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October 14, 2011

VIA FEDERAL EXPRESS

Ms. Linda Roberts, Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: Docket No. 421 – Application by T-Mobile Northeast LLC for a Certificate of Environmental Compatibility and Public Need for a Telecommunications Facility at 158 Edison Road, Trumbull, Connecticut

Dear Ms. Roberts:

I write on behalf of the Applicant, T-Mobile Northeast LLC ("T-Mobile"), regarding the above-captioned matter. T-Mobile objects to the Application to Intervene, filed by Citizens Against Trumbull Tower, to the extent intervention is sought under General Statutes § 22a-19. I have enclosed T-Mobile's objection and fifteen copies. T-Mobile respectfully requests oral argument on the matter.

Very truly yours,

Jesse A. Langer

JAL:lcc

Enclosures
cc: Service List

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STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

RE: APPLICATION BY T-MOBILE NORTHEAST LLC FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR A TELECOMMUNICATIONS FACILITY AT 158 EDISON ROAD IN THE TOWN OF TRUMBULL, CONNECTICUT

DOCKET NO. 421

Date: October 14, 2011

T-MOBILE'S OBJECTION TO APPLICATION TO INTERVENE

The Applicant, T-Mobile Northeast LLC ("T-Mobile"), respectfully submits this Objection to the Application to Intervene, by a voluntary association called Citizens Against Trumbull Tower ("CATT"). T-Mobile objects to the Application to Intervene only to the extent CATT seeks intervention under General Statutes § 22a-19.[1] CATT's Application to Intervene is insufficient because it does not articulate cognizable environmental claims under § 22a-19 and, even if the Application to Intervene articulated potentially cognizable claims, it fails to set forth specific facts in support of those claims. Because CATT's Application to Intervene does not satisfy the statutory requirement for a verified pleading under § 22a-19, the Connecticut Siting Council ("Council") should not afford CATT intervenor status under § 22a-19.[2]

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[1] T-Mobile does not object to CATT's Application to Intervene under General Statutes § 16-50n.

[2] General Statutes § 22a-19 (a) provides: "In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." (Emphasis added.)

I. BACKGROUND

On or about August 1, 2011, T-Mobile filed its Application for a Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a telecommunications facility at 158 Edison Road, Trumbull, Connecticut ("Facility"). The Application for Certificate is voluminous and establishes that the proposed Facility would not have an unreasonable adverse impact on the environment. On or about October 5, 2011, CATT filed its Application to Intervene under § 22a-19, § 16-50n and § 4-177a.

II. LEGAL STANDARD FOR INTERVENTION UNDER § 22a-19

Section 22a-19 (a) provides in relevant part: "In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law . . . any . . . association . . . or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." The standing conferred by § 22a-19 is limited strictly "to challenging only environmental issues covered by the statute and only those environmental concerns that are within the jurisdiction of the particular administrative agency conducting the proceeding into which the party seeks to intervene." (Internal quotation marks omitted.) *Pond View, LLC v. Planning & Zoning Commission*, 288 Conn. 143, 157, 953 A.2d 1 (2008).

A would-be intervenor must submit a "verified pleading" containing "specific facts." *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 164, 788 A.2d 1158 (2002). The specific factual allegations must set forth the environmental issues that the intervenor intends to raise. *Id.*, 164-65. "A [verified pleading] does not sufficiently allege standing [however] by merely reciting the provisions of § [22a-19], but must set forth facts to support an inference that unreasonable pollution, impairment or destruction of a natural resource will probably result from the challenged activities unless remedial measures are taken." (Internal quotation marks omitted.) *Finley v. Inland Wetlands Commission*, 289 Conn. 12, 35, 959 A.2d 569 (2008).

The requirement to allege a sufficient factual predicate comports with the pleading standards of the Practice Book, which requires a pleading to contain the material facts upon which the pleader relies. *Nizzardo v. State Traffic Commission*, *supra*, 259 Conn. 163; Practice Book § 10-1. Ultimately, the would-be intervenor must articulate a colorable claim of unreasonable pollution, impairment or destruction of the environment. *Finley v. Inland Wetlands Commission*, *supra*, 289 Conn. 35.

III. ARGUMENT

CATT's Application to Intervene does not allege any cognizable claims under General Statutes § 22a-19. Additionally, it does not comport with the pleading requirements established by § 22a-19 and Practice Book § 10-1.[3] It contains six

[3] Practice Book § 10-1 provides in relevant part: "[e]ach pleading shall contain a plain and concise statement of the material facts on which the pleader relies, but not the evidence by which they are to be proved, such statement to be divided into paragraphs numbered consecutively, each containing as nearly as may be a separate allegation." (Emphasis added.)

allegations in total, some of which do not relate to any environmental issue within the purview of § 22a-19. Each allegation is addressed in turn.

1. CATT is a duly constituted voluntary association whose purpose includes the protection and conservation of natural resources in the Town of Trumbull.

This allegation avers only that CATT is concerned with protecting the natural resources of the Town of Trumbull. There are no facts indicating what natural resources CATT seeks to protect, nor any allegations articulating what natural resources that would be impacted by the proposed Facility.[4]

2. The proposed tower will have a negative impact on the scenic vistas in Trumbull and it fails to meet the requirements of zoning in the Town in a way which fundamentally harms the general welfare of the community.

This allegation does not support intervention under § 22a-19 because (1) the reference to "scenic vistas" does not provide CATT with a valid based upon which to intervene in this specific docket and (2) the vague reference to zoning does not provide CATT with a valid basis upon which to intervene; and (3) CATT offers no specific facts to support its assertions about "scenic vistas" or "zoning."

There is no reference to any "natural resource," protected by the Connecticut Environmental Protection Act ("CEPA"), other than "scenic vistas." There is also no reference to any specific vista purportedly impacted by the proposed Facility. Moreover, the phrase "vistas" is found only within the context of the Coastal Area Management Act, General Statutes § 22a-91 (15) (F). The proposed location for the Facility is not located in a coastal area. See Application for Certificate, Exhibits C, D, K, N and Q.

[4] The Application to Intervene does not include the names and addresses of CATT's members. The Application, therefore, does not comply with § 16-50j-15a (b) of the Regulations of Connecticut State Agencies, which requires a prospective intervenor to include the intervenor's name and address.

Assuming *arguendo* that the local parks in the Town of Trumbull – within the vicinity of the location for the proposed Facility – constitute "scenic vistas" for purposes of CEPA intervention, the Facility would not impact any of those areas or parks in an unreasonable manner. There is nothing in T-Mobile's Application for Certificate that demonstrates, nor can CATT establish, that the proposed Facility would have any unreasonable (let alone any) physical impact on any of the protected areas or parks in and around the Town. In addition, the Facility would not be visible from all but one of the parks. Island Brook Park would only have a minimal view of the very top of the Facility, just over the tree line, even during leaf-off conditions. *See* Application, Exhibit M. *(View 19 of the Visual Resource Evaluation is attached hereto as Attachment A).*

This allegation also refers vaguely to zoning requirements without any specificity. Putting aside the fact that the Council is not obligated to follow local zoning requirements, *see* General Statutes § 16a-50x, the proposed Facility would meet the setback requirements and most of the other requirements provided in the Trumbull Zoning Regulations. *See* Application for Certificate, pp. 18-19. The only portion of the monopole that would exceed the zoning regulations regarding height is the portion relating to the municipal and regional dispatch platform, which has been requested by the Town. There is absolutely no factual basis for an unreasonable impact to the environment, premised upon a failure to meet zoning requirements, as required by § 22a-19. Notably, there is no alleged factual basis for unreasonably impact in CATT's Application to Intervene regarding zoning requirements.

Finally, this allegation does include "specific facts" as required for a sufficient "verified pleading" under § 22a-19. *Nizzardo v. State Traffic Commission*, *supra*, 259

Conn. 164-65. There can be no inference of unreasonable impairment to the environment based upon this allegation.

3. There exists at least one configuration which can provide adequate coverage for the applicant with less impact by utilizing a shorter tower because the height is driven by a speculative and baseless need of the Town communications; internally or flush mounted antennas; removing the Town whip antennas from the top of the pole; and utilizing other locations.

This allegation does not appear to address any "natural resource." If this allegation refers to the visual impairment of a "scenic vista," then it is defective for the same reasons discussed above. If this allegation refers to the potential visual impact of the Facility on residences, such allegations do not confer standing under § 22a-19. A neighbor's potential visibility of a proposed telecommunications facility, located at a police station, does not constitute a "natural resource" and does not amount to the unreasonable pollution, impairment or destruction of a "natural resource."

The case law supports this conclusion. The Connecticut Supreme Court has held that prime agricultural land is not a natural resource. *Red Hill Coalition v. Town Plan & Zoning Commission*, 212 Conn. 727, 739-40, 563 A.2d 1347 (1989). As such, it is very unlikely that a court would conclude that a residence - or views from that residence of a telecommunications facility located at nearby police department - would be a "natural resource."

Such an allegation, without more, cannot constitute unreasonable pollution, impairment or destruction of the State's "natural resources." It does not allow for a reasonable inference of such an impact. If this were the case, then most, if not all, towers or taller structures, regardless of location, would unreasonably impact the State's "natural resources." The Application to Intervene does not cite to any statute or case

law supporting the proposition that a view of a telecommunication facility from one's home constitutes a "natural resource" protected by CEPA.[5]

4. CATT intends to submit evidence to the record 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).

This allegation is a conclusory statement of what CATT intends to do at the hearing should the Council grant the Application to Intervene. It does not provide any factual basis upon which to confer standing under § 22a-19.

5. The height requested is excessive and unnecessary to meet the public need and will be visible from sensitive residential receptors.

The operative word in this allegation is "residential." This statement cannot confer standing for the same reasons the third allegation cannot confer standing. The term "natural resource" does not include views of the proposed Facility, located at a police station, from any of the homes of CATT representatives.

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 designs.

This allegation does not address any "natural resource" conceivably protected by CEPA. This statement cannot confer standing under § 22a-19.

Accordingly, the six cursory allegations – taken individually or cumulatively - do not set forth facts to support an inference that unreasonable pollution, impairment or destruction of a natural resource will probably result from the challenged activities unless remedial measures are taken. *Finley v. Inland Wetlands Commission*, *supra*, 289 Conn. 35. They do not, therefore provide a colorable basis for standing under §

[5] T-Mobile has already agreed to flush mount its antennas. See Application, Exhibit C.

22a-19. None of the authorities cited by CATT in its Application to Intervene support intervention under § 22a-19 based upon the minimal facts presented.

IV. CONCLUSION

For the foregoing reasons, T-Mobile respectfully requests that the Council deny CATT's Application to Intervene as it relates to § 22a-19.

Respectfully Submitted,

T-MOBILE NORTHEAST LLC

By: _____

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ATTACHMENT A

PHOTOGRAPHIC DOCUMENTATION

VIEW	LOCATION	ORIENTATION	DISTANCE TO SITE	VISIBILITY
19	ISLAND BROOK PARK	SOUTHEAST	0.40 MILE +/-	YEAR-ROUND

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VHB

PHOTOGRAPHIC SIMULATION

VIEW	LOCATION	ORIENTATION	DISTANCE TO SITE	VISIBILITY
19	ISLAND BROOK PARK	SOUTHEAST	0.40 MILE +/-	YEAR-ROUND

T··Mobile·

VHB

CERTIFICATION

I hereby certify that on this day a copy of the foregoing was delivered by Electronic Mail and regular mail, postage prepaid, to all parties and intervenors of record, as follows:

Keith R. Ainsworth, Esq.
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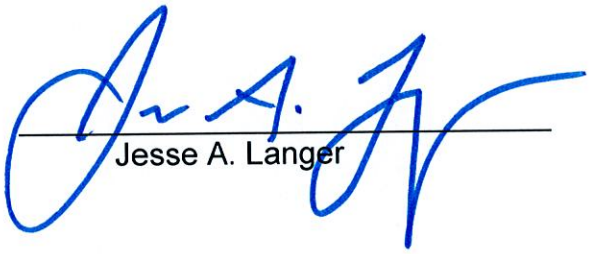
(Via Email: krainsworth@snet.net***)***



Jesse A. Langer