attorneys would handle." [Transcript, June 2, 2009, page 55, lines 1-2.] (See Ex AA attached hereto.)

SBA filed the Application knowing that the Department of Agriculture opposed the proposed commercial, non-agricultural use of farmland for which the development rights had been previously purchased by the State of Connecticut.

As described in the Brief filed by the Town of Washington Conservation Commission dated June 9, 2009, on September 13, 2008, Diane Dupuis sent an email to Carrie Larson, Charles Regulbuto and others advising them that the Commissioner of Agriculture had confirmed in an email to Diane Dupuis, Chair of the Town of Washington's Cell Tower Committee, that

Similar requests have previously been reviewed with the Office of the Attorney General.

The construction of the structure and related outbuilding on such development rights restricted farmlands has been deemed to be a prohibited, commercial, non-agricultural use.

(See Ex BB attached hereto.)

2. SBA's Application was false and misleading in at least two material respects.

(A) On page 3 of the Application, SBA stated that its notice of lease included in the application as Exhibit C covered "either site." However, at the hearing on June 2, SBA revealed that the lease with the Tanners was not amended to include Site B until April 7, 2009, more than five (5) weeks after the Application was filed.

(B) On page 18 of the Application, SBA disclosed that Site A is located on a portion of the property for which there is a "deed restriction pursuant to CSS 22-26cc." While SBA described the basis upon which it believed construction of a tower on Site A "can be approved by the Council," SBA omitted to state that the Department of Agriculture had reviewed similar requests in the past and determined that the proposed use would constitute "a prohibited, commercial, non-agricultural use."

3. SBA also selectively cited as support for its proposed use of restricted farmland portions of the Conveyance of Development Rights (the "Conveyance") which were incomplete and taken out of context. As previously covered in CROWW's Brief dated June 9, 2009, the entirety of the paragraphs of the Conveyance cited by SBA makes it clear that the Tanners do not have the right to grant a lease for a commercial, non-agricultural use of any portion of the restricted land on their farm.

#### **Prejudice to Other Parties and Intervenors**

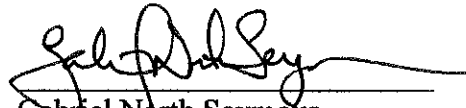
As a result of SBA's bad faith, parties and intervenors have been required to spend substantial time and resources opposing an Application that should never have been filed in the first place. CROWW submits the attached affidavit of CROWW President Bruce Coleman to detail these injuries (Ex CC). SBA and its counsel should

bear the responsibility for their actions and reimburse all parties and all intervenors for their reasonable costs incurred in connection with the Application.

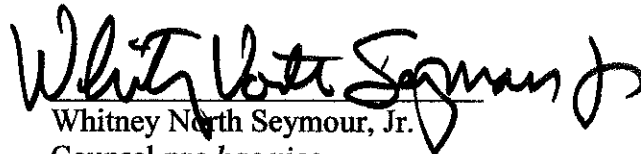
**CONCLUSION**

For all of the foregoing reasons, the Application should be dismissed with prejudice and the Applicant directed to reimburse all out-of-pocket costs and attorneys fees to parties and intervenors for opposing this unlawful and frivolous application.

Respectfully submitted,



Gabriel North Seymour  
Juris No. 424367  
200 Route 126  
Falls Village, CT 06031  
Tel: 860-824-1412  
Fax: 860-824-1210  
Email: certiorari@earthlink.net



Whitney North Seymour, Jr.  
Counsel *pro hac vice*  
425 Lexington Avenue, Room 1721  
New York, NY 10017  
Tel: 212-455-7640  
Fax: 212-455-2502  
Email: wseymour@stblaw.com

Counsel to CROWW

HEARING RE: SBA TOWERS II, LLC  
JUNE 2, 2009 (11:25 AM)

1 MR. WRINN: Mr. Ashton, Miss Larson was  
2 referring to Exhibit R --

3 MR. ASHTON: Thank you --

4 MR. WRINN: -- in the application. Mr.  
5 Rieger, I'd ask you then whether you knew that -- whether  
6 you yourself knew that this property was under  
7 restriction at the time you made your consultations with  
8 various agencies?

9 MR. RIEGER: I'm trying to recall the  
10 timeline in my head of when I became aware --

11 MR. WRINN: Mmm-hmm --

12 MR. RIEGER: -- I think early in the  
13 process we may not have been completely aware, but at  
14 least by mid-process we were aware that there was an  
15 agricultural restriction on it. Definitely prior to my  
16 consultation with DEP.

17 MR. WRINN: Is there any particular reason  
18 why you didn't research the Department of Agriculture's  
19 restrictions? Did you go to the Department of  
20 Agriculture website or take any steps to inform yourself  
21 regarding the Department of Agriculture's possible  
22 interest in this property?

23 MR. RIEGER: Before I was aware of the  
24 restriction, no, I did not.

POST REPORTING SERVICE  
HAMDEN, CT (800) 262-4102

EXHIBIT AA



HEARING RE: SBA TOWERS II, LLC  
JUNE 2, 2009 (11:25 AM)

1 MR. WRINN: Well what about after you  
2 became aware of the restriction?

3 MR. RIEGER: After I became aware of the  
4 restriction, I was, you know, aware that there was a  
5 restriction. There wasn't any need at that point for  
6 research relative to the Department's interest.

7 MR. WRINN: I -- I'm sorry, maybe I'm  
8 being a little -- a little dense here this afternoon, but  
9 if you're going to go and consult with the Office of  
10 Tourism and you're going to contact the Indian tribes and  
11 you're going to talk to someone at DEP, I'm puzzled as to  
12 why you would not have thought to follow-up with the  
13 Department of Agriculture.

14 MR. RIEGER: The Department of Agriculture  
15 is not in the typical process for review for historical  
16 properties, archeological resources. Historical  
17 properties and archeological resources fall under the  
18 Connecticut Office of Culture and Tourism. Relative to  
19 the Natural Diversity Database review, that's DEP's realm  
20 of expertise. So they wouldn't likely have anything to  
21 say about your department's involvement in the project,  
22 they speak to what they know.

23 MR. WRINN: But curiously, our department  
24 -- well strike that -- but curiously, the Department of

HEARING RE: SBA TOWERS II, LLC  
JUNE 2, 2009 (11:25 AM)

1 Agriculture might have something to say about properties  
2 within the preservation program. Why wouldn't you  
3 consult with it? It does bear upon the application, does  
4 it not?

5 MR. RIEGER: It's not part of the NEPA  
6 requirements.

7 MR. WRINN: Ha. Well, outside the NEPA  
8 requirements, would it not make some sense to consult  
9 with another agency that might have information that  
10 bears upon the application?

11 MR. RIEGER: It might, but -- it might.

12 MR. WRINN: It might.

13 MR. ASHTON: I must confess that this was  
14 a question that I had in my mind too as to when you  
15 uncovered the fact that --

16 CHAIRMAN CARUSO: Mr. Ashton.

17 MR. ASHTON: Thank you. That DAG was  
18 involved, why didn't you go and talk to them -- or for  
19 that matter any property where there was a significant  
20 transfer of title, partial or complete, why wouldn't you  
21 talk to that individual?

22 MR. RIEGER: That would be a conversation

23 --

24 MR. ASHTON: I'm sorry?

HEARING RE: SBA TOWERS II, LLC  
JUNE 2, 2009 (11:25 AM)

1 MR. RIEGER: That would be a conversation  
2 that either our client or the attorneys would handle. We  
3 simply handle NEPA, SHPO, wetlands and ecological  
4 impacts.

5 MR. ASHTON: Okay.

6 CHAIRMAN CARUSO: So would it be fair to  
7 say you've just never run across this before?

8 MR. RIEGER: Me personally, correct.

9 CHAIRMAN CARUSO: Okay, great. Thank  
10 you.

11 MR. WRINN: Let me put it another way --  
12 and I don't want to belabor the point, but it is very  
13 important -- were you told by anyone that you did not  
14 have to consult with the Department of Agriculture?

15 MR. RIEGER: No.

16 MR. WRINN: You testified about the grade  
17 -- the various grades of agricultural land. Mr. Rieger,  
18 what specific qualification do you possess to give  
19 testimony about agricultural land?

20 MR. RIEGER: My project team on this is  
21 supported by a certified Connecticut soil scientist and  
22 also a professional registered soil scientist, whose work  
23 supports my testimony.

24 MR. WRINN: But that person isn't here

September 11, 2008

Diane Dupuis  
Conservation Commissioner  
Washington, CT

Dear Ms. Dupuis:

This letter is in response to your email to Commissioner Philip Prelli dated September 5, 2008, in which you ask if a cell tower can be constructed on lands to which the State of Connecticut has acquired the development rights.

Similar requests have previously been reviewed with the Office of the Attorney General.

The construction of the structure and related outbuildings on such development rights restricted farmlands has been deemed to be a prohibited, commercial, non-agricultural use.


This would not apply to any such area that may have been excluded from the development rights deed covenant. Farm specific A-2 surveys are recorded in the local land records.

I hope this answers your question on the matter.

Sincerely,

Joseph Dippel  
for Commissioner Prelli

EXHIBIT BB

From: diane dupuis <DD9ART@SBCGLOBAL.NET>  
Subject: **optasite's proposed tower location on 422a property, the tanner farm in warren**  
Date: September 13, 2008 11:55:13 AM EDT  
To: clarson@pullman.com, cregulbuto@optasite.com, joseph.dippel@ct.gov, anthony.jannotta@po.state.ct.us,  
robert.marconi@po.state.ct.us  
Cc: Susan Payne <sbfpayne@charter.net>, Mark Lyon <mark.lyon@washingtonct.org>, diane dupuis  
<dd9art@sbcglobal.net>  
 1 Attachment, 203 KB

Ms. Larson and Mr Regulbuto,

Per our meeting and conversations on Thursday September 11, 2008,  
attached is our letter detailing our objections to this application and its  
proposed siting on 422a restricted farmland.



[tannertower.docx \(203 KB\)](#)

Mark Lyon, First Selectman Town of Washington  
Diane Dupuis, Chair Cell Tower Committee

**Ms. Carrie L Larson, Pullman & Comley LLC  
Mr. Charles S Regulbuto,  
Director of Northeast Development Optasite  
Via email**

**9.13.08**

**Re: Tanner Farm Tower Site Proposal  
Rabbit Hill Road Warren Ct**

**Dear Ms. Larson and Mr. Regulbuto,**

**As we discussed at our meeting on Thursday afternoon, we do not consider the siting of a tower on the Tanner Farm to be a legal siting. This is a commercial venture on restricted farmland previously sold to the state for development rights. Only noncommercial, agricultural ventures are allowed on this type of property. A copy of the email received from the Commissioner of the Connecticut Department of Agriculture confirming our understanding was presented to you at that meeting:**

**"Similar requests have previously been reviewed with the Office of the Attorney General. The construction of the structure and related outbuildings on such development rights restricted farmlands has been deemed to be a prohibited, commercial, non-agricultural use."**

**We also advised that we considered Optasite's application insufficient and discussed with you the many areas of inaccuracy and incompleteness contained in your initial report to the town (propagation maps, sight lines, scenic roads and other environmental and technical aspects to name a few). We asked that you resubmit a full and proper application should you feel you wish to continue with this application.**

**In addition, we advised you that the town of Washington is on record as being opposed to a site in this residential area.**

**An application was made in November of 2002 by ATT for a tower approximately 400 feet away and at an elevation 110 feet lower than this application site. That site was strongly objected to by the people of town of Washington, its Selectmen, its land use boards, the Steep Rock Land Trust, and other town environmental agencies.**

Since 2003 the town of Washington has worked diligently to protect its natural resources in this area, adding protections at the local and state level. This proposed tower would sit in an environmentally sensitive area above our largest aquifer and effect multiple scenic view sheds, including property bought by the Town of Washington, the State of Connecticut and Steep Rock Land Trust, the 238 acre Macrocostas Preserve. In addition to being situated among historic housing, scenic roads, critical habitats and key areas for recreation, this proposed tower would be in an area of moderate to high archaeological importance.

All letters of our original objections were submitted to the Siting Council in 2003 and are on record there. That 2003 application was made by ATT, who you represent in this application. At our town meeting in 2003, and recorded for the record, when queried about the viability of the Tanner Farm, ATT's representative, Ms. Gaudet, replied "the Tanner property was protected farmland and so was unavailable under the terms of the state protection program."

Since that time, nothing has changed in either the state or Siting Council regulations.

We ask that you take into consideration the town of Washington's objections and the legalities of siting on protected farmland and withdraw your application for a site on Rabbit Hill Road.

Sincerely,

Mark Lyon  
First Selectman  
Town of Washington

Diane Dupuis  
Chair Cell Tower Committee

cc Mr. Joseph Dipple, Dept of Agriculture  
Mr. Anthony Jannotta, Attorney General's Office  
Mr. Robert Marconi, CT Siting Council

**AFFIDAVIT OF SUSAN PAYNE**

State of Connecticut ]  
                                          ]      ss.  
County of Litchfield ]

SUSAN PAYNE being duly sworn deposes and says:

1. My name is Susan Payne. I reside at 35 South Street, Washington, Connecticut.
2. I am Chairman of the Conservation Commission of the Town of Washington, Connecticut, an office I have held since 2002.

3. The Washington Conservation Commission maintains regular records and minutes of its meetings in accordance with state law.

4. On Nov 5, 2008, Ms. Carrie Larson and Mr. <sup>Charles</sup> Regalbuto, representatives of SBA Towers II, LLC, attended a meeting of the Conservation Commission of the Town of Washington. That duly noticed public meeting took place at 5 p.m. at Washington Town Hall. I was in attendance.

5. An audiotape recording of that meeting was made in the ordinary course of business, and that tape recording has been retained at Washington Town Hall in the ordinary course of business as a business record.

6. On June 8, 2009 I caused to have a written transcript made of a section of the recording of this meeting from this tape that has been retained as a business record at Town Hall.

7. I hereby certify that the audiotape is an authentic record of the Town of Washington Conservation Commission meeting held on Nov 5, 2008 at the Washington Town Hall, and that the transcript was prepared by Shawn, our regular secretarial transcriber.

8. I further certify that the attached transcription is an accurate and true transcription of part of the meeting of the Town of Washington Conservation Commission meeting held on Nov 5, 2008 at the Washington Town Hall.

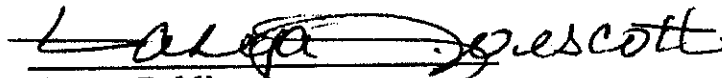


9. The Commission submits this transcript in support of its motion to dismiss and asks that the Connecticut Siting Council also accept the attached transcript into evidence for consideration under Docket 378, as it is material evidence of issues under the Council's consideration for the proper disposition of several matters before the Council on this docket.

Sworn to before me

This 9 day of June, 2009

  
Susan Payne

  
Notary Public  
Com exp 5/31/14



# Town of Washington, CT

## Conservation Commission Meeting

November 5, 2008

**The following information was reproduced from the posted minutes of the meeting.**

**Members Present:** Susan Payne, Linda Frank, Phil Markert, Kelly Boling, Joe Gitterman, Diane Dupuis, Ric Sonders, Phil Dutton

**Guests:** Chris Charles, Rod Bascom, Engineer, Atty. Carrie Larson, Charles Regulbuto, Representative for Optasite

**Staff Present:** Shelley White

Susan Payne called the meeting to order at 5:02 p.m. and seated members Kelly Boling, Linda Frank, Phil Markert, Joe Gitterman, and herself.

**The following transcription is from a select excerpt approximately two-minutes long of the audio recording completed at the meeting.**

**Kelly Boling:** Is this located in an area where public money was used to purchase development rights?

**Carrie Larson:** It is. The property, the development rights were purchased by the State of Connecticut and it is located in the area.

**Multiple Voices:** Inaudible.

**Kelly Boling:** Why is it not being located in a place where taxpayer money wasn't used to prevent development?

**Carrie Larson:** The reason that the locate, first of all, under the statutes we are permitted to site a cell tower on property that's subject to the development restriction that this property is subject to.

**Multiple Voices:** Inaudible.

**Diane Dupuis:** That's up for dispute. That, that is, um, a first look action. You have not, that has never been put before the Siting Council before. This will be the first case before them. Is that correct?

**Carrie Larson:** Yeah. Um, but the reason that the, this location was chosen on this property is because we're really taking advantage of the topography there and the existing vegetation to screen and shield the tower from neighboring properties. Um, and Rod has done the visuals on this site so he can talk about that a little bit further. But, in order to, if you, if we pull

EXHIBIT C

it out on, there's six acres of, of a subject parcel that are not subject to the development restriction, but there's no vegetation there. It's further up the hill so you, you're just going to be more visible for people to see.

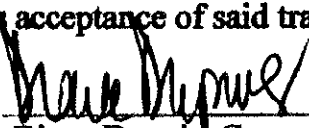
- Diane Dupuis: But it also doesn't work for you, is that not the facts, more correct, that site that we would, we've asked that before and the answer from Optasite and AT&T is that you can't get the signal that you want if you put it up on property that has not been sold to the State?
- Carrie Larson: No, that was not our response at all.
- Diane Dupuis: Oh, we have that in some paper somewhere. Ok.
- Multiple Voices: Inaudible.
- Kelly Boling: So is, is that a viable site from, uh, engineering perspective, the, the portion not encumbered by the development rights?
- Rod Bascom: Yes.
- Kelly Boling: Ok.
- Charles Regulbuto: We actually haven't gone out there yet to draft up any plans. That is in the works to take a look at it that way.
- Linda Frank: Who does this serve? Where, I mean, what, what's your audience here for this tower?
- Male: Inaudible.
- Carrie Larson: The proposed tenant is, is AT&T Wireless.
- Linda Frank: Yeah, but who, who's picking up ...

---

End of selected portion.

I, Sheila R. Silvernail, do hereby certify that the foregoing pages are an accurate transcription to the best of my ability of a portion of the Conservation Commission Meeting held on Nov 5, 2008 and that said pages have been verified and proofread by Diane Dupuis, Conservation Commission Member, whose signature below indicates acceptance of said transcription.

Dated at Washington, CT the 9th day of June 2009

  
Diane Dupuis, Conservation Commission

**AFFIDAVIT OF BRUCE COLEMAN**

State of New York     ]  
                                  ]     ss.  
County of New York    ]

BRUCE COLEMAN being duly sworn deposes and says:

1. My name is Bruce Coleman. I live at 158 Rabbit Hill Road, Warren, Connecticut.
2. I am President of Concerned Residents of Warren and Washington [CROWW].
3. CROWW was granted party status in Connecticut Siting Council Docket Number 378, the "Application of SBA Towers II, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Telecommunications Facility at one of Two Alternate Sites at Rabbit Hill Road in Warren, Connecticut".
4. For the purpose of vindicating CROWW members' property rights, interests in scenic values, interests in preventing the potential hazards of cell towers on properties, decrease in property values, and other deleterious effects from the proposed towers on the Towns and the residents of Warren and Washington, Connecticut, and for the vindication on behalf of these residents, of the Towns' zoning regulations to protect the health, safety and welfare of citizens, CROWW engaged legal counsel at a total cost of \$ 18,000. for the purposes of fulfilling its role under the grant of party status by the Connecticut Siting Council on Docket 378.
5. Legal Counsel for CROWW filed appearances, met with Siting Council staff at appointed times, prepared briefs and motions, gathered and copied exhibits on CROWW's behalf during the pendency of Docket 378 proceedings, attended hearings and met with CROWW and traveled extensively for all of these purposes, all during the pendency of the Siting Council proceedings on Docket 378.
6. For the purpose of vindicating CROWW members' property rights, interests in scenic values, interests in preventing the potential hazards of cell towers on properties, property values, on the Towns of Warren and Washington, Connecticut, and for the vindication of the Towns' zoning regulations to protect the health, safety and welfare of citizens, CROWW proceeded to file, as directed by the Connecticut Siting Council and its staff, all filings, pre-filings on paper in multiple, directly to the Siting Council and for service by mail on all parties and intervenors as required by the Council, for the purposes of fulfilling its role under the grant of party status by the Connecticut Siting Council on Docket 378.

EXHIBIT CC

7. The costs for copying, mailing, binding, parking, mileage and other out-of-pocket costs related to undertaking the vindication of CROWW's rights and the interests of CROWW by legal counsel to CROWW totalled \$ 2,371.43 on May 29, 2009. The out-of-pocket costs subsequent to May 29, 2009 are still being expended in vindicating CROWW's rights and are still being tabulated.

8. As President of CROWW, my personal schedule has been disrupted by the demands of participating in Docket 378, including, but not limited to attendance at meetings, providing meeting space and hospitality, phone calls, trips and communicating with and meeting with legal counsel to CROWW. This has been a constant and on-going process from mid-March, 2009 to the date of this affidavit.

9. On behalf of CROWW I have attended two sessions of the public hearing opened and presided over by the Connecticut Siting Council on SBA's application under Docket 378 - - once in the Town of Warren, and once at the Siting Council offices in New Britain -- in order to represent the interests of other Concerned Residents of Warren and Washington, and in order to watch, observe and participate in the proceedings in order to inform CROWW and to cooperate with our legal counsel.

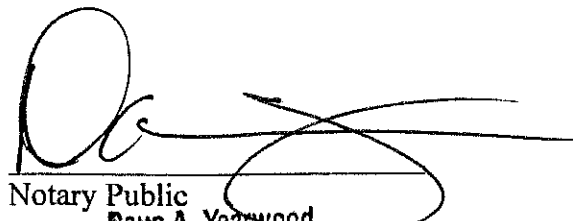
10. All of the foregoing activities in conjunction with CROWW's participation as a duly recognized party to Docket 378 have required substantial expenditures including, but not limited to those described in paragraphs 4 and 7 above, as well as worry and concern over compliance with the requirements of the Council and supplying everything required to support our case and our cause appearing before the Council.

11. CROWW has been materially, specifically and concretely injured as described above by having to defend rights in Docket number 378 before the Connecticut Siting Council.

Sworn to before me  
this 17<sup>th</sup> day of June, 2009



Bruce Coleman  
President, Concerned Residents  
of Warren and Washington



Notary Public  
Dawn A. Yearwood  
Notary Public, State of New York  
Qualified in the County of Nassau  
No. 01YE5026271  
Commission Expires 11/15/ 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, an original and fifteen copies of the foregoing CROWW'S Brief in Further Support of its Motion to Reject SBA's Voluntary Withdrawal and to Dismiss SBA's Application With Prejudice and Costs was served on the Connecticut Siting Council by hand and a copy of same was sent first class mail, postage prepaid to:

Carrie L. Larson, Esq., Pullman & Comley, LLC  
90 State House Square, Hartford, CT 06103-3702

Christopher B. Fisher, Esq., Cuddy & Feder LLP  
445 Hamilton Avenue, 14th Floor, White Plains, NY 10601

Kenneth Baldwin, Esq., Robinson & Cole LLP  
280 Trumbull Street, Hartford, CT 06103-3597

Hon. Mark E. Lyon, First Selectman, Bryan Memorial Town Hall  
P.O. Box 383, Washington Depot, CT 06794

Hon. Jack Travers, First Selectman  
Warren Town Hall, 7 Sackett Hill Road, Warren, CT 06754


Ray and Mary Ellen Furse, 26 Jack Corner Road  
Warren, CT 06777

Hon. F. Philip Prelli, Commissioner, Department of Agriculture  
165 Capitol Avenue, Hartford, CT 06106

David H. Wrinn, Esq., Assistant Attorney General  
55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120

Susan Payne, Chairperson, Conservation Commission  
Town of Washington, Bryan Memorial Town Hall  
P. O. Box 383, Washington Depot, CT 06794

Diane Dupuis, Chair, Cell Tower Committee  
Conservation Commission, Bryan Town Hall  
P. O. Box 383, Washington Depot, CT 06794-0383

  
\_\_\_\_\_  
Gabriel North Seymour  
June 23, 2009