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September 17, 2019

**VIA FEDERAL EXPRESS
AND ELECTRONIC MAIL**

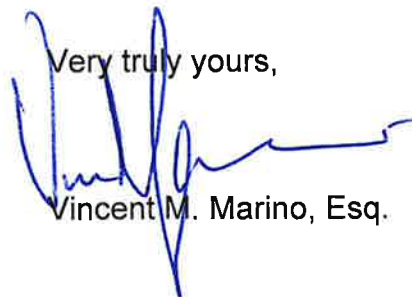
Attorney Melanie Bachman,
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: 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 at 796 Woodin Street, Hamden, Connecticut

Dear Attorney Bachman:

On behalf of Tarpon Towers II, LLC, enclosed please find an original and fifteen (15) copies of the Applicant's Objection to SBA Communications Corporation d/b/a MCM Acquisition 2017, LLC's Application to Intervene.

If you have any questions, please do not hesitate to give me a call.

Very truly yours,

Vincent M. Marino, Esq.

VMM/lcc
Enclosures

cc: Service List

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

RE: TARPON TOWERS II, LLC
APPLICATION FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR A
TELECOMMUNICATIONS FACILITY
AT 796 WOODIN STREET IN THE
CITY OF HAMDEN, CONNECTICUT

DOCKET NO. 486

DATE: SEPTEMBER 17, 2019

**TARPON TOWERS II, LLC
OBJECTION TO APPLICATION TO INTERVENE**

The Applicant, Tarpon Towers II, LLC ("Tarpon"), respectfully submits this Objection to the Application to Intervene (the "Application") by SBA Communications Corporation d/b/a MCM Acquisition 2017, LLC ("SBA"). SBA's Application to Intervene is insufficient as a matter of law because it: (1) seeks to intervene on non-environmental (economic) issues; (2) fails to articulate cognizable environmental claims under General Statutes § 22a-19; and (3) fails to set forth specific facts in support of those claims. Accordingly, since SBA's Application to Intervene fails to satisfy General Statutes § 22a-19's verified pleading requirement, the Connecticut Siting Council ("Council") should deny SBA's intervener status under § 22a-19.

I. BACKGROUND

On or about July 12, 2019, Tarpon filed its Application for a Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a telecommunications facility at 796 Woodin Street in Hamden, CT (the "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 September 11, 2019, SBA filed its Application to Intervene under § 22a-19, § 16-50n, and § 4-177a.

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

General Statutes § 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.”

A would-be intervenor must submit a “verified pleading” containing “specific facts.” Nizzardo v. State Traffic Commission, 259 Conn. 131, 164 (2002). The specific factual allegations must set forth the **environmental** issues that the intervenor intends to raise. (Emphasis added.) Id., 164-65. 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. Id., 163; See also Practice Book § 10-1. Relying on **specific facts** in its verified pleading, an intervenor must articulate a colorable claim of **unreasonable** pollution, impairment or destruction of the environment. A verified pleading does not sufficiently allege standing by merely reciting the provisions of § 22a-19. See Nizzardo v. State Traffic Commission, 259 Conn. 131, 164 (2002); Finley v. Inland Wetlands Commission, 289 Conn. 12, 35, 959 A.2d 569 (2008).

However, “an intervenor’s standing pursuant to § 22a–19 strictly is limited 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 Comm’n of Town of Monroe, 288 Conn. 143, 157 (2008). See also Rocque v. Northeast Utilities Service Co., 254 Conn. 78, 85 (2000) (§ 22a–19 “strictly limited to the raising of environmental issues.”)

III. ARGUMENT

SBA’s Application to Intervene fails to allege a cognizable claim under General Statutes § 22a-19 because it seeks to intervene regarding economic issues instead of environmental. Further, to the extent the Application does seek to intervene regarding environmental issues, 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. SBA’s Application is Legally Insufficient

a. SBA Inappropriately Seeks to Intervene Concerning Economic Issues

In its Application, SBA claims there will be “economic loss to neighboring property interests due to the unnecessary proliferation of towers” due to the fact that Tarpon’s Application for Certificate seeks to “site a tower ½ mile away from an existing SBA Facility.” See SBA’s Application, 1. In furtherance of this claim, SBA seeks to intervene “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 on the proposed tower.” See SBA’s Application, 1.

Such economic claims are wholly inappropriate for an Application to Intervene under CEPA. “An intervening party under § 22a–19(a) . . . may raise **only environmental issues**. . . . an intervenor’s standing pursuant to § 22a–19 strictly is limited to challenging only environmental issues covered by the statute” (Emphasis added.) Red Hill Coalition, Inc. v. Conservation Commission, 212 Conn. 710, 715, (1989). Therefore, on this basis alone, the Application should be denied.

b. To the Extent the Application Concerns Environmental Issues, SBA’s Application, Relying on Interference with Scenic Vistas and Visual Quality as a Basis for Intervener Status, is Legally Infirm

SBA’s Application further argues *inter alia*, that it seeks to intervene in these proceedings to prevent unreasonable impact on the environment. Specifically, SBA articulates: (1) “unreasonable impact to the natural resources of the Sate including scenic vistas;” (2) “unreasonabl[e] impair[ment of] the visual quality of the environment in and about Hamden; and (3) “reasonabl[e] like[lihood] to cause viewshed that is unreasonable.” (collectively, the “Visual Impairment”) See SBA’s Application, 1-2. SBA misapplies Connecticut law, as none of these allegations authorize intervention under General Statutes § 22a-19.

1. Connecticut Law Does Not Authorize Intervention for Visual Impairment

General Statutes § 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.¹ Similarly, Connecticut Courts have not interpreted General Statutes § 22a-19 to protect

¹ The only reference to “vistas” in the Connecticut Environmental Protection Act (“CEPA”) is in the Coastal Area Management Act, Conn. Gen. Stat. § 22a-93 (15)(F). The proposed location is not located in a coastal area; its proposed location is in Hamden. See Application for Certificate Exhibits E, G.

Visual Impairment. Moreover, several Connecticut courts have denied intervention in 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"); Nizzardo v. State Traffic Commissioner, 55 Conn. App. 679, 687-688 (1999) (living near proposed development is insufficient to warrant environmental intervention).

Further, SBA relies on Cannata v. Dept. of Environmental Protection et al., 239 Conn. 124 (1996), stating that that mere "allegation of facts that the proposed activity at issue . . . is likely to unreasonably impair the public trust in natural resources of the State is sufficient." However, Cannata involved harm to floodplain forest resources to support its position. Accordingly, SBA's allegations of Visual Impairment are legally insufficient to warrant intervention.

2. Tarpon's Facility Does Not Impact SBA's Views

Even if General Statutes § 22-19 authorized intervention for Visual Impairment, SBA's Application fails because the Facility does *not* impact SBA's scenic views. In fact, SBA is not even alleging that its own scenic views will be impacted. As stated above, the crux of SBA's Application appears to be concerns over economic impact on its own business, rather than environmental concerns of the surrounding community.

However, to the extent that SBA is arguing that any scenic views will be impaired, the Application fails because the Facility does not unreasonably impact 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.) Tarpon's Application for Certificate contains extensive visibility analysis, concluding that the area, which consists of forested land, residential development and the Route 15 (Wilbur Cross Highway) transportation corridor, has minimal potential visual impact. See Application for Certificate, Exhibit H (Visual Assessment Report).

SBA fails to specifically establish any evidence of visual impact. Instead, SBA relies exclusively on inflammatory allegations regarding Visual Impairment without specifying the properties/owners affected and without offering *any* information regarding the nature of the impairment (permanence, extent, etc.). As such, SBA: (1) fails to comport with the pleading requirements established by General Statutes § 22a-19 and Practice Book § 10-1² as discussed herein, and (2) fails to establish how the visual impairments constitute "unreasonable" interference, as required by § 22a-19.

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

SBA maintains, *inter alia*, that mere allegations of unreasonable impairment are sufficient to intervene, implicitly arguing that specific facts are not required. SBA misstates Connecticut law.

An intervener must submit a "**verified pleading**" containing "**specific facts.**" (Emphasis added.) Nizzardo v. State Traffic Commission, 259 Conn. 131, 164 (2002). This specific factual predicate comports with Practice Book requirements, necessitating **material facts upon which the pleader relies**. Id.; Practice Book § 10-1. "A [verified pleading] does not sufficiently allege standing [however] by merely reciting the

²Practice 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.)

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.” (Emphasis added, internal quotation marks omitted). Finley v. Inland Wetlands Commission, 289 Conn. 12, 35, 959 A.2d 569 (2008).

Here, SBA does not provide **any** specific facts, information, and/or arguments to support its Application. Instead, SBA makes references to vague and broad principles of law relating to the statutory requirements of § 22a-19, while continuously reciting the provisions of § 22a-19. See Application, 2-3. SBA repeatedly makes conclusory statements with no factual backing. See Application, 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”). Further, SBA cites to numerous cases stating that an intervening party maintains a right of appeal of an administrative decision, which is completely irrelevant and unrelated to the current proceedings. This pleading strategy has been expressly rejected by the Connecticut Supreme Court. See Id.

B. SBA’s Conclusory Allegations regarding Potential Testimony, Briefs, and Other Evidence are Irrelevant.

SBA claims that it plans to submit testimony, briefs and other evidence regarding “mitigation of environmental impact to scenic vistas greater optimization of the capacity of the existing SBA Facility” Application, 1-2. This conclusory statement of SBA’s intention – premised on intervention – provides no factual basis to confer standing pursuant to General Statutes § 22-19. SBA presumptuously assumes that it will be granted permission to intervene without a legally or factually sufficient basis for the requested relief. SBA’s application fails to set forth facts to demonstrate that the Facility


will create **unreasonable** pollution, impairment or destruction of a natural resource and its arguments are not supported in fact or in law. See generally, Finley v. Inland Wetlands Commission, supra, 289 Conn. 35. Accordingly, SBA's Application should be denied.

IV. CONCLUSION

For the foregoing reasons, Tarpon Towers II, LLC respectfully requests that the Council deny SBA's Application to Intervene.

**Respectfully Submitted,
TARPON TOWERS II, LLC**

By:



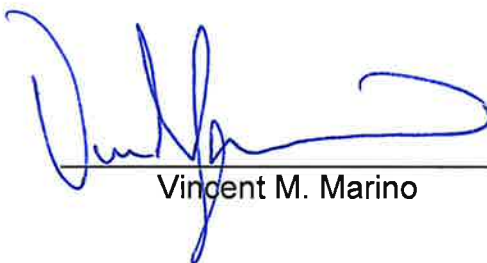
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CERTIFICATION

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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