

**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 44 GAVITT ROAD,
BARKHAMSTED, CONNECTICUT

DOCKET NO. 387

Date: January 11, 2010

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 September 17, 2009 for a Certificate of Environmental Compatibility and Public Need (“Certificate”).

SBA proposes to construct a 170-foot steel monopole telecommunications facility in the northern portion of a 36 acre parcel of land owned by Karen and Richard Langer, known as 44 Gavitt Road in Barkhamsted, Assessor’s Parcel Map 26, Block 33, Lot 15A of the

Barkhamsted Tax Assessor's Records (the "Property"). The Property is currently undeveloped although portions of the Property, including the majority of the proposed access drive, are cleared. The 70-foot by 70-foot leased area will include a 70-foot by 70-foot fenced compound area at the Property ("Facility"). This Facility will be designed to accommodate the antenna arrays and associated equipment of New Cingular Wireless PCS, LLC ("AT&T"), Cellco Partnership d/b/a Verizon Wireless ("Verizon"), and the equipment of two (2) other telecommunications carrier as well as the Town of Barkhamsted's emergency services.

The purpose of this Facility is to provide wireless telecommunications services to the Town of Barkhamsted, including along Routes 219 and 179 in Barkhamsted and surrounding areas. Both AT&T and Verizon expressed need for a facility in this area of Barkhamsted. In addition, Youghiogheny Communications Northeast, LLC d/b/a Pocket Wireless ("Pocket") has expressed interest in locating on the proposed Facility. Finally, the Town of Barkhamsted Fire Department has expressed its need for emergency services coverage in this area of Barkhamsted. A Facility at the Site will provide wireless coverage service and emergency services coverage to this area of Barkhamsted which currently suffers from inadequate coverage.

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 F; Verizon Exhibits 1-3; AT&T Exhibits 1-2).

There are no other telecommunications facilities in this area of Barkhamsted 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 Barkhamsted. AT&T participated in this proceeding and testified that it currently experiences a 3.8 mile coverage gap along Route 219 and a 3.3 mile coverage gap along Route 179. AT&T testified that, at a height of 167’, it could fill much of these existing coverage gaps. Verizon participated in this proceeding and testified that it currently experiences a coverage gap of 4.52 miles (at cellular frequencies) and 6.4 miles (at PCS frequencies) along Route 219 and a coverage gap of 2.34 miles (at cellular frequencies) and 5.9 miles (at PCS frequencies) along Route 179. (Verizon Exhibit 2). Verizon testified that, at a height of 157’, it could fill much of these existing coverage gaps. (Id.). In addition, Pocket filed a letter of interest in this docket expressing its desire to locate on the proposed Facility. Finally, the Town of Barkhamsted Fire Department has indicated it may have a future need to locate equipment on the proposed Facility. (SBA Exhibit 3). Clearly, the provision of reliable emergency services is important for the community and residents of this area of Barkhamsted and would fill 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 virtually 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: I (Visual Resource Evaluation), J (Wetlands delineation and impact report), Exhibit K (correspondence from

State Historic Preservation Office (“SHPO”) and Department of Environmental Protection (“DEP”). In addition, SBA provided updated information in SBA Exhibit 8 confirming that the proposed Facility will have no impact on the spring salamander. 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 1,000 feet from the proposed Facility and approximately 7 feet from the proposed access drive. The development of the proposed Facility will have no direct impact on that wetland (SBA Exhibit 1 at Exhibit J; SBA Exhibit 7);
- ii. No endangered, threatened or species of concern were found on the Site and development of the Site would have no adverse impact on any of these species, including the spring salamander (SBA Exhibit 7; SBA Exhibit 8);
- iii. The Site is not located in a designated wilderness or wildlife preserve area (App at 15-16);
- iv. No listed species or designate critical habitats occur on or near the Site. (SBA Exhibit 7; SBA Exhibit 8);
- v. According to the State Historic Preservation Office, there will be no adverse impact on cultural resources, including historic areas (App. at Exhibit K; SBA Exhibit 6);
- vi. The Site is not located on lands belonging to any federally recognized Indian tribe in Connecticut (App at 15-16);
- vii. The Facility will not be located in a flood zone. (App. at 15-16); and
- viii. The tower will not be lit (App. at Exhibit N).

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.

Views of the Facility are expected to be limited to several small, isolated pockets within the 2-mile study area. The proposed Facility will be visible from only 13 acres within a two-mile radius of the proposed Facility, which is less than 1% of the two-mile radius study area. The proposed Facility will be visible from approximately four (4) residences year-round and an additional two (2) 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 Tunxis Trail. (App. at Exhibit I).

IV. A CERTIFICATE SHOULD BE ISSUED 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).

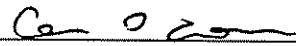
Certification of the proposed Facility will help to avoid the unnecessary proliferation of telecommunication facilities in this portion of the state. There are no other existing facilities or structures in this area from which the carriers could co-locate to provide such coverage. AT&T, Verizon and Pocket have all expressed their need for a Facility in this area of Barkhamsted. In addition, the Town of Barkhamsted Fire Department has expressed that it may have a future 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 Barkhamsted 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 Barkhamsted. 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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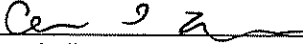
Certification

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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