

STATE OF CONNECTICUT
SITING COUNCIL

New Cingular Wireless PCS, LLC
Application for a Certificate of Environmental
Compatibility and Public Need for the construction,
Maintenance, and operation of a telecommunications
Facility located at
257 Perkins Road, Southbury, Connecticut.

: DOCKET # 443

: DECEMBER 11, 2013

**INTERVENOR'S REPLY TO APPLICANT'S OBJECTION TO INTERVENTION
APPLICATION**

Intervenor became aware of an objection expressed by the Applicant to Intervenor's intervention petition on the grounds that the intervenor is an unincorporated group, also known under Connecticut law as a voluntary association, and that the entire list of the Intervenor's members has not been disclosed.

Intervenor makes this reply to assist the Council in understanding the legal rights and responsibilities of the intervening party, Protect the Purchase. Intervenor respectfully objects to the imposition of any special pre-condition or prior restraint on its intervention petition which deprives it of its procedural rights in these proceedings.

The grounds for this reply are in brief:

1. That the intervention petition meets the requirements of the Connecticut Environmental Protection Act as well as the Council regulations and the Uniform Administrative Procedures Act.
2. That the petition has been signed and verified under oath stating sufficient facts which if proved would implicate the Council's jurisdiction. No further disclosures must be made at this stage.

3. The Applicant's objection and proposed condition, that the intervention be conditioned upon disclosure of intervenor's entire membership list with addresses, seeks to circumvent the procedural process of Interrogatories and responses and objections.

II. LEGAL DISCUSSION

A. Any Legal Entity or Person Anywhere in Connecticut May Intervene to Assert Their Interest in the Public Trust in Connecticut's Natural Resources --- Including Voluntary Associations

CEPA clearly and in the broadest terms indicates that any legal entity may intervene. This includes voluntary associations. Connecticut General Statutes §52-76 acknowledges the long tradition of Connecticut citizens banding together to assert common goals and succinctly states:

Any number of persons associated together as a voluntary association, not having corporate powers, but known by a distinguishing name, may sue and be sued and plead and be impleaded by such name...

Id.

The law of Connecticut has long since recognized an unincorporated entity known as a "voluntary association". Bennett v. Lathrop, 71 Conn. 613, 616 (1899); Scanlon v. Duffield, 103 F.2d 572 (6th Cir.1936) (holding a voluntary association is a legal entity). Many organizations recognized as legal entities for the purpose of suit exist in this form: labor unions (Benoit v. Amalgamated Local 299, 150 Conn. 266 (1963)), teacher's associations (Waterbury Teacher's Ass'n v. Civil Service Commission, 178 Conn. 573 (1979)), ecclesiastical gatherings (McCauliffe v. Russian Greek Catholic Church, 130 Conn. 521 (1944)), cultural societies (Olechny v. Thadeus Kosciuszko Society, 128 Conn. 534 (1942)) and neighborhood associations (The South East Property Owners & Residents

Association v. City Plan Commission, 156 Conn. 582 (1968)(§8-28 zoning appeal) and environmental associations (Timber Trails Corp. v. P&Z Commission, 222 Conn. 380 (1992)).

The Supreme Court in Connecticut Association of Health Care Facilities v. Worrell, 199 Conn. 609, 616(1986) expressed the more enlightened view of associational standing and held:

We disagree with the views expressed in Conn.Soc. of Architects concerning the standing of an association to bring suit on behalf of its members. In so doing we adopt the federal standards for association standing that provide for efficient, expeditious and vigorous resolution of controversies affecting similarly situated persons....An association has standing to bring suit on behalf of its members when:(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organizations purpose; and (c)neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit Associational standing is particularly appropriate ...where the relief sought is ...a declaratory judgment....

Id(citations omitted).

The Worrell court succinctly set forth both legal and public policy reasons for allowing associations to sue on behalf of their members. For several centuries citizens in Connecticut have banded together in voluntary associations to assert common goals and have thereby submitted themselves to suit. Davidson v. Holden, 55 Conn. 103, 112 (1887). While the protections of formal incorporation are not available to such groups, they nonetheless exist for the purposes of suit under C.G.S §52-572j and under §52-76.

As the Connecticut Supreme Court has declared "[s]tanding is not a technical rule intended to keep aggrieved parties out of court..." Worrell, at 609.

B. The Intervenor Has made the Prima Facie Showing Required Under CEPA to Establish Statutory Standing

The Intervenor, Protect the Purchase has alleged that they are property owners whose

homes are in proximity to the tower and that they enjoy the scenic views in and around Perkins Road in Southbury. They have alleged that those interests and the natural resources of the state – scenic vistas – would be unreasonably impaired. Having made these allegations under oath, they have fully established their statutory standing. Red Hill Coalition, Inc. v. Conservation Commission, 212 Conn. 710, 715, 563 A.2d 1339 (1989). They need not prove classical aggrievement.

As noted above, this Application is made pursuant to CEPA, the plain language of which was intended to provide wide access to the states' various tribunals. Red Hill Coalition, Inc. v. Conservation Commission of Town of Glastonbury, 212 Conn. 710 (1989).

The statute provides in relevant part:

“[in] any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, ...any person ...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.”

§22a-19 (emphasis added).

Unlike a classical zoning cases, a §22a-19 or 22a-19 intervenor need not show “aggrievement”. Hyllen-Davey v. Planning & Zoning Commission, 57 Conn. App. 598, 593, 749 A.2d 682, cert denied, 253 Conn. 926, 754 A.2d 796 (2000)(“the EPA waives the additional aggrievement requirement in ... §22a-19, [which] authorizes any citizen or other entity, ***without having to first establish aggrievement***, to intervene in an existing proceeding.”); Scaringe v. Meriden Planning & Zoning Comm, CV-000274515-S, J.D. at Meriden, (November 26, 2002)(Gilardi, J).

An allegation of facts that the action at issue in the proceeding is likely to unreasonably impair the public trust in natural or historical 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).

In conclusion, the Council should not place restrictions on the petitioners which do not exist under law or in any way place a prior restraint on or impair the right of intervention on behalf of the public trust.

Respectfully Submitted,

Protect the Purchase,

Keith R. Ainsworth

By _____

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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 11th day of December, 2011 and addressed to:

Ms. Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 electronic) (15 copies by mail)

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