

**STATE OF CONNECTICUT  
SITING COUNCIL**

**DOCKET No. 486** - Tarpon Towers II, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 796 Woodin Street, Hamden, Connecticut.

SEPTEMBER 11, 2019

**APPLICATION TO INTERVENE UNDER CEPA, §22a-19, §4-177a AND §16-50n**

SBA Communications Corporation d/b/a MCM Acquisition 2017, LLC ("SBA"), a Delaware limited liability company, is owner and operator of a cellular communications facility and tower located at 1055 Wintergreen Avenue, Hamden, Connecticut (41.349664, -72.972497) ("the SBA Facility") which hereby moves and petitions the Connecticut Siting Council ("CSC") to become a party intervenor in the above application by Tarpon Towers II, LLC, which has made application for permission to site a tower only ½ mile away from the existing SBA Facility. 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, economic loss to neighboring property interests due to the unnecessary proliferation of towers.

Pursuant to Conn.Gen.Stat. §22a-19 ("CEPA"), §16-50n and §4-177a, SBA seeks party status as an entity which has a direct interest in the proceedings which will be specifically and substantially affected as it is owner of the tower facility on which Verizon equipment is currently located and which is proposed to be relocated onto the proposed tower. The public interest and CSC policy is to encourage co-location and to discourage a proliferation of towers in order to preserve Connecticut's viewsheds. These public policies are reasonably likely to be impaired by the unnecessary siting of a duplicative tower. SBA seeks party status 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 by

greater optimization of the capacity of the existing SBA Facility which will assist the CSC in complying with its mandate to minimize impact as required by C.G.S §16-50g and 16-50p(3)(G)(b)(1).

SBA'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 and about Hamden; and is reasonably likely to cause viewshed that is unreasonable because alternatives to the petitioner's proposal exist which would result in lesser impact – more efficient use of existing structures.

## **DISCUSSION OF LAW**

The CSC 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 Intervenor 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).

SBA's application for intervenor status should be granted so that it may participate by presenting evidence for the record and meaningfully assist the CSC in reaching a decision which minimizes the impact to natural resources of the state while balancing the public need for wireless telecommunication siting.

VERIFICATION

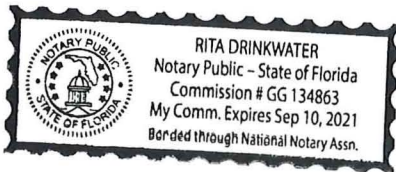
The undersigned, Victoria Weidenthal duly authorized Zoning Litigation Manager of SBA Communications Corporation d/b/a MCM Acquisitions 2017, LLC, duly sworn, hereby verifies that the above application is true and accurate to the best of her knowledge and belief.

[Signature]

Sworn and subscribed before me this 11th day of September, 2019.

Rita Drinkwater

Notary Public; My Commission Expires 09/10/2021



Respectfully Submitted,

SBA Communications Corporation d/b/a MCM Acquisition 2017, LLC,

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 electronic 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 11<sup>th</sup> day of September, 2019 and addressed to:

Ms. Melanie Bachman, 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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