

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

SR LITCHFIELD, LLC PETITION FOR	:	
DECLARATORY RULING, PURSUANT TO	:	
CONNECTICUT GENERAL STATUTES	:	PETITION NO. 1442
§4-176 AND §16-50k, FOR THE PROPOSED	:	
CONSTRUCTION, MAINTENANCE AND	:	
OPERATION OF A 19.8-MEGAWATT AC	:	
SOLAR PHOTOVOLTAIC ELECTRIC	:	
GENERATING FACILITY ON 6	:	
CONTIGUOUS PARCELS LOCATED BOTH	:	
EAST AND WEST OF WILSON ROAD	:	
SOUTH OF THE INTERSECTION WITH	:	
LITCHFIELD TOWN FARM ROAD IN	:	
LITCHFIELD, CONNECTICUT, AND BOTH	:	
EAST AND WEST OF ROSSI ROAD, SOUTH	:	
OF THE INTERSECTION WITH HIGHLAND	:	
AVENUE IN TORRINGTON, CONNECTICUT,	:	
AND ASSOCIATED ELECTRICAL	:	
INTERCONNECTION	:	SEPTEMBER 24, 2021

**OBJECTION TO NICHOLAS REQUEST FOR PARTY STATUS AND
NOTICE OF CEPA INTERVENTION AND REQUEST FOR PUBLIC HEARING**

SR Litchfield, LLC (“Petitioner”) hereby objects to the Request for Party Status and Notice of CEPA Intervention and Request for Public Hearing (“Request”) filed by Ranald K. Nicholas and Robin L. Nicholas (“Nicholas”) on September 23, 2021. As discussed in more detail below, the Request is untimely, moot and fails to meet the statutory requirements for intervention under the Connecticut Environmental Protection Act, Conn. Gen. Stat. § 22a-14 to 22a-20 (“CEPA”). For all of these reasons, Nicholas’ request should be denied.

BACKGROUND

Petitioner filed Petition No. 1442 application with the Council on February 5, 2021. At its regular business meeting of June 17, 2021, the Council voted to set the date by which to render a decision on Petition No. 1442 as no later than November 2, 2021. The Council approved Petition No. 1442 at its regular meeting on September 23, 2021.

Now, following the Council's decision in this docket, Nicholas asks the Council for party status, seeks to intervene under the CEPA, and requests that the Council hold a hearing on the Application.

ARGUMENT

A. The Request is Untimely and Moot

The Request should be denied because it is untimely and moot in light of the Council's decision on September 23, 2021. Section 4-176(d) of the Connecticut General Statutes provides the Council discretion, in a proceeding on a petition for declaratory ruling, to grant party status upon the filing of a "*timely* petition . . . demonstrating that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency proceeding[.]" Similarly, the decision to hold a hearing is discretionary under the Uniform Administrative Procedures Act and the Council's own regulations. *See* Conn. Gen. Stat. § 4-176(g); R.C.S.A. § 16-50j-40(b). *See also Cadlerock Props. J.V., L.P. v. Commissioner of Env'tl. Protection*, 253 Conn. 661 (2000) ("Agencies . . . are given broad discretion to exercise their regulatory authority.").

Petition No. 1442 was filed nearly eight months ago. Nicholas, as a direct abutter to the project site received notice of the Petitioner's intent to file Petition No. 1442 at that same time. If Nicholas wanted to further participate in this matter, they should have sought to intervene long ago, and not waited until after the Council issued a decision on the Petition. Nicholas had ample time and opportunity to seek party status in this proceeding but chose not to do so. Further, as the Council is familiar with the issues raised in the Request and clearly capable of rendering a decision in Nicholas' absence and without a hearing, granting the Request at this late juncture would result in delay and prejudice to Petitioners for no practical purpose. The Request is untimely, moot and should be denied.

B. The Request Fails to Meet the Statutory Requirements for CEPA Intervention

Connecticut General Statutes Section 22a-19 allows a person to intervene in an administrative proceeding on the filing of a verified petition that “contain[s] specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources of the state and should be sufficient to allow the reviewing authority to determine from the verified pleading whether the intervention implicates an issue within the reviewing authority’s jurisdiction.” Although an individual need not prove his case to intervene pursuant to Section 22a-19, “he must articulate a colorable claim of unreasonable pollution, impairment or destruction of the environment” to be granted intervenor status under CEPA. *Windels v. Env’tl. Prot. Comm’n*, 284 Conn. 268, 289-90 (2007). Merely citing provisions of the statute is not sufficient. *See Finley v. Inland Wetlands Comm’n*, 289 Conn. 12, 36 (2008); *see also Fairwindct, Inc. v. Conn. Siting Council*, 313 Conn. 669, 712 (2014) (“[T]he mere allegation that [an applicant] has failed to comply with certain technical or procedural requirements of a statute imposing environmental standards does not, in and of itself, give rise to a colorable claim of unreasonable pollution under the [CEPA]...”). Moreover, policy and legislative concerns do not fall within Section 22a-19 because they do not involve *conduct* which is reasonably likely to unreasonably pollute, impair or destroy the natural resources of the State. *Pond View, LLC v. Planning & Zoning Comm’n*, 288 Conn. 143, 160-61 (2008).

The Request primarily raises concerns related to stormwater runoff and potential erosion and sedimentation of nearby watercourses. However, the project will need to comply with Connecticut Department of Energy and Environmental Protection (“DEEP”) requirements with

regard to stormwater discharges, and these issues are not within the Council's jurisdiction here. *See Connecticut Fund for Environment Inc. v. City of Stamford*, 192 Conn. 247 (1984).

The Request also complains that approving Petition No. 1442 will result in changes to the nature and character of the surrounding area, by way of changes to the Nicholas' view from their backyard and "mechanical noise". (Request, at 2-3). However, Connecticut law does not guarantee a right to scenic views. *See Irwin v. Planning & Zoning Commission*, 45 Conn. App. 89, 99 (1997), *rev'd on other grounds*, 244 Conn. 619 (1998) (holding that property owners do not have a right to unobstructed views); *New Haven v. United Illuminating Co.*, 168 Conn. 478, 495 (1975). Moreover, the Request fails to explain how impacts on views or mechanical noise constitutes the unreasonable pollution, impairment or destruction of a natural resource.

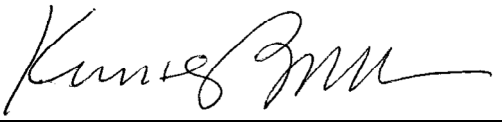
Indeed, nothing in the Request demonstrates that approving Petition No. 1442 will result in *unreasonable* impacts to natural resources of the state. In other words, the Request for CEPA intervention does not "give rise to a colorable claim of unreasonable pollution" and should be denied.

CONCLUSION

For all of these reasons, Petitioner respectfully requests that the Council deny Nicholas's request for party status, request to intervene, and request for public hearing.

Respectfully submitted,

SR LITCHFIELD, LLC

By 

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CERTIFICATION

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A handwritten signature in black ink, appearing to read "Kenneth C. Baldwin", written over a horizontal line.

Kenneth C. Baldwin