

**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 18, 2019

**REPLY TO TARPON'S OBJECTION TO
APPLICATION TO INTERVENE UNDER CEPA, §22a-19, §4-177a AND §16-50n**

SBA Communications ("SBA"), hereby replies to Tarpon's objection to its application to intervene on the grounds that:

- (1) Tarpon's objection mistakes the application to intervene as one solely under CEPA where the application is founded upon three statutory bases §22a-19, §4-177a AND §16-50n *each of which* provide a right to intervene in these proceedings.
- (2) Tarpon mis-characterizes or simply fails to recognize that the basis for intervention is related to the proliferation of towers caused by an application to add an additional tower to the existing inventory of towers in the Hamden area which inherently impacts scenic vistas.
- (3) Tarpon mis-states or mis-understands the law by erroneously claiming that scenic vistas are not protected under the environmental laws. Under the Council's mandate to minimize visual impact as required by C.G.S §16-50g and 16-50p(3)(G)(b)(1) – "the council shall examine,...The feasibility of requiring an applicant to share an existing facility...the latest facility design options intended to minimize aesthetic and environmental impacts...The council may deny an application for a certificate if it determines that...the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood..." Corcoran v. Connecticut Siting Council, 50 Conn. Supp. 443

(2006) (Satter, J.) (finding that “*the council should take into account the "scenic" values to determine why the adverse effects upon such values are not sufficient reason to deny the application*”).

- (4) Tarpon seems oblivious to its burden to demonstrate to the Council “the nature of the probable environmental impact, including a specification of every significant adverse effect, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife...” as required by C.G.S. §16-50p(a) (emphasis added).
- (5) In addition, §16-50p(b) directs that, when issuing a certificate for a telecommunications tower, the Council “may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state.” “The sharing of facilities is encouraged, if not required by General Statutes §16-50p(b)(1)(A).” *Nobs v. Connecticut Siting Council*, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

SBA proposes to intervene to assist the Council in determining the impacts to scenic values which Tarpon’s application threatens by constructing a new tower to host a telecommunications array which is already hosted on an existing shared facility.

The verified application to intervene appropriately invokes its rights under the Council’s regulations, the Connecticut Administrative Procedures Act and the Connecticut Environmental Protection Act and should be granted.

Respectfully Submitted,

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

By _____

Keith R. Ainsworth, Esq.

Law Offices of Keith R. Ainsworth, Esq., L.L.C. #403269

51 Elm Street, Suite 201

New Haven, CT 06510-2049

(203) 435-2014

keithrainsworth@live.com

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 18th 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).

And electronic copies to:

Vincent Marino, Esq.

Cohen & Wolf, PC

657 Orange Center Road

Orange, CT 06477

(203)298-4066

vmarino@cohenandwolf.com

Tarpon Tower, LLC

Kenneth Baldwin, Esq.

Robinson & Cole

280 Trumbull Street

Hartford, CT 06103-3597

(860)275-8200

kbaldwin@rc.com

(all by e-mail)

Keith R. Ainsworth, Esq.