

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

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 12 BURR ROAD,
BLOOMFIELD, CONNECTICUT

DOCKET NO. 379

Date: August 13, 2009

POST- HEARING BRIEF OF APPLICANT SBA TOWERS II, LLC

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies (“RCSA”), applicant SBA Towers II, LLC (“SBA”) submits this post-hearing brief in support of the above-captioned application. This brief is limited to (1) the public need for this telecommunications facility, (2) the lack of environmental impact of the proposed facility, and (3) consistency with the mandate of the Connecticut Legislature to avoid the unnecessary proliferation of towers in the state. SBA also submits its Proposed Findings of Fact in conjunction with this Post-Hearing Brief.

I. BACKGROUND

SBA, in accordance with the provisions of Connecticut General Statutes (“CGS”) §§ 16-50g through 16-50aa and §§ 16-50j-1 through 16-50j-34 of the RCSA, applied to the Connecticut Siting Council (“Council”) on March 16, 2009 for a Certificate of Environmental Compatibility and Public Need (“Certificate”).

SBA proposes to construct a 130-foot steel monopole telecommunications facility in the northwestern portion of a 29.54 acre parcel of land owned by Maple Hill Farms, Inc. known at 12 Burr Road in Bloomfield, Map 85-1, Block 126-2, Lot 13 of the Bloomfield Tax

Assessor's Records (the "Property"). The Property is currently developed with a distribution facility and associated outbuildings. The 50-foot by 90-foot leased area will include a 50-foot by 90-foot fenced compound area at the Property ("Facility"). This Facility will be designed to accommodate the antenna arrays and associated equipment of Cellco Partnership d/b/a Verizon Wireless ("Verizon"), Omnipoint Communications, Inc., a subsidiary of T-Mobile USA, Inc. d/b/a T-Mobile ("T-Mobile"), Sprint/Nextel Corporation ("Sprint"), and the equipment of one (1) other telecommunications carrier as well as the Town of Bloomfield's emergency services.

The purpose of this Facility is to provide wireless telecommunications services to Bloomfield, including along Route 185 (Simsbury Road) and surrounding areas. Verizon has expressed its need for a facility in this area of Bloomfield. In addition, T-Mobile and Sprint have expressed their need for a facility in this area of Bloomfield and have executed leases with SBA for the proposed Facility. Finally, the Town of Bloomfield has expressed their need for emergency services coverage in this area of Bloomfield. A Facility at the Site will provide wireless coverage service and emergency services coverage to this area of Bloomfield which currently suffers from inadequate coverage.

Thomas Midney, an owner of abutting property at 13 Burr Road, became an intervenor in this proceeding. In addition, Elizabeth Auerbach Schiro became an intervenor in this proceeding, although she never filed any exhibits and did not appear at the public hearing held on July 9, 2009.

II. SBA HAS SATISFIED THE CRITERIA UNDER CSG § 16-50p FOR THE ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Pursuant to CGS §16-50p, the Council must find that there is a significant public need for the facility. In addition, the Council must weigh “the nature of the probable environmental impact of the facility.” The evidence in this record clearly demonstrates a significant public need for the proposed Facility and that this need is clearly outweighed by the minimal environmental impact anticipated.

A. A SIGNIFICANT PUBLIC NEED EXISTS FOR A TELECOMMUNICATIONS FACILITY IN THIS AREA

CGS §16-50p(a) mandates that the Council “shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (1) A public need for the facility and the basis of the need...” CGS §16-50p(a). There can be no dispute that there is a significant public need for this Facility. (SBA Exhibit 1 (“App”) at Exhibit G; Verizon Exhibits 1 and 2).

There are no other telecommunications facilities in this area of Bloomfield and no utility structures or other suitably tall structures on which to locate a telecommunications facility. Three licensed wireless carriers have expressed their need for a facility in this area of Bloomfield. Verizon participated in this proceeding and testified that it currently experiences a coverage gap of 1.27 miles (at cellular frequencies) and 4.83 miles (at PCS frequencies) along Route 185. (Verizon Exhibit 2). In addition, the propagation maps supplied by T-Mobile also demonstrate a significant gap along Route 185 and the surrounding areas. (App at Exhibit G). Finally, SBA testified that it has a signed lease with Sprint for the proposed Facility, further supporting the need for the proposed Facility. (SBA Exhibit 3 (Pre-filed Testimony of Hollis Redding (“Redding Testimony”))); July 9, 2009 Hearing Transcript

("TR"), 3:00 Session at 37). Finally, the Town of Bloomfield has indicated its desire to locate equipment on the proposed Facility. (Redding Testimony). Clearly, the provision of reliable emergency services is important for the community and residents of this area of Bloomfield and is filling a vital public need.

B. THE FACILITY WILL HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating the public need for the Facility, SBA has identified "the nature of the probable environmental impact, including a specification of every significant adverse effect, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife..." as required by CGS §16-50p(a).

The record is replete with expert testimony that 1) the Facility will have no adverse environmental impact; 2) the Facility will have minimal visual impact and 3) the Facility will have no effect on historic resources, as determined by the State Historic Preservation Office ("SHPO");

Indeed, the record in this matter convincingly demonstrates that the Facility will have a minimal environmental impact on the surrounding areas, and will not conflict with any environmental policies of the State of Connecticut. Several Court decisions have affirmed the issuance of Certificates for similar facilities and projects that involved comparable or greater environmental impacts than that proposed in the present Application. Westport v. Connecticut Siting Council, 47 Conn. Sup. 382 (2001), Aff'd, Westport v. Connecticut Siting Council, 260 Conn. 266, 796 A.2d 510 (2002); Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

1. There Will Be Minimal Environmental Impact

SBA conducted a complete and comprehensive environmental analysis of the proposed Facility, which can be found in the Application at Exhibits: J (Visual Resource Evaluation), K (Wetlands report), Exhibit L (NEPA compliance documentation). In addition, SBA provided updated information in SBA Exhibit 5 (Updated SHPO correspondence) and SBA Exhibit 6 (Updated NEPA compliance documentation). The State and Federal Agencies contacted as part of this environmental analysis provided substantive responses and conclusions. The environmental analysis concludes that:

- i. The closest wetland on the Property is located more than 100 feet to the west and north of the proposed Facility. The development of the proposed Facility will have no direct impact on that wetland (SBA Exhibit 1 at Exhibit K; SBA Exhibit 3 (Pre-filed Testimony of Dean Gustafson (“Gustafson Testimony”)));
- ii. No species of concern exist on the Site (App at Exhibit L; SBA Exhibit 6);
- iii. The Site is not located in a designated wilderness or wildlife preserve area (App at Exhibit L; SBA Exhibit 6);
- iv. No listed species or designate critical habitats occur on or near the Site. (App at Exhibit L; SBA Exhibit 6);
- v. According to the State Historic Preservation Office, there will be no adverse impact on cultural resources, including historic areas (SBA Exhibit 5; SBA Exhibit 3 (Pre-filed Testimony of Michael Libertine));
- vi. The Site is not located on lands belonging to any federally recognized Indian tribe in Connecticut (App at Exhibit L; SBA Exhibit 6);
- vii. The Facility will be located outside of the 100 year flood zone. A portion of the utility trenching will be located in the 100 year flood hazard zone but will have no impact on the 100 year flood hazard zone; (Gustafson Testimony); and
- viii. The tower will not be lit (SBA Exhibit 1 at P).

2. *There Will Be Minimal Visual Impact*

As far as the Facility's potential visibility, the Facility is proposed to be located on the Property in order to minimize impact to residential receptors. The topography in the vicinity of the Property and the existing vegetation will significantly limit the visual impact of the Facility. In addition, in order to further minimize potential views of the Facility, SBA has indicated its willingness to re-locate the proposed Facility approximately 40 feet to the northwest, reducing the visual impact from intervenor Thomas Midney's property. See 7:00 TR at 47.

Views of the Facility are expected to be limited to primarily within the immediate vicinity of the Facility. The proposed Facility will be visible from only 37 acres within a two-mile radius of the proposed Facility, which is less than 1% of the two-mile radius study area. A portion of the anticipated visibility occurs in open fields associated with the Auer Farm property to the southwest. The proposed Facility will be visible from approximately nine (9) residences year-round and an additional eight (8) residences will experience limited seasonal views of the Facility.

Of note, the proposed Facility will not be visible from any sensitive visual receptors in the area. No views are anticipated from the Metacomet Trail. (3:00 TR at 52). Partial views may be obtained from the upper floors of the Hueblein Tower at Talcott Mount State Park. (Id.) The SHPO has determined that the proposed Facility will have no adverse visual impact on the Auer Farm property. (SBA Exhibit 5).

In addition, while the record clearly demonstrates that the Tumble Brook Country Club is not a viable alternate site to the proposed Facility, even if it was a viable alternative, the record is clear that the proposed Facility would need to be 25 feet higher at that property

and the anticipated visual impact from a facility at that property would be far greater than the limited visual impact of the Facility at the Property. (SBA Exhibit 8; 3:00 TR at 63-64; 7:00 TR at 49-50).

3. *There Will Be No Adverse Historic Impact*

Based on the updated SHPO correspondence, the SHPO has determined that, with the proposed alternative mitigation, the Facility will have no adverse impact to historic resources in the area, including the Auer Farm property. (SBA Exhibit 5). Therefore, the proposed Facility will have no adverse effect on historic values, pursuant to CGS 16-50p.

As explained during the evidentiary hearing, SBA engaged in informal negotiation with the SHPO concerning potential impacts to the Auer Farm property, which is eligible for listing on the National Historic Register. (3:00 TR at 23). SBA conducted a crane test at the proposed site so the SHPO could observe the proposed Facility from the Auer Farm property. (3:00 TR at 31-32). In order to accommodate the technical needs of wireless carriers and the aesthetic concerns of the SHPO, both SBA and the SHPO agreed to alternative mitigation, which resulted in the no adverse effect letter contained in the record. (SBA Exhibit 5). SBA has agreed to perform this alternative mitigation. As discussed, this mitigation must and will be performed so that the Facility is NEPA compliant. (3:00 TR at 23, 25). Therefore, the alternative mitigation does not need to be included in the Council's decision in this docket.

Connecticut courts have determined that neither NEPA, 42 U.S.C. § 4321 *et seq.* nor CEPA, CGS § 22a-14 *et seq.* apply directly to the Siting Council. City of New Haven v. Connecticut Siting Council, 2002 WL 31126293 *1, *15 (Conn. Super. 2002). Therefore, a facility's compliance with NEPA is separate and apart from the Council's jurisdiction. The Council only has jurisdiction to consider the environmental impacts of a proposed Facility,

under CGS 16-50p, including historic values. In this record, SBA has demonstrated that the proposed Facility will have no impact on historic values, based on the no adverse effect letter received from the SHPO. (SBA Exhibit 5).

As the foregoing demonstrates, any environmental impacts associated with the Facility will be extremely limited. Further, the Facility will eliminate the need for additional facilities in this area of Bloomfield, thereby reducing the cumulative environmental impact on the Town to the greatest extent possible.

IV. A CERTIFICATE SHOULD ISSUE TO SBA FOR THE PROPOSED FACILITY TO AVOID THE UNNECESSARY PROLIFERATION OF TOWERS

The Connecticut legislature has declared that the sharing of towers to avoid the unnecessary proliferation of towers is in the public interest. CGS §16-50aa. In addition, §16-50p(b) directs that, when issuing a certificate for a telecommunications tower, the Council “may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state.” “The sharing of facilities is encouraged, if not required by General Statutes §16-50p(b)(1)(A).” Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

Certification of the proposed Facility will help to avoid the unnecessary proliferation of telecommunication facilities in this portion of the state. There are no other existing facilities or structures in this area from which the carriers could co-locate to provide such coverage. Verizon, T-Mobile and Sprint have all expressed their need for a Facility in this area of Bloomfield. In addition, the Town of Bloomfield has expressed its need to locate emergency services equipment on the proposed Facility. Because all major

telecommunications carriers could utilize the Facility as well as local emergency services, as requested, approval by the Council will uphold the state mandate to avoid the unnecessary proliferation of towers.

V. CONCLUSION

It is clear from the evidence presented in the docket that approval of the Facility in this area of Bloomfield is necessary to provide adequate wireless coverage. SBA has demonstrated that utilization of the Property provides the best location for a Facility in this area of Bloomfield. This Facility is the optimal solution for the lack of coverage in this area, with the least amount of environmental impact. As such, SBA respectfully urges the Council to issue a Certificate for the proposed Facility.

Respectfully Submitted,

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Certification

This is to certify that a copy of the foregoing has been mailed this date to all parties and intervenors of record.

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