

STATE OF CONNECTICUT
SITING COUNCIL

IN RE: SBA TOWERS II, LLC : DOCKET #396
APPLICATION FOR CERTIFICATE FOR :
TELECOMMUNICATIONS FACILITY AT 49 :
BRAINERD ROAD IN THE TOWN OF EAST LYME : MARCH 18, 2010

**FRIENDS OF THE PATTAGANSETT TRUST'S REPLY TO SBA'S OBJECTIONS TO
INTERVENOR'S REQUEST FOR ADMINISTRATIVE NOTICE**

The FOPT hereby replies to SBA's objection to its administrative notice requests. SBA has objected to FOPT's requests on the grounds that they are out-of-date because they date from 2003; they are not peer reviewed, they relate the visual impacts of similar industrial structures to those of cell towers; the issue of public need has been pre-empted by the federal government, and that the issue of economic impacts are not relevant before the Siting Council¹.

Each of these objections are taken up in turn, but preliminarily they should be considered in the context of the law which governs administrative notice and those statutes which govern the proceedings of the Siting Council.

A. Studies of the Effect on Residential Real Estate Values of Visual Impact of Cell Towers

The Council takes great pains to quote aloud before every proceeding federal law with the suggestion that the Council is severely limited in its discretion with regard to regulating towers. It is notable that the Council's charge as mandated by the legislative act which authorizes its existence makes the following legislative finding:

¹ SBA also complains that the studies on visual impacts by cell towers on real estate values based upon information from outside the United States is simply xenophobic and insultingly dehumanizing to the people of New Zealand who contributed to the scientific study and who, like most human beings, find cell towers visually unappealing neighbors.

Sec. 16-50g. Legislative finding and purpose. The legislature finds that ...telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, *scenic*, historic and *recreational values of the state*. The purposes of this chapter are: *To provide for the balancing of the need for adequate and reliable public utility services ... with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values;*

This finding clearly indicates that telecommunication towers do harm scenic values and that balancing the need for towers with potential damage to scenic values *is* a primary charge of the Council, the superior wisdom of Congress notwithstanding.

Since one cannot balance the need without understanding the basis for the need for any particular tower, the Council cannot possibly execute its charge of balancing the impact a proposed facility will have without knowledge of both the particular need, not just a generalized statement of need articulated by Congress, and the particular impact of a proposed facility.

It logically follows that since the impact of telecommunication towers on scenic values is the visual presentation of the tower, then studies describing the perception and impact of towers on home values due to visual presentation would be entirely relevant. The impact on residential real estate values is an objective quantitative indicator of the visual impacts which this council must consider. It is also rational to conclude that if a tower will impact property values, then it will affect scenic values significantly.

SBA's objection to such materials (FOPT's administrative notice items 1 and 2) is hypocritically disingenuous as SBA has submitted a "study" commissioned by Optasite (a party with a distinct financial interest in the outcome) in response to FOPT's Interrogatories. That study suffers from the same alleged deficiencies and more, yet SBA

claims that such items are not appropriate when offered by an intervenor. If SBA truly wants the Council to be able to conduct a fair and thorough hearing on the balancing of the need versus scenic impact, then a full airing of all relevant information should be welcomed, not thwarted on specious grounds.

If SBA's objection to FOPT's administrative notice items 1 and 2 are granted, then FOPT respectfully requests the council strike from the record, SBA's own non-peer reviewed, privately commissioned, unpublished, study from outside Connecticut which lacks citations.

This concept of full disclosure finds support in the enabling legislation for the Council:

Sec. 16-50o. Record of hearing. Rights of parties. Administrative notice re electromagnetic fields. (a)
...Every party or group of parties as provided in section 16-50n shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Under the Administrative Procedures Act, the Council is authorized to receive into the record any documentary evidence which is probative on issues before it. **Sec. 4-178.**

It is also notable that the Council itself routinely administratively notices several documents which are not recent, subject to peer review or the subject of common knowledge. For example, Administrative Notice item #5 is a document from the Electronics Industry Assn from 1996; Admin Notice Item #9 the Connecticut Walk Book from the Forest and Park Assoc.(2005); Item #18 Mail A Map (2002). There is also a dubious relevance to an Administrative Notice item 21, a presidential proclamation regarding safeguarding infrastructure from destruction.

By contrast, the FOPT's requested administrative notice is probative and relevant.

B. THE CEQ LETTER

With respect to Administrative Request #3, the CEQ letter from Docket 393, the

evidence is entirely appropriate as it is recently generated by a State Agency, commenting on a telecommunications facility in the Coastal Area of the immediately adjacent town as it impacts the scenic views of Long Island Sound. The comments, while not repeated in this Docket, reference "other towers proposed along the shoreline" in addition to Dockets 391-393 and are of general applicability to towers proposed which are visible from Long Island Sound in Connecticut. The memorandum also references the protection of avian species from bird strikes by towers generally. Clearly, such a memorandum must be of interest to the Council in evaluating the balance between public need and environmental impact.

C. Studies from Other Dockets relating to Visual Impacts to Long Island Sound

SBA objects to administrative notice of submissions its own visual impact expert has submitted to this Council in other dockets on the grounds that the dockets are still open. SBA cites no law which support its objection. Moreover, SBA gives no rational basis for objecting to the material other than that it disagrees with what the evidence would demonstrate regarding the cumulative impacts to the scenic values of Long Island Sound, something which the Council must consider under section 16-50p(3)(B):

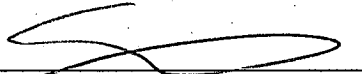
The council **shall not grant a certificate**, either as proposed or as modified by the council, **unless it shall find and determine..The nature of the probable environmental impact of the facility alone and cumulatively** with other existing facilities, including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, **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.

In fact, RCSA sec. 16-50j-28(d) specifically allows that: "Any exhibit admitted as evidence by the council in a prior hearing of a contested case may be offered as evidence in a subsequent contested case and admitted as an exhibit therein". The FOPT asks the Council to admit those same documents as evidence in this Docket so that the cumulative impact of the series of coastal towers may be considered by the Council.

Wherefore, the objection to the FOPT's Administrative Notice requests should be denied and the real estate impacts and the cumulative visual impacts should be addressed in these proceedings.

Respectfully Submitted,
Friends of the Pattagansett Trust

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 18th day of March, 2010 and addressed to all parties and intervenors on the attached service list and as noted below.

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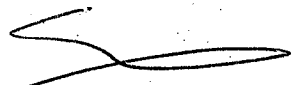
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