

**Fontaine, Lisa**

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**From:** Mercier, Robert  
**Sent:** Monday, June 01, 2009 10:35 AM  
**To:** Fontaine, Lisa  
**Subject:** FW: Docket 378  
**Attachments:** To the Siting Council.doc

Yes there was another motion from Furse,, please add this to the opening statement.

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**From:** Ray Furse [mailto:rayworks@charter.net]  
**Sent:** Wednesday, May 27, 2009 9:28 AM  
**To:** CSC-DL Siting Council; robert.marconi@po.state.ct.us; Mark Lyon; Susan Payne; Carrie L. Larson; cfisher@CUDDYFEDER.com; ken baldwin; David H. Wrinn; selectman@warren.org; gabriel seymour Seymour; Bachman, Melanie; Shannon, Lance; diane dupuis  
**Subject:** Re: Docket 378

RE: Docket 378: 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

**MOTION TO DISMISS AND FOR COSTS**

To The Council:

We, Ray and Mary Ellen Furse, are owners of property abutting the subject property of the above-named application and parties to the above-named Certification Proceeding. This letter constitutes our MOTION TO DISMISS AND FOR COSTS.

We became involved with opposing the SBA plan for a cell phone tower on the scenic and protected Tanner Farm atop Rabbit Hill when we attended a public "informational meeting" on September 26, 2008. Shortly thereafter (September 28) we wrote:

"We were also taken aback to hear them [SBA, then Optisite] freely admitted that they chose this site with full knowledge that it was on a property with a conservation easement, for which commercial development was prohibited, and that it violates numerous town planning and zoning regulations."

This letter was addressed to our Town Selectmen, who indicated at the meeting that opinions expressed in such letters would be conveyed to the Siting Council. This letter (attached) should be on file with the Siting Council. We availed ourselves of that appropriate channel to express our concerns. We never planned to or desired to become a formal Party to these proceedings; we did so only reluctantly because as taxpayers, we frankly felt ourselves to have been misled by our state government. What is the point of using our taxpayer money to preserve farmland, if all we are preserving are potential cell phone tower sites? As we investigated further, it became obvious that a loophole in the law was being exploited by SBA which, if allowed to succeed, would have devastating consequences on land preservation efforts throughout the state. Our Pre-Filed Testimony explains this in greater detail.

As time (very quickly) passed, and dismayed that other state agencies were not taking up this issue on behalf of the taxpayers, we reluctantly petitioned to become a Party and began to gather materials to present our opposition. This was not a decision undertaken lightly. Lacking the knowledge base to mount an appropriate legal opposition, we have had to "learn the ropes" on our own, spending significant amounts of time and money researching and writing, copying, collating, mailing, calling, and driving (to the town hall. meetings, Staples), taking time away from our home business of solar installation, not to mention suffering a good deal of anxiety and many sleepless nights.

As the proceedings continued, we were able to read and hear more, and especially by the time of the last session held in Warren, a number of facts had become abundantly clear:

1. We will suffer a significant loss of time and out-of-pocket expenses to oppose this tower, and
2. Should our opposition fail, we will suffer significant devaluation of our property, a double loss, and
3. As taxpayers, we have contributed to the Farmland Preservation Program, which will have failed to avert this attempted encroachment on that program's goals, a triple loss, and
4. As taxpayers, we have paid our state government, through the Attorney General's office, to defend our rights (both as property owners and taxpayers), which will have failed to do so, a quadruple loss, and finally:
5. Even if we prevail, and the Siting Council turns down SBAs application, we still will suffer losses described in 1 and 4 above. And because the Siting Council chose to entertain an application for which there is no clear right to use of the property at issue, the mere act of entertaining the application will have caused these losses.

We feel that the Siting Council should have never agreed to entertain this SBA application in the first place, since SBA stated plainly that Site A was on land for which development rights had been sold to the state. This seems to us akin to a bank providing a mortgage for a home sale for which no title search has been conducted. It is an obvious attempt by SBA to exploit a carelessly worded, singular legislative exception to effect a self-serving end run around explicitly clear state land preservation policies; it is abusive to all parties, including the Siting Council, and indeed to all residents and taxpayers of Connecticut. SBA should first have consulted with the DoAG to clarify the development rights situation; judging from the present position taken by the DoAG, SBA surely would have been refused, and we would not have suffered the losses enumerated above.

#### CONCLUSION

For the foregoing reasons, Ray & Maryellen Furse respectfully request that the Siting Council grant our motion to dismiss the SBA Application, and to restore all costs, both of time and of out-of-pocket expenses, connected with defending against this Application that has affected the procedural and substantive due process and property rights of persons other than SBA.

Respectfully submitted,

Ray & Maryellen Furse

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