

March 16, 2015

***VIA FEDERAL EXPRESS AND
ELECTRONIC MAIL***

Ms. Melanie A. Bachman, Esq., Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06501

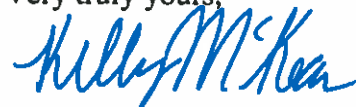
Re: Docket No. 454 – Application by Tower Holdings, LLC for a Certificate of Environmental Compatibility and Public Need for a Telecommunications Facility at 199 Brickyard Road, Farmington, Connecticut

Dear Attorney Bachman,

This office represents the Town of Farmington (the “Town”), a party in the above-captioned docket. In accordance with § 16-50j-12 of the Regulations of Connecticut State Agencies, I have enclosed an original and fifteen (15) copies of the Town’s response to the objection motion filed by Tower Holdings, LLC (the “Applicant”), filed with the Connecticut Siting Council on March 13, 2015.

If you have any questions concerning the Town’s response to the Applicant’s objection, please do not hesitate to contact me.

Very truly yours,



Kelly C. McKeon

Enclosures

cc: *Service List* (via regular mail and electronic mail)

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**APPLICATION BY TOWER HOLDINGS, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR THE CONSTRUCTION,
MAINTENANCE AND OPERATION OF A WIRELESS
TELECOMMUNICATIONS FACILITY LOCATED AT
199 BRICKYARD ROAD, FARMINGTON, CONNECTICUT**

DOCKET NO. 454

MARCH 16, 2015

**TOWN OF FARMINGTON'S RESPONSE TO APPLICANT'S OBJECTION TO TOWN
OF FARMINGTON'S PRE-HEARING SUBMISSION**

The Town of Farmington ("Town"), hereby responds to the Objection to the Pre-Hearing Submission of the Town ("Objection") by the Applicant, Tower Holdings, LLC ("Tower Holdings" or "Applicant"), dated March 13, 2015, in connection with the above-captioned Application for Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility ("Facility") at 199 Brickyard Road, Farmington, Connecticut ("Application"), currently pending before the Connecticut Siting Council ("Council"). The Applicant's Objection is baseless on the grounds that (1) the Town has been granted party status in Docket No. 454, and as such, has the right to present its case as to why the Council should not approve the Application as proposed; and (2) the Town's Pre-Hearing Submission not only expresses the Town's reservations about this Application, but it is directly responsive to many of the documents and/or testimony already in the record.

On December 11, 2014, the Council granted the Town party status in the above-captioned docket because, as the town in which the proposed facility is to be located, its "rights, duties or privileges shall be specifically affected by the Council's decision in the proceeding." *See* § 16-50j-14(c). The Council's Rules of Practice provide, in relevant part, that "[b]y its decision in a proceeding, the council shall dispose of the legal rights, duties, and privileges of each party

named or admitted to the proceeding.” *See* § 16-50j-17(a). In disposing of the Town’s “legal rights, duties and privileges,” the Council has, in fact, requested that the Town submit any pre-filed testimony and supplemental information to the Council and the service list by the close of business on or before March 10, 2015. *See* Council’s Continuation Memo, dated February 4, 2015. The Council’s authority to make such a request is found in § 16-50j-27(a), which reads, in pertinent part, that “[u]pon order of the council before, during, or after the hearing of a case, any party . . . shall prepare and file added exhibits and testimony.”

In accordance with the foregoing, the Town submitted its Pre-Hearing Submission, dated March 10, 2015. The Town’s Pre-Hearing Submission is directly responsive to statements made during the February 3, 2015 hearing before the Council, as well as the pre-filed testimony and interrogatories submitted by the Applicant, including the following:

1. The Applicant’s Pre-Hearing Submission, dated January 27, 2015, included pre-filed testimony of Ernest R. Jones, P.E., in the form of a letter dated January 5, 2015, whereby Mr. Jones explains that the operations of a gin pole are similar to that of a crane or other lifting device, and that the use of gin poles has resulted in a number of fatalities. *See* Applicant’s Pre-filed Testimony, dated January 5, 2015, Attachment C. Mr. Jones also commented on many of the points he raised in his pre-filed testimony during the February 3, 2015 hearing. *See* Transcript, Vol. I, pg. 53, lines 14-24, pg. 56, lines 16-19. The Chief Executive Officer of the Town, Kathleen A. Eagen, in response, has the right to comment upon, and raise concerns about, those matters raised by Mr. Jones’ testimony, specifically the Town’s concern of being placed in a position of having its own emergency services personnel placed in harm’s way, or bear the expense of, responding to an accident at the Facility.

2. Mr. Savino has testified that the Applicant has tried to be a good neighbor. *See* Transcript, Vol. I, pg. 35, lines 3-7, p. 69, lines 24-25, p. 70, line 1; *see also* Genesis of the Proposed Facility and Legal Authority, dated March 10, 2015, at 2. As the Chief Executive Officer of the Town, Ms. Eagen, in response, has the right to take issue with this assertion, especially in light of the fact that under Conn. Gen. Stat. § 16-50x and § 16-50gg, the Council is obligated to consider the Town's "location preferences or criteria" for the siting of proposed telecommunication towers.¹

3. The Applicant has responded to the Town's interrogatories that it would like to be a good neighbor by making the lattice tower available for the Town to train on. *See* Applicant's Response to Second and Third Set of Interrogatories by Town, A.11; *see also* Transcript, Vol. I, p. 105, lines 15-25, p. 106, lines 1-2. As Chief Executive Officer of the Town, Ms. Eagen, in response, has the right to point out that no one from Northeast Towers ever contacted her, the Police Chief, Paul Melanson, or Director of Fire & Rescue Services, Mary Ellen Harper, about using this tower for training purposes.

4. The Applicant has included in its second Pre-Hearing Submission, dated March 10, 2015, a memorandum of the genesis of the proposed Facility. Moreover, both Mr. Savino and Mr. Regulbutto testified in response to Dr. Klemens' questions at the February 3, 2015 hearing, regarding the timeline of negotiations for the proposed Facility. *See* Transcript, Vol. I, pg. 36, lines 18-25, pg. 37, lines 1-2, 3-8, Vol. I, pg. 82, lines 2-5. The Chairman of the Town's Plan & Zoning Commission, Philip Dunn, in response, calls into question the credibility of these

¹ Attorney Langer's characterization of Ms. Eagen's testimony as being "angry" is highly inappropriate, and, quite frankly, unseemly. As Ms. Eagen points out in her testimony, the Town has worked cooperatively with cellular carriers in the past, including AT&T, and the Town is prepared to work with AT&T again in finding a suitable location for a monopole in the subject area if a need for such a tower, in fact, exists.

statements and the facts as to reasons why the Application to build a training tower came before the Council without first obtaining the necessary land use approvals related to a training facility.

5. Mr. Savino has testified that he put together a booklet for purposes of presenting its plan for the proposed training tower at the property and requested an informal meeting with the Farmington Plan and Zoning Commission to discuss the booklet and proposed training tower. *See Transcript, Vol. I, pg. 90, lines 6-23.* The Town, in response, has the right to submit the Agenda and Meeting Minutes, dated April 9, 2013 (Attachment D in the Town's Pre-Hearing Submission), in order to highlight the last minute withdrawal of the informal meeting with the Town Plan and Zoning Commission, and to address Mr. Savino's testimony.

6. Mr. Savino has testified that the Applicant would like to use the Facility as a training school. *See Transcript, Vol. I, pg. 68, lines 2-16.* The Applicant has also responded to the Town's interrogatories stating that it would like to use the Facility to operate a training school. *See Applicant's Response to Second and Third Set of Interrogatories by Town, dated March 10, 2015, A.9.* Contrary to Attorney Langer's assertion on page 3 of his Objection, the Chairman of the Town's Plan & Zoning Commission, Philip Dunn, in response, provides important testimony regarding the establishment and operation of a training school under the Town's Zoning Regulations.

The Applicant's witnesses, including Mr. Savino and Mr. Regulbuto, have testified under oath, and the Town, as a designated party by the Council in this proceeding, has the right to question their statements in an attempt to establish their unreliability. To hold otherwise would result in the denial of the Town's procedural and substantive due process rights as a full party to

this proceeding.² The Pre-Hearing Submission by the Town is relevant to this proceeding, and Attorney Langer's Objection is simply a desperate attempt to ignore what is already patently obvious to many – that this location is not suitable given all the surrounding circumstances and that approval of a training facility is not within the exclusive jurisdiction of the Council. The Town, as a designated party, has the right to present its case and establish these facts .

WHEREFORE, the Town respectfully moves the Council to overrule the Applicant's Objection to the Town's Pre-Hearing Submission, and allow its admission into the record.

Respectfully Submitted,

Party, Town of Farmington

By:  _____

Kelly C. McKeon
Duncan J. Forsyth
Kenneth R. Slater, Jr.
Halloran & Sage, LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06103
Its Attorneys

² Accordingly, Mr. Langer has the right to cross-examine both Ms. Eagen and Mr. Dunn if he so chooses with regard to their testimony.

CERTIFICATION

I certify that on this 16th day of March, 2015, fifteen copies of the foregoing were sent by regular and electronic mail to all parties and intervenors of record, as follows:

Counsel for the Applicant

Jesse A. Langer, Esq.
Updike, Kelly & Spellacy, P.C.
265 Church Street
New Haven, CT 06510
(203) 786-8300
JLanger@uks.com

Counsel for New Cingular Wireless PCS, LLC ("AT&T")

Christopher B. Fisher
Lucia Chiocchio
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601



Kelly C. McKeon, Esq.