

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF SBA TOWER II, LLC FOR : DOCKET NO. 396  
A CERTIFICATE OF ENVIRONMENTAL :  
COMPATIBILITY AND PUBLIC NEED FOR :  
THE CONSTRUCTION, MAINTENANCE AND :  
OPERATION OF A TELECOMMUNICATIONS :  
FACILITY AT 49 BRAINERD ROAD, :  
NIANTIC (EAST LYME), CONNECTICUT : MARCH 16, 2010

PRE-FILED TESTIMONY OF  
WILLIAM MULHOLLAND, ZONING OFFICIAL  
OF THE TOWN OF EAST LYME

1. Q. Please state your position at the Town of East Lyme, your employment background and your employment duties.

A. I have been employed by the Town of East Lyme for 24 years as the Zoning Official. I act as staff person to the Zoning Commission. I am a member of the American Planning Association and a member of the Connecticut Association of Zoning Officials. I have a wetlands certification and aquifer protection certification from the Connecticut Department of Environmental Protection. My job is to interpret and enforce the East Lyme Zoning Regulations and advise the Zoning Commission. My duties as such include interpretation and enforcement of the Connecticut Coastal Management Act C.G.S. §22a-90, et. seq. (CCMA).

2. Q. Have you reviewed SBA Tower II, LLC's Application for a wireless communication facility at 49 Brainerd Road and made a determination whether it conforms to East Lyme's Zoning Regulations?

A. I have reviewed the Application and in particular Item number VII B (page 13) with regard to the Application's compliance with Section 31 of the East Lyme Zoning Regulations. Section 31 is entitled "Telecommunications Facilities" and was adopted by the Zoning Commission in 2001. This Section provides specific standards for regulating such facilities. A copy of Section 31 of the Regulations is attached as Exhibit A.

The purpose of the regulations as stated in Section 31.1 are “[t]o provide for the location of wireless telecommunication towers and antennae; reducing adverse effect through careful design, siting and vegetation screening; and to minimize the number of towers by encouraging share use or joint use...”

On pages 13 - 15 of the Application number VII - B & C the Applicant provides a summary of the consistency of the project with the “local municipality’s zoning regulations”. In Item B the applicant states that the proposal is in compliance with Section 31. However, a specific comparison with the requirements of said section and the proposal finds that the applicant has not addressed all of the requirements of the Zoning Regulations.

The applicant provides a compliance table which lists six “Standards & Dimensional Requirements”. The table specifically lists sections: 31.2.1, 31.2.6, 31.2.9, 31.2.7, 31.2.14 and 31.4.3 of the zoning regulations. However Section 31 provides several pages of provisions for addressing telecommunication facilities. First and foremost, the Regulation requires submission for a special permit and site plan as provided for in Section 25 and 24 of the municipality’s Zoning Regulations. The Application as submitted does not address these requirements.

In addition Exhibit B of the Application does not provide a landscape plan as required by Section 31.2.8 nor was a site plan submitted as required by Section 31. 7. Furthermore, Section 31.4.3 provides that all attempts should be made to locate all towers outside residential neighborhoods and this does not appear to have been done by the Applicant.

3. Q. Has the applicant made efforts to protect Coastal Resources as defined in the Connecticut Coastal Management Act?

A. No. The Applicant denies there is any impact to the Coastal Resources. In Exhibit L of the application, Mr. Gustafson states that “[d]ue to the significant distance separating coastal resources from the subject property from the proposed facility, no likely adverse impact to coastal resources will result from the proposed SBA Towers II, LLC, project.”

Mr. Gustafson then goes on to state the the “proposed project will not result in adverse impacts to Coastal Resources as defined in the Connecticut Coastal Management Act (CCMA).” The CCMA lists 8 definitions of each potential adverse impact for each resource area, including “degrading visual quality by significantly altering the natural vistas and viewpoints.” Mr. Gustafson’s opinion is that although the

proposed 170 foot tower will be visible from areas along the Pattagansett River and from open water on the Long Island Sound, "it will not significantly obstruct views of coastal resources from scenic overlooks or publically accessible areas." This is simply not true.

Those areas from which the tower would be especially visible include public trust waters within the 2 mile study area as shown on the Applicant's Viewshed Map (Attachment B to Exhibit I). These include the lower Pattagansett River, the waters surrounding Watts and Griswold Island, Niantic Bay and the adjacent waters of the Long Island Sound.

The visibility of the proposed tower from numerous public areas represents a significant adverse impact in comparison with the existing uninterrupted terrain, inconsistent with CCMA Policy.

The statements above are true and complete to the best of my knowledge.

3/16/2010  
Date

Wm Mulholland  
William Mulholland

Subscribed and sworn to before me on this 16 day of March, 2010.

Ray M. Ellis  
Notary Public  
Commissioner of Superior Court

## CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of March, 2010, a copy of the foregoing was sent via electronic mail and/or regular mail to:

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

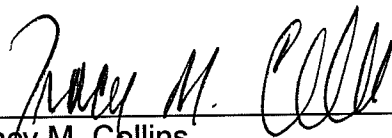
Kenneth C. Baldwin, Esq.  
Robinson & Cole, LLP  
280 Trumbull Street  
Hartford, CT 06103-3597

Russell L. Brown  
41 Brainerd Road  
Niantic, CT 06357

Daniel M. Laub, Esq.  
Christopher B. Fisher, Esq.  
Cuddy & Feder LLP  
445 Hamilton Avenue, 14<sup>th</sup> Floor  
White Plains, NY 10601

Keith R. Ainsworth, Esq.  
Evans, Feldman & Ainsworth LLC  
261 Bradley Street  
P.O. Box 1694  
New Haven, CT 06507-1594

Joseph Raia  
97 West Main Street, Unit 9  
Niantic, CT 06357

  
\_\_\_\_\_  
Tracy M. Collins

## EXHIBIT A

### East Lyme Zoning Regulations

## SECTION 31

### TELECOMMUNICATIONS FACILITIES

- 31.1 GENERAL PURPOSE The purpose of this regulation is to provide for the location of wireless telecommunication towers and antennae; reducing adverse effect through careful design, siting and vegetation screening; and to minimize the number of towers by encouraging shared use or joint use where practical. These Regulations are consistent with the Federal Communications Act of 1996 in that they do not discriminate among providers of functionally equivalent services, prohibit or act to prohibit the provision of personal wireless services or regulate the placement and construction of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with Federal Communications Commission regulations regarding such emissions.

Except for the location and height of tower/antennae, this Regulation does not regulate any aspect of licensed (under Federal Communications Commission 47 CFR 97) amateur radio and small business communications.

Should jurisdiction over the siting of telecommunication towers or facilities fall outside of the Town of East Lyme, a Public Hearing shall be held in accordance with state statutes and East Lyme Zoning Regulations. The record of the Public Hearing and the findings of the East Lyme Zoning Commission shall be forwarded to the Connecticut Siting Council or other appropriate agency(ies) of jurisdiction.

Telecommunication towers are permitted in all zones subject to the approval of a Special Permit and site plan approval. A Special Permit shall be granted if the requirements of Section 25, Section 24 where applicable, and the following are satisfied.

Telecommunication antennae and facilities are permitted in all Zoning Districts subject to site plan approval and the following conditions:

31.2 GENERAL STANDARDS

- 31.2.1 To discourage the proliferation of telecommunication towers, shared use of tower structures is both permitted and encouraged. Placement of more than one tower on a lot may be permitted if all setbacks, design, and landscape requirements are met for each tower. Applications for new towers shall be accompanied by documentation that no existing or planned tower or other structure can accommodate the applicant's tower or transmitter. The applicant shall include documentation regarding the availability of any existing or approved telecommunication towers or other non-residential structures within the transmission area that meets the needs of the applicant.

It is a condition of any Special Permit issued under this Regulation that the permit holder shall provide an affidavit assuring good faith in allowing other providers to share space or co-locate on the site, provided that such shared use does not impair the technical level or quality of service. In the event that a dispute arises as to whether the permit holder has exercised good faith in accommodating other users, the Town of East Lyme may require a third party technical study at the expense of either or both the permit holder and the applicant.

- 31.2.2 Applications involving the co-location of antennae on existing telecommunication towers are exempt from the need for a Special Permit and shall only be subject to site plan approval from the Zoning Commission.
- 31.2.4 The lot on which a new telecommunication tower is constructed shall meet the minimum lot area requirements for the underlying zone.
- 31.2.5 The tower and/or antennae shall be erected to the minimum height necessary to satisfy the technical requirements of the telecommunication facility. Documentation of the minimum height needed, prepared by a professional telecommunication systems engineer, shall accompany the application for Special Permit. Such documentation may include propagation modeling and/or test results.
- 31.2.6 All new structures shall meet the setback requirements of the respective zone or be set back from all property lines a distance equal to the height of the structure, whichever is greater. Guy anchors shall meet the setback requirements of the respective zone. A fall zone clear of utilities and structures other than the applicants accessory equipment, structures and sheds within the proposed site, shall be provided.
- 31.2.7 Towers and antennae shall be a subdued, non-reflective color which shall blend in with all surroundings.
- 31.2.8 Landscaped buffers shall be required around the perimeter of all structures, including guy anchors. Such landscape buffers shall include evergreen trees of sufficient height and planted at sufficient distance to provide visual buffering as determined during the site plan approval process.
- 31.2.9 Signal lights or illumination shall not be permitted unless required by the Federal Communication Commission or the Federal Aviation Commission.
- 31.2.10 No advertising or signage, other than warning signs, is permitted on any tower.
- 31.2.11 All unused telecommunication towers shall be removed within 12 months after cessation of use. As a condition of site plan approval, the Zoning commission shall require a bond to insure removal of abandoned towers.

- 31.2.12 No new or existing telecommunication service shall interfere with public safety, telecommunications or with any existing television or radio signal. All applications for facilities under this Regulation shall be accompanied by a study which provides technical evaluation of existing and proposed transmissions including Electromagnetic Field transmissions and indicates all potential interference problems.
- 31.2.13 Satellite dishes under 3 feet in diameter are exempt from this Regulation when ground mounted.
- 31.2.14 The entry road and surrounding area of the facility and/or site must allow sufficient room for approach and deployment of fire rescue apparatus. In addition, the following minimum requirements shall be provided for;
- a. Road service able to accommodate a vehicle of at least 60,000 pounds gross vehicle weight.
  - b. Grade not to exceed 8%.
  - c. A minimum vertical clearance of 12 feet.

31.3 SITING PREFERENCES

Siting preferences are listed in order of preference:

- a. On existing approved towers.
- b. On existing structures such as non-residential building/facades, utility poles, steeples, clock or bell towers, silos and water towers.
- c. On new towers located on property occupied by one or more existing towers. The applicant must demonstrate that existing towers could not be replaced and/ or updated to avoid an increase in the number of towers on any one site unless the Zoning Commission determines that additional towers could be more appropriate to the site.
- d. On new towers located in Commercial Zones.
- e. On non-residential structures in Residential Zones.
- f. On residential structures in Residential Zones.

31.4 LOCATION STANDARDS FOR WIRELESS TELECOMMUNICATION

31.4.1 Wireless telecommunication facilities where a new tower is located on property occupied by one or more towers erected prior to the effective date of these Telecommunication Zoning Amendments:

- a. All attempts shall be made to co-locate the antennae on existing towers.
- b. Tower height shall be site specific and of the minimum height necessary to meet technical transmission requirements.
- c. New equipment structures and buildings shall meet all applicable requirements of the East Lyme Zoning Regulations.

- d. The Zoning Commission may require independent engineering or technical review of submitted materials at the applicant's expense.

31.4.2 Wireless telecommunication facilities in a Commercial Zone where the existing topography, vegetation, building or other structures provide appropriate buffering:

- a. All attempts shall be made to co-locate the antennae on existing towers, buildings and structures.
- b. Equipment structures and sheds shall meet all applicable requirements of the East Lyme Zoning Regulations.
- c. All attempts shall be made to mitigate adverse impacts on surrounding residential areas.

31.4.3 Wireless telecommunication facilities in a residential zone

- a. All attempts shall be made to co-locate the antennae on existing towers, buildings or structures outside of residential areas. The application shall be accompanied by documentation prepared by a radio engineer that no other existing or planned tower or structure can accommodate the applicant's antennae. All structures existing within ¼ mile radius of the proposed site, documentation shall be provided that the owners of these locations have been contacted and have denied permission to install the antennae on these structures for other than economic reasons.
- b. Equipment structures and sheds shall meet all applicable requirements of the East Lyme Zoning Regulations.

31.5 PLACEMENT STANDARDS FOR WIRELESS TELECOMMUNICATIONS

31.5.1 Wireless communications may be located as specified below provided the following standards are met:

- a. No change is made to the height of a building.
- b. Panel antennae shall be of the smallest dimensions necessary and documentation shall be provided confirming this. Dish antennae shall not exceed 36 inches in diameter.
- c. Equipment structures and sheds shall meet all applicable requirements of the East Lyme Zoning Regulations.
- d. Facilities shall be of a material or color matching the exterior of the building and shall blend into the existing architecture to the extent possible.
- e. Façade mounted antennae shall not protrude above the building structure and shall not project more than 3 feet beyond the wall or façade.
- f. Roof mounted antennae shall not exceed the highest point of the rooftop by more than 10 feet.
- g. Roof mounted antennae shall be set back from the front or side roof edge a minimum of 10 feet or 10 percent of the roof width, whichever is greater.



31.5.2 Wireless Communication facilities where the antennae is mounted on existing utility poles, steeples, clock or bell towers, chimneys, silos, windmills and water towers, provided the following standards are met:

- a. No change is made to the height of the building or structure.
- b. Panel antennae shall be of the smallest dimensions necessary and documentation shall be provided confirming this. Dish antennae shall not exceed 36 inches in diameter. Whip antennae shall not exceed 25 feet in length and shall not exceed the height of the existing structure unless the Zoning Commission determines that it would be appropriate due to the nature of the structure and its location.
- c. Equipment structures and sheds shall meet all applicable requirements of the East Lyme Zoning Regulations.
- d. Facilities shall be of a material or color matching the exterior of the building and shall blend into existing architecture to the extent possible.

31.5.3 Wireless telecommunication facilities where the antennae is mounted on an existing residential structure:

- a. Every effort shall be made to minimize the visual impact of telecommunication equipment on residential structures including the use of Radio Frequency screening materials.
- b. Shall meet the requirements of Section 31.5.2 of these Regulations.

### 31.6 ACCESSORY FACILITIES, BUILDINGS AND STRUCTURES

All accessory facilities, buildings and structures associated with wireless telecommunication facilities shall comply with the following:

31.6.1 Within Residential Zones, the accessory building shall be as small as possible and shall have a roofline characteristic of other buildings in the vicinity. Only one building per facility is allowed in Residential Zones.

31.6.2 Each building shall comply with setback requirements, as well as other applicable zoning requirements for accessory buildings for the Zoning district in which it is located.

31.6.3 If located on the roof of a building, it shall be designed to blend with the color and design of the building to the closest extent possible.

31.6.4 All ground level buildings, boxes or structures shall be surrounded by a six-foot fence of materials appropriate to the zone. All landscaping shall be maintained.

### 31.7 SITE PLAN REQUIREMENTS

A full site plan review shall be required of all applications for a telecommunication facility pursuant to Section 24 of the East Lyme Zoning Regulations. In addition, a State of Connecticut licensed engineer must submit all plans. The following information shall be submitted for each application where applicable. The Zoning Commission may require independent engineering or technical review of submitted materials at the applicant's expense.

- a. A map indicating the extent of the provider's existing and planned coverage within the Town of East Lyme and a map indicating the search radius for the proposed wireless telecommunications site, identifying the location of potential site locations on existing structures within one mile of the proposed site.
- b. A report from the applicant indicating why the proposed site location is necessary to satisfy its function in the applicant's proposed wireless telecommunications system and why at least one alternate site within one mile is not suitable.
- c. A scaled plan and elevation drawing showing where and how the proposed antennae and mounting supports will be affixed to a particular building or structure.
- d. A detailed list of all antennae and mounting supports indicating size and color.
- e. Elevations of all proposed visual screening and fencing and details of materials including color.
- f. Elevations of all proposed equipment buildings, enclosures and structures.
- g. Design plans and tower base elevation showing height and fall circles of all towers.
- h. A description of the tower capacity, including the number and type of antennae it can accommodate as well as the proposed location of all mounting positions for co-located antennae and minimum separating distances.
- i. A signed statement from the licensed radio engineer indicating that the proposed wireless telecommunications facility will comply with FCC radio frequency emission standards and will be operated in accordance with the owner's Federal Communications Commission license and Federal Aviation Administration requirements.
- j. All proposed landscaping with a list of all materials.
- k. Proposed access to the site.
- l. Proximity of the site to residential structures.
- m. Nature of uses on adjacent and nearby properties.
- n. Surrounding topography with 1,000 feet at contour intervals not exceeding 10 feet.
- o. Design of the tower with particular references to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- p. A visual analysis showing all areas from which the tower would be visible and, if requested by the Zoning Commission, a simulation of the proposed site in order to help the Zoning Commission determine the visual impacts associated with the proposal. This visual analysis should include a simulation (using balloon or computer generated landscape view from

each octant of the compass) of the tower's appearance during the winter months from the furthest extent of the tower's visibility from the perimeter of the Town of East Lyme.

- q. The Zoning Commission reserves the right to make its own assessment of visual impact of any tower or structure and further identify any additional sight lines.

### 31.8 APPLICATION REVIEW STANDARDS

In addition to other appropriate review standards found in these regulations, the Zoning Commission, in reviewing applications for wireless telecommunication facilities, shall consider:

- a. Detailed analysis of alternative sites, structures, antennae and access as provided by the applicant. Particular attention will be placed upon the siting preferences found in Section 31.3 of the Regulations.
- b. Detailed propagation and antennae separation analysis relative to tower height.
- c. Tower sharing or co-location to facilitate the telecommunication needs of municipalities, emergency services, and other entities in order to reduce the need to construct additional towers. The Zoning Commission reserves the right to require the applicant to utilize the provisions of Section 16-50aa of the State of Connecticut General Statutes to achieve tower sharing.
- d. Assessment of tower structure type.
- e. Design characteristics/architectural treatments that mitigate, reduce or eliminate visual impacts on surrounding areas.
- f. If located on a property of important historic and/or architectural character consideration shall be made of the preservation of such character.
- g. Future use or re-use of the site, with provisions for facility removal and site restoration if the towers or antennae are no longer used.