STATE OF CONNECTICUT
SITING COUNCIL

SBA Towers II/New Cingular Wireless PCS, LLC Application for a Certificate of Environmental Compatibility and Public Need For a Telecommunications Facility Located at Wewaka Brook Road, Bridgewater, Connecticut.	:	DOCKET #412
	:	DECEMBER 15 , 2010

APPLICATION TO INTERVENE UNDER CEPA, §4-177a AND §16-50n

The Town of Bridgewater hereby moves and petitions the Connecticut Siting Council to become a party intervenor in the above application by SBA Towers II, LLC and New Cingular Wireless PCS, LLC, ("SBA"), for a certificate of environmental compatibility and public need for a telecommunications facility at Wewaka Brook Road, Bridgewater, Connecticut. The purpose of the intervention is to participate in these proceedings to prevent unreasonable impact to the natural resources of the State including scenic vistas and wetlands so that additional evidence of an alternative location and configurations of lesser visual impact may be entered into the record.

Pursuant to Conn.Gen.Stat. §22a-19 ("CEPA"), §16-50n and §4-177a, the Town of Bridgewater ("Bridgewater"), is an entity which has a direct interest in the proceedings which will be specifically and substantially affected as it is a duly constituted municipal corporation charged with conservation of natural resources in the Town of Bridgewater where the proposed facility is to be located. Bridgewater, by and through it Board of Selectmen, seeks to intervene in the above proceedings for the purpose of submitting testimony, briefs and other evidence relevant to the consideration of the application under consideration; specifically the mitigation of environmental impact to scenic vistas and wetlands by the use of alternate locations and tower configurations.

Bridgewater's participation will be in the interests of justice and is proper under

CEPA in that the evidence and testimony to be given will tend to show that the proposed activity for which Applicant seeks a certificate is likely to unreasonably harm the public trust in the air, water or other natural resources of the State of Connecticut in that, if granted, the proposed facility will, inter alia, unreasonably impair the visual quality of the environment in a rural residential area; and is reasonably likely to cause viewshed and wetlands deterioration that is unreasonable because a feasible alternative of lesser impact exists.

In support of this application, the movant states the following:

1. The Town of Bridgewater is a duly constituted Connecticut municipal corporation which is charged with, inter alia, the protection and conservation of natural resources in the Town of Bridgewater.
2. The proposed tower will have a negative impact on the scenic vistas and wetlands in Bridgewater and it fails to meet the requirements of zoning in the Town in a way which fundamentally harms the general welfare of the community.
3. There exist feasible alternative technologies, including but not limited to, alternative antenna technologies, mounting configurations and multi-site solutions which can provide adequate coverage for the applicant with less scenic vista impact.
4. Bridgewater intends to submit evidence to the record which has not been previously considered in the form of expert testimony which will substantiate the feasibility of alternatives to the proposed facility which will assist the Council in complying with its mandate to minimize impact as required by C.G.S §16-50g and 16-50p(3)(G)(b)(1).
5. The height requested is excessive and unnecessary to meet the public need and will be visible from sensitive historic and recreational receptors including

rural residential neighborhoods defined by and prized for their lack of visible industrial facilities.

6. The design does not incorporate the best available technology for reducing the visual impacts of the facility in that it fails to consider alternative antenna and mounting technologies and multi-site solutions.
7. The Board of Selectmen on December , 2010 have voted to intervene in these proceedings.

DISCUSSION OF LAW

The Council must be mindful of the statutory requirements which apply to interventions under CEPA. The bar is quite low for filing an intervention and thus §22a-19 applications should not be lightly rejected. Finley v. Town of Orange, 289 Conn. 12 (2008) (an application need only allege a colorable claim to survive a motion to dismiss) citing Windels v. Environmental Protection Commission, 284 Conn. 268 (2007).

CEPA clearly and in the broadest terms indicates that any legal entity may intervene. This includes municipal officials, Avalon Bay Communities v. Zoning Commission, 87 Conn. App. 537, 867 A.2d 37 (2005).

An allegation of facts that the proposed activity at issue in the proceeding is likely to unreasonably impair the public trust in natural resources of the State is sufficient. See, Cannata v. Dept. Of Environmental Protection, et al, 239 Conn. 124 (1996)(alleging harm to floodplain forest resources).

The Connecticut Appellate Court has noted that statutes "such as the EPA are remedial in nature and should be liberally construed to accomplish their purpose." Avalon Bay Communities, Inc. v. Zoning Commission of the Town of Stratford, 87 Conn.App.537 (2005); Keeney v. Fairfield Resources, Inc., 41 Conn.App. 120, 132-33, 674 A.2d1349 (1996). In Red Hill Coalition, Inc. V. Town Planning & Zoning Commission, 212 Conn. 7272, 734, 563 A.2d 1347 (1989) ("section 22a-19[a]makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded"); Polymer Resources, Ltd. v. Keeney, 32

Conn. App. 340, 348-49, 629 A.2d 447 (1993) ("*[Section] 22a-19[a] compels a trial court to permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is therefore not discretionary.*") See Also, Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984).

In Mystic Marinelife Aquarium v. Gill, 175 Conn. 483, 490, 400 A.2d 726 (1978), the Supreme Court concluded that one who filed a verified pleading under § 22a-19 became a party to an administrative proceeding upon doing so and had "statutory standing to appeal for the limited purpose of raising environmental issues." "It is clear that one basic purpose of the act is to give persons standing to bring actions to protect the environment." Belford v. New Haven, 170 Conn. 46, 53-54, 364 A.2d 194 (1975).

The Town of Bridgewater is entitled to participate as a §22a-19 intervenor which allows for a right of appeal under that statute. Committee to Save Guilford Shoreline, Inc. v. Guilford Planning & Zoning Commission, 48 Conn.Sup. 594, 853 A.2d 654(2004) once any entity has filed for intervention in an administrative proceeding, it has established the right to appeal from that decision independent of any other party. Mystic Marinelife Aquarium v. Gill, 175 Conn. 483 (1978) stated quite clearly that "one who files a §22a-19 application becomes a party with statutory standing to appeal." Branhaven Plaza, LLC v Inland Wetlands Commission of the Town of Branford, 251 Conn. 269, 276, n.9 (1999) held that a party who intervenes in a municipal land use proceeding pursuant to §22a-19 has standing to appeal the administrative agency's decision to the Superior Court. The Court cited as support for this proposition, Red Hill Coalition, Inc. v. Conservation Commission, 212 Conn. 710, 715, 563 A.2d 1339 (1989)("because the [appellants] filed a notice of intervention at the commission hearing in accordance with §22a-19(a), it doubtless had statutory standing to appeal from the commission's decision for that limited purpose.")

In Keiser v. Zoning Commission, 62 Conn. App. 600, 603-604 (2001) our Appellate Court stated that the Branhaven Plaza case is directly on point and held "the plaintiff in the present case properly filed a notice of intervention at the zoning commission hearing in accordance with §22a-19(a). Accordingly, we conclude that he has standing to appeal environmental issues related to the zoning commission's decision."

The rights conveyed by CEPA are so important and fundamental to matters of public trust that the denial of a 22a-19 intervention itself is appealable. See, CT Post Limited Partnership v. New Haven City Planning Commission, 2000 WL 1161131 Conn. Super. (Hodgson, J. 2000)(§22a-19 intervenors may file an original appeal for improper denial of intervenor status).

Bridgewater's application for intervenor status should be granted so that it may participate by presenting evidence for the record and meaningfully assist the Siting Council in reaching a decision which minimizes impact to natural resources of the state while providing adequate coverage for wireless telecommunications.

VERIFICATION

The undersigned, Ronald E. Graiff, P.E. duly authorized, on behalf of the Town of Bridgewater, duly sworn, hereby verifies that the above application is true and accurate to the best of his knowledge and belief.

Ronald E. Graiff, P.E.

Sworn and subscribed before me this 14th day of December, 2011

Notary Public; My Commission Expires 06/30/2012

Respectfully Submitted,

The Town of Bridgewater,

By

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The intervenor requests copies of all filings made in the course of this docket to date and from this date forward and requests service by mail.

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 15th day of December, 2010 and addressed to:

Ms. Linda Roberts, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, 15 copies, plus 1 electronic) (US Mail/electronic).

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