

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

RE: APPLICATION BY FLORIDA PARTNERS LLC
d/b/a NORTH ATLANTIC TOWERS APPLICATION
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED
FOR A TELECOMMUNICATIONS FACILITY
AT 62-64 CODFISH HILL ROAD IN THE
TOWN OF BETHEL, CONNECTICUT

DOCKET NO. 458

Date: April 28, 2015

FLORIDA PARTNERS LLC d/b/a NORTH ATLANTIC TOWERS'
OBJECTION TO APPLICATION TO INTERVENE

The Applicant, Florida Partners LLC d/b/a North Atlantic Towers ("North Atlantic Towers"), respectfully submits this Objection to the Application to Intervene by Codfish Hill Environmental Trust ("CHET"). CHET's Application to Intervene is insufficient as a matter of law because it fails to: (1) articulate cognizable environmental claims under § 22a-19; and (2) set forth specific facts in support of those claims. Accordingly, since CHET's Application to Intervene fails to satisfy *Conn. Gen. Stat.* § 22a-19's verified pleading requirement, the Connecticut Siting Council ("Council") should deny CHET intervener status under § 22a-19.¹

¹ 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 March 19, 2015, North Atlantic Towers filed its Application for a Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a telecommunications facility at 62-64 Codfish Hill Road ("Facility"). The Application for Certificate is comprehensive and establishes that the proposed Facility would not have an unreasonable adverse impact on the environment. On or about April 15, 2015, CHET filed its Application to Intervene under § 22a-19, § 16-50n and § 4-177a.

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

Conn. Gen. Stat. § 22a-19 (a) provides that any association or 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."

Relying on **specific facts** in its verified pleading, an intervener must articulate a colorable claim of **unreasonable** pollution, impairment or destruction of the environment. *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 164, 788 A.2d 1158 (2002); *Finley v. Inland Wetlands Commission*, 289 Conn. 12, 35, 959 A.2d 569 (2008).

III. ARGUMENT

CHET's Application to Intervene fails to allege a cognizable claim under *Conn. Gen. Stat.* § 22a-19 because it fails to articulate "unreasonable pollution, impairment or

destruction of the environment” and relies exclusively on recitations of statutory language, rather than specific allegations, to buttress its legally deficient claim.

A. CHET’s Application, Relying on Interference with Scenic Vistas and Visual Quality as a Basis for Intervener Status, is Legally Infirm.

CHET’s Application argues *inter alia*, that North Atlantic Towers proposed telecommunications facility unreasonably impacts the state’s natural resources because it claims that it will impact CHET member properties. Specifically, CHET articulates: (1) “unreasonable impact to the natural resources of the State including scenic vistas;” (2) “property value loss different from and greater than that of the public in general due to the proximity of the facility to [CHET’s member] homes;” (3) “unreasonabl[e] impair[ment of] the visual quality of the environment in and around the Codfish Hill Road area;” (4) “reasonable like[lihood] to cause viewshed deterioration” (collectively the “Visual Impairment”). CHET Application, 1-2. CHET misapplies Connecticut law, as none of these allegations authorize *Conn. Gen. Stat. § 22a-19* intervention.

1. Connecticut Law does Not Authorize Intervention for Visual Impairment.

Conn. Gen. Stat. § 22a-19 – which only protects against “unreasonable polluting, impairing or destroying the public trust in the air, water or other natural resources” – does not expressly protect visual quality, scenic vistas, or viewshed deterioration.² Similarly, Connecticut Courts have not interpreted *Conn. Gen. Stat. § 22a-19* to protect Visual Impairment. Moreover, several Connecticut courts have denied intervention in

² The only reference to “vistas” in the Connecticut Environmental Protection Act (“CEPA”) is in the Coastal Area Management Act, *Conn. Gen. Stat. § 22a-91(15)(F)*. The proposed location is not located in a coastal area. See Application for Certificate Exhibits I and M.

analogous circumstances, finding that movant's allegations did not constitute "natural resources" warranting intervening interest. See *Red Hill Coalition v. Town Plan & Zoning Commission*, 212 Conn. 727, 739-40, 563 A.2d 1347 (1989) (prime agricultural land not "natural resource"); see also *Nizzardo v. State Traffic Commissioner*, 55 Conn. App. 679, 687-688 (1999) (living near proposed development is insufficient to warrant environmental intervention).

CHET relies on one entirely distinguishable case, *Cannata v. Dept. of Environmental Protection et al.*, 239 Conn. 124 (1996), arguing that mere allegation of impairment of natural resources (through visual attributes) authorizes intervention. However, *Cannata* involved harm to floodplain forest resources – a factual scenario entirely distinct from the allegations herein. CHET cites no authority – statute, regulation, or case law -- that a potential view of a telecommunication facility from one's home constitutes a "natural resource" protected by CEPA.

Accordingly, CHET's allegations of Visual Impairment are legally insufficient to warrant intervention.

2. North Atlantic Tower's Proposed Facility Would Not Result in an Unreasonable Impact on Natural Resources. .

Even if *Conn. Gen. Stat.* § 22-19 authorized intervention for Visual Impairment, CHET's Application fails because the Facility would not unreasonably impact CHET's scenic views. See *Evans v. Planning and Zoning of Town of Glastonbury*, 73 Conn.App. 647 (2002) (finding developer's proposed subdivision application, which relied on independent report, did not unreasonably impair natural resources). North Atlantic

Tower's Application contains extensive visibility analysis, concluding that the heavily wooded area minimizes any potential visual impact. Indeed, the majority of the acreage for the proposed Facility consists of "undeveloped land that is heavily wooded in some locations." Application, 2. This "rolling terrain and mature forest" consists of extensive tree canopy with "an average estimated height of 65 feet." Application, 21; Exhibit I at 6. This mature vegetation "minimizes(s) the potential visual impact of the Facility." Application, 21. See Application, Exhibit I.

CHET fails to specifically establish any evidence of visual impact. CHET relies exclusively on inflammatory allegations regarding Visual Impairment, without specifying the properties/owners³ affected and without offering *any* information regarding the nature of the impairment (permanence, extent, etc.). As such, CHET: (1) fails to comport with the pleading requirements established by *Conn. Gen. Stat. § 22a-19* and Practice Book § 10-1⁴ as discussed *infra* at 6, and (2) fails to establish how the Visual Impairments constitute "unreasonable" interference, as required by *Conn. Gen. Stat. § 22a-19*.

B. CHET Fails to Allege Any "Specific Facts" Material to its Application.

CHET maintains *inter alia*, that mere allegations of unreasonable impairment are

³ The Application to Intervene does not include all of the names or specify the addresses of CHET's members. The Application, therefore, does not comply with § 16-50j-15a (b) of the Regulations of Connecticut State Agencies, which requires a prospective intervener to include the intervener's name and address.

⁴ 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.)

sufficient to intervene, implicitly arguing that specific facts are not required. CHET misstates Connecticut law.

An intervener must submit a **“verified pleading” containing “specific facts.”** *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 164, 788 A.2d 1158 (2002) (emphasis added). This specific factual predicate comports with Practice Book requirements, necessitating **material facts upon which the pleader relies.** *Id.*; 259 Conn. 163; Practice Book § 10-1. **“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.”** *Finley v. Inland Wetlands Commission*, 289 Conn. 12, 35, 959 A.2d 569 (2008) (emphasis added, internal quotation marks omitted).

Here, CHET alleges neither specific nor material facts to support its Application. Rather, CHET merely recites the provisions of *Conn. Gen. Stat.* § 22-19 – a strategy expressly rejected by the Connecticut Supreme Court. *See id*; *see e.g.* CHET Application at 1-2 (Applicant seeks a certificate “likely to unreasonably harm the public trust in the air, water or other natural resources of the State of Connecticut”).

C. CHET’s Conclusory Allegations regarding Potential Expert Testimony and the “Important” Matters at Issue are Irrelevant.

CHET’s red herring arguments regarding potential expert testimony and the “importance” of the issues raised in its Application are undeserving of Council consideration.

First, CHET maintains that it plans to submit testimony regarding “mitigation of environmental impact to scenic vistas by the use of alternate locations, alternative technology and tower configurations.” CHET Application, 2. This conclusory statement of CHET’s intention – premised on intervention – provides no factual basis to confer standing pursuant to *Conn. Gen. Stat. § 22-19*. CHET presumptuously *assumes* that will be granted permission to intervene without a legally or factually sufficient basis for the requested relief.

Second, CHET devotes substantial attention to the “important and fundamental” nature of Section 22a-19 rights, arguing *inter alia*, that the “important and fundamental” nature of these rights warrant intervention. North Atlantic Towers does not contest the importance of Section 22a-19 – indeed, that is why North Atlantic Towers submitted an extensive Application supported by a detailed visibility analysis completed by All Points Technology Corporation. *See* Exhibit I. CHET’s Motion is deficient because it is legally and factually infirm, not because of the importance of the subject matter addressed therein.

Accordingly, CHET’s irrelevant, unsupported, and conclusory allegations fail to set forth facts to demonstrate that the Facility will create **unreasonable** pollution, impairment or destruction of a natural resource. *Finley v. Inland Wetlands Commission, supra*, 289 Conn. 35. As such, CHET’s Application should be denied.

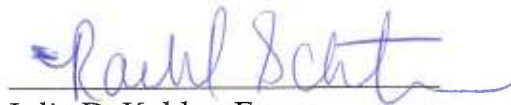
IV. CONCLUSION

For the foregoing reasons, North Atlantic Towers respectfully requests that the Council deny CHET's Application to Intervene as it relates to its request pursuant to Conn. Gen. Stat. § 22a-19.

Respectfully Submitted,

**FLORIDA TOWER PARTNERS LLC
D/B/A NORTH ATLANTIC TOWERS**

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CERTIFICATION

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

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