

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

The United Illuminating Company Petition for a) Docket 1120
Declaratory Ruling that no Certificate of Environmental)
Compatibility and Public Need is Required for the)
Proposed Modifications to the Hawthorne Substation at)
180 Hawthorne Drive, Fairfield, Connecticut) June 5, 2015

POST HEARING BRIEF OF
THE UNITED ILLUMINATING COMPANY

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On Behalf of:
The United Illuminating Company

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I. INTRODUCTION

The United Illuminating Company (“UI” or the “Company”) submits this Brief to the Connecticut Siting Council (“Council”) in support of the Council’s issuance of a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction of two 20 MVAR 115kV transmission capacitor banks (the “Project”) UI proposes to install at the Company’s Hawthorne Substation located at 180 Hawthorne Drive in the Town of Fairfield (“Town” or “Fairfield”) (the “Substation”). The existing Substation is located on a 2.8 acre parcel in an R-3 zoned area. The transmission capacitor banks UI proposes are an essential modification of the Substation in order to mitigate the risk of inadequate voltage in the vicinity of the Substation. Undertaking the relatively modest upgrade at the Substation is expected to defer the need for a new substation in Fairfield for at least ten years. UI proposes to develop the Substation on the western portion of the Property, adjacent to the Eversource transmission line easement (the “Site”). In addition to UI’s normal efforts to minimize visual and ecological impacts, the Company listened to and addressed the concerns of neighbors of the Substation, adjusting its design wherever possible. The Project will have no substantial adverse

environmental impact and is consistent with state policies concerning the natural environment and ecological balance, public health and safety, and scenic, historic, and recreational values.

II. PROJECT DESCRIPTION

In compliance with the requirements of governing authorities including the National Electric Regulatory Commission, the Northeast Power Coordinating Council, Inc. and the ISO New England (“ISO-NE”), UI participated in a study of the southwestern Connecticut electric grid, as part of the continuing effort to maintain a reliable electric power system in the northeastern United States. The Company determined that the transmission corridor in the vicinity of the Substation is constrained, resulting in low voltages in the surrounding area. UI Exhibit 1 at 1-2.

UI proposes installing two 20 MVAR 115 kV transmission capacitor banks at the Site as the least intrusive yet viable way to ensure reliable electric service in the areas served by the Substation. *See* UI Exhibit 8, Response CSC-II-6. Additionally, UI proposes several ancillary component upgrades not directly associated with the capacitor bank, such as increased lightning protection, large equipment access, and additional emergency yard lighting. UI Exhibit 1 at 4. These upgrades were similarly identified as deficiencies in the Substation and will aid in its safety, security, and reliability.

III. THE SITE IS THE BEST LOCATION FOR THE PROJECT

As noted above, UI determined in a regionally required compliance study that the transmission corridor in southwestern Connecticut is constrained. UI Exhibit 1 at 1-2. UI examined a number of different options for rectifying the issue of low voltages in the area surrounding the Substation and determined that the proposed Project represents the most efficient solution. *See* UI Exhibit 8, Response CSC-II-6.

When comparing the installation of two capacitor banks at the Substation to other potential modifications or new construction within the system, the proposed work is relatively modest. April 23, 2015 Tr. at 9. As an alternative to the Project, UI contemplated upgrading the Old Town Substation to mitigate the identified reliability concerns. *See* UI Exhibit 8, Response CSC-II-6. However, UI concluded that the proposed Project is the most technically effective and practical solution to meet regional reliability compliance obligations. *Id.* The Hawthorne Substation property can readily accommodate the critically important capacitor banks and provides the best technical system benefit when compared to the Old Town alternative. *Id.* Additionally, even if UI undertook the significant necessary modifications of the Old Town Substation to accommodate capacitor banks, doing so would delay the project by years when there is an immediate need and would not include the added capacity benefit the proposed Project provides. *Id.* Such a delay would increase area customers' exposure to reliability issues, which will worsen as loads continue to grow. *Id.*

The proposed modifications enable UI to resolve low voltage and capacity issues in the southwestern Connecticut transmission corridor without more extensive alterations to the electrical system. Thus, the proposed Site represents the best location when considering all pertinent factors for ensuring system reliability.

IV. THE NOTICE PROVIDED TO THE AZARIAN FAMILY AND STACEY TOURNAS SATISFIED THE NOTICE REQUIREMENTS OF § 16-50J-40(a)

The Council should disregard the efforts of those who seek to delay this critical Project on a non-existent procedural error. As a matter of law, and as discussed in greater detail in the Adequacy of Notice Supplement to this Brief (*see* pages 15-22), all individuals who were legally required to receive notice of the filing of the Petition with the Council received timely and adequate notice. UI complied with the notice requirements of the Regulations of Connecticut

State Agencies (“RCSA”) § 16-50j-40(a), and the repeated assertions that UI provided insufficient and untimely notice are patently false. Specifically, the Intervenor claim that UI failed to comply with § 16-50j-40(a) by neglecting to provide the Azarian family and Ms. Stacey Tournas with notice of the proposed Project. The Intervenor (as well as numerous area residents and state legislators) are wrong as a matter of law.

The RCSA provide that petitioners seeking a declaratory ruling from the Siting Council shall provide notice to those property owners abutting the proposed site. The property owned by the Azarian family does not abut the Site, and therefore falls outside the scope of § 16-50j-40(a). Ms. Tournas received actual notice from her brother, Mr. Jason Tournas and her father, Mr. Arthur Tournas.¹ Thus, the Project is in compliance with the notice requirements of § 16-50j-40(a). *See Adequacy of Notice Supplement.*

A. The Azarian Family

The Azarian family’s property does not abut the Site. Instead, the Azarian family owns a parcel of land adjacent to a driveway UI uses to access the Site. UI holds no ownership or leasehold interest in the property that stands between the Azarian family and the Site. As the Azarians do not own property abutting the Site, under RCSA § 16-50j-40(a), UI is not required to provide them with notice. *See Adequacy of Notice Supplement.*

B. Stacey Tournas

Unlike the Azarians, Ms. Tournas and her brother, Jason Tournas, co-own a parcel abutting the Site. In order to ensure compliance with the notice provisions of § 16-50j-40(a), UI conducted an investigation to determine ownership of each abutting property by utilizing the Multiple Listing Service (“MLS”) real estate database. The MLS database depicted Jason Tournas as the only owner of record for the abutting property in question and UI had no reason

¹ As noted above, Mr. Arthur Tournas is an Intervenor in this proceeding.

to doubt its accuracy. UI provided notice in accordance with § 16-50j-40(a) to Jason Tournas, which is not in dispute. Upon receiving this notice, Jason Tournas provided actual notice to Ms. Tournas, and acting on this notice, Ms. Tournas appointed her father as her third party representative in the proceedings before the Council. *See* Stacy Tournas Pre-File Testimony. Ms. Tournas herself was even listed as a witness in Arthur Tournas' pre-hearing submission to the Council. Letter, Intervenor Tournas, March 20, 2015. Connecticut's Supreme Court has consistently ruled that notice to one co-owner is notice to all co-owners. *Katz v. Town of W. Hartford*, 191 Conn. 594, 600-601 (1983). Based on the relevant facts, Ms. Tournas certainly received the notice required and contemplated by Connecticut law under RCSA § 16-50j-40(a).

V. THE PROJECT SATISFIES THE CRITERIA FOR APPROVAL BY PETITION FOR DECLARATORY RULING AND WILL NOT HAVE AN ADVERSE ENVIRONMENTAL EFFECT

As clearly demonstrated by the record, the Project satisfies the requirements of Conn. Gen. Stat. § 16-50k(d) because it will have no adverse environmental impact. The Project warrants approval by declaratory ruling as it is consistent with state policies concerning the natural environment, ecological balance, public health and safety, and scenic, historic, and recreational values.

A. Modification of an Existing Facility

UI reiterates that this Project is a modification of a long-existing facility that the Company has operated as an electrical substation for many years and it will not have an adverse environmental impact. As discussed in greater detail below, beyond the vital improvement in electrical system reliability, very little will change after the modifications are complete. The opponents to this Project have raised a number of "red herrings", from inextinguishable fires to toxic metals. However, the facts demonstrate that the Substation will remain in largely the same

state before and after the proposed modifications. The noise produced by the Substation will not change. The electric and magnetic fields generated by the Substation at the property boundary will not change. UI will illuminate only one additional light fixture during normal working conditions. April 23, 2015 Tr. at 13-14. The impervious surface within the Substation will actually decrease, ensuring that the Project will have no impact on stormwater runoff or the nearby isolated wetland. As made abundantly clear by the record in this proceeding, the Project will not have an adverse environmental effect and warrants approval by declaratory ruling.

B. Air Quality and Fugitive Dust Particles

The proposed modifications will not result in any emissions and thus the Project does not require an air permit. Fugitive dust and other construction material particles, such as aluminum, will not migrate from the construction site. *See* UI Exhibit 13, Response to TOU-III-31. *See* April 23, 2015 Tr. at 38-39. When conditions are conducive to generating dust from construction activities, UI will implement fugitive dust control measures. April 23, 2015 Tr. at 38-39. Without support, and in contrast to almost every other substation construction project undertaken by the Company, Project opponents allege that the cutting of metals, such as aluminum, during the course of construction, will be harmful to the neighbors. Aluminum is a fairly common element. Based on the activities UI contemplates as part of the Project, the Company is not aware of any studies or literature that describe aluminum as being a hazardous product or threat to human safety. *Id.* at 41.

C. Ecological Conditions

i. The Proposed Project Will Not Impact the Eastern Box Turtle

Although The Department of Energy and Environmental Protection (“DEEP”) identified the Site as a potential habitat for the Eastern Box Turtle (“Box Turtle”), which is recognized by

the State as a species of special concern, there is no indication that Box Turtles currently inhabit the Site.²

According to Dennis Quinn, the only expert to testify on the matter, the habitat immediately surrounding the substation is suboptimal for the Box Turtle. Mr. Quinn testified before the Council that the habitat is suboptimal due to it being heavily developed as well as the surrounding forest area being inadequate to house Box Turtles. March 31, 2015 Tr. at 83. Box Turtles typically do not hibernate within close proximity to forested edges. The proposed Project Site is situated very close to a forested edge, making the area an unlikely habitat. *Id.* UI's expert has found no evidence of additional Box Turtles in the area. *Id.*

UI will implement protocols designed to protect Box Turtles that may currently exist or later travel into the vicinity of the Substation, despite the suboptimal setting. March 31, 2015 Tr. at 86. UI's proposed protocol conforms to industry standard and is accepted as a best practice by DEEP. By implementing such a protocol, UI will adequately protect any potential Box Turtles in the area. *Id.* Finally, UI commits to employing a Box Turtle expert to sweep the Site each working day during civil construction to locate and shield any Box Turtles from UI's activities. UI will train its employees and contractors on the protection protocols and what to do if they spot a Box Turtle in the area. April 23, 2015 Tr. at 7.

ii. The Proposed Project Will Not Impact the Wild Turkey

Intervenor Vincent Giandurco raised the presence of wild turkeys in the general vicinity of the Substation as a reason to deny the Project. According to Mr. Quinn, turkeys are not

² Although there are no known instances of Box Turtle sightings at the Substation, at least one Box Turtle was reported 200 yards from the construction area. April 23, 2015 Tr. at 24. The Substation area does not necessarily constitute a Box Turtle habitat, but a "home range." *Id.* Additionally, identifying a solitary Box Turtle in the general vicinity of the Substation does not correlate to the existence of a "healthy" Box Turtle population inhabiting the area. March 31, 2015 Tr. at 84.

endangered, and in fact, as a game bird, are prohibited from the inclusion on state threatened or endangered lists. March 31, 2015 Tr. at 87-88.

D. Stormwater Management and Wetlands

On March 25, 2015, DEEP approved UI's Stormwater Management Plan and authorized a General Permit Registration for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities.³ As contained within UI's DEEP approved plan, UI proposes the following perimeter erosion control measures to ensure that the proposed modifications result in no adverse effect.

- Establish and observe stockpile restrictions.
- Construct covered wheel washout station.
- Cover all disturbed areas with grass seed, mulch, or crushed stone.
- Minimize off-site vehicle tracking via wet dust control measures.
- Install hydromulch and erosion control blankets.
- Install drop inlet sediment barriers, diversion bales, silt fencing, and hay/straw bales.

March 31, 2015 Tr. at 32-33. *See also* UI Exhibit 9, Response to TOF-3, Attachment TOF-3-C.

It is additionally important to note that the Project will result in a net *decrease* of 730 square feet of impervious surface, helping to further mitigate any issues related to stormwater runoff at the Substation. April 23, 2015 Tr. at 15. UI Exhibit 19 (Revised Site Plan).

Although UI's consultant identified an isolated non-vegetated wetland within 500 feet of the proposed modifications, UI's stormwater plan complies with all state and federal regulations and will ensure that any potential increased stormwater runoff will not impact the delineated wetland. March 31, 2015 Tr. at 31-32.

³ *See* UI Exhibit 17.

UI's Wetland Delineation stated that the identified wetland was a potential breeding site for amphibians in the spring season. UI conducted a two-day field assessment from April 10–11, 2015 to determine if, in fact, this wetland served as a vernal pool (a potential breeding site for amphibians). After an extensive review, consisting of egg mass counts, dip-netting, minnow trapping and cover object survey methods, UI determined that the identified wetland adjacent to the substation does not support any amphibian breeding populations and does not consist of the characteristics required to meet the classification of a vernal pool. UI Exhibit 18, Response CSC-III-7 Attachment at 1. UI's vernal pool assessment further confirmed that the identified wetland's classification as an isolated non-vegetated concave depression wetland is appropriate. *Id.*

E. *Noise*

The Project will result in no noise impacts to the Site and surrounding properties. *See* UI Exhibit 15 at ES-1. According to the noise study UI commissioned, the proposed expansion equipment necessary for the modifications may emit some discrete noise that may be audible in localized areas close to the equipment, but will generally emit low sound levels that would not be discernible beyond the fence lines. *Id.*

The sound pressure levels of the Substation, including the proposed modifications, will comply with all noise regulations specified by the Town of Fairfield and the State of Connecticut. *Id.* Thus, the proposed project will result in no noise impact to the surrounding properties.

F. *Electric and Magnetic Fields*

The Project and in particular the electric and magnetic fields ("EMFs") it generates, will have no impact on public health and safety. UI Exhibit 18, Response CSC-III-10 Attachment at

iv; March 31, 2015 Tr. at 45. The record demonstrates that the EMF levels that the Project will generate are exceedingly low, and at a distance of 150 feet from the Substation perimeter, the calculated EMF levels are similar to or lower than those measured or calculated for pre-construction (existing) conditions. *Id.*

The Project will result in no significant increase in the exposures of local residents to EMF. The very low levels of EMF produced by the substation fall well within the range of values that are encountered by residents in their homes today. March 31, 2015 Tr. at 46-47. As determined by the Company's EMF expert:

In summary, the addition of the proposed capacitor banks to the existing Hawthorne Substation will not cause any significant change to the existing levels of electric and magnetic fields at the boundary of the site. Levels of electric and magnetic fields under existing and proposed conditions would be *far below* levels recommended by the International Committee on Electromagnetic Safety and the International Commission on Non-Ionizing Radiation Protection for the general public and are similar to those found in homes not near substations.

UI Exhibit 18, Response CSC-III-10 Attachment at vii (emphasis supplied).

G. Historic, Scenic and Recreational Values

The Project will have no impact on scenic, historic, and recreational values. The Connecticut State Historic Preservation Officer ("SHPO") has indicated that there are no known and recorded historic and archaeological sites on or near the Project. *See* UI Exhibit 17, Attachment A. As the proposed Project consists of modifications to an existing substation, the construction activities will not impact parks, recreational areas and open spaces.

Additionally, UI met with residents from the area surrounding the Substation in an effort to address their concerns over changes to the visual landscape of the Substation. Based on various meetings and correspondence throughout the siting process, UI has changed its original

design to address the residents' concerns and will undertake several visual mitigation measures. For a complete list *see* Section VII, Community Outreach and Input.

Both the Intervenor and the Council raised the issue of necessity in regard to UI's proposed lightning protection plan. March 31, 2015 Tr. at 105. UI reiterates that it can lower the height of the proposed masts from seventy to fifty-five feet by adding one additional mast. UI can also shift the eastern most lightning mast 100 feet to the north by adding three five-foot finials to the takeoff structures while still achieving 100% lightning protection for its equipment. April 27, 2015 Tr. at 16 and 33. However, achieving something less than 100% protection is contrary to UI's standard operating procedures and imprudent when complete protection is readily available at minimal cost. As the poles used to house the Substation's light fixtures are similarly situated, it is not likely that the addition of the proposed lightning masts will cause an adverse visual effect.

Finally, UI firmly opposes the suggestion that a concrete wall of any magnitude is required for the safety and security of the Substation and the surrounding area. As is the case with nearly all of UI's other substations, a fourteen-foot high mesh fence with appropriate screening is entirely adequate for protecting the Substation from the public and protecting the public from entering the Substation property and injuring themselves. April 23, 2015 Tr. at 84. The cost associated with installing a concrete wall around the perimeter is exponentially greater than the fence UI proposes and provides little to no additional benefit. *Id.*

VI. COMMUNITY OUTREACH AND INPUT

A. Development and Management Plan

Since the Project is a relatively modest upgrade project and will have no adverse environmental impact, the Company respectfully requests that the Council provide for a development and management plan (“D&M Plan”) that is consistent with the RCSA §§ 16-50j-60 through 16-50j-62 and the Council’s past practices in ordering various components of a D&M Plan. As the Company has indicated previously, it will “work with the neighbors ... to make any modifications that would appease both parties.” April 23, 2015 Tr. at 16-17.

B. Outreach Efforts to the Neighbors

The Company has been receptive to input from the neighbors and the Town. The record demonstrates that the Company has taken a good neighbor approach when considering possible modifications to the original Project design based on the concerns expressed by the neighbors. Contrary to the assertions of various speakers at the March 31, 2015 public comment session, and various filings made to the Council, the Company has been amenable to suggestions by the neighbors, and the Council’s open and transparent process has worked to ensure a full discussion of the Project has taken place. No less than three field visits have been conducted. The Council conducted a field visit on December 1, 2014. (*See* Administrative Notice Item 18). A second field visit was conducted by the Council on March 31, 2015. (*See* January 23, 2015 Hearing Notice.) The Company also conducted a field visit of the Site on February 4, 2015. *See* UI Exhibit 6. Additionally, the Company met with interested parties to discuss and to answer questions about the Project. *Id.* Finally, as the Council is aware, on April 2, 2015 the Company (with the concurrence of the Town and the intervenors) asked that the April 7, 2015 hearing be rescheduled until April 23, 2015 in order to allow the parties the opportunity to enter into settlement discussions. As a result of these events, as set forth above, the Company has significantly modified its original proposal in order to further lessen the already limited visual

impact of the Project and the Company has already committed to work with the residents to address screening and to make additional modifications to the Project. April 23, 2015 Tr. at 15-

17. In summary, since the Petition was filed with the Council, the Company has modified the Project in the following significant ways:

- The impervious surface within the Substation will actually decrease since UI elected to use gravel rather than asphalt wherever possible.
- UI will only operate one overhead light fixture during normal working conditions.
- UI will angle the corners of the perimeter fence on forty-five degree angles and modify the original fence design to increase the distance between the abutters and the Substation fence where possible.
- UI will use a fourteen foot, two inch mesh fence with winged slats that are available in a variety of colors to mask the Substation equipment, both new and existing.

UI proposes vegetative screening to eliminate any potential visual impact created by the relatively minor modifications and further commits to collaborate with the abutting property owners to create the most agreeable final landscaping design.

VII. CONCLUSION

The record before the Council amply supports the grant of a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for Modifications to the Hawthorne Substation at 180 Hawthorne Drive, Fairfield, Connecticut. As the record demonstrates, the proposed modifications will have no adverse environmental effects on the surrounding area. Accordingly, UI respectfully requests that the Council determine that the Project meets the criteria for approval by petition for declaratory ruling.

CERTIFICATION

This is to certify that on this 5th day of June 2015, an original and fifteen (15) copies and an electronic copy of the foregoing were delivered by hand to the Connecticut Siting Council, 10 Franklin Square, New Britain, Connecticut 06051, one copy was served on all other known parties and intervenors electronically or by depositing the same in the United States mail, first class postage prepaid on the 5th day of June.



Bruce L. McDermott

SUPPLEMENT – ADEQUACY OF NOTICE

A. *The Notice Provided to the Azarian Family and Stacey Tournas Satisfied the Notice Requirements of § 16-50j-40(a)*

The Council should disregard the efforts of those who seek to delay this critical Project on a non-existent procedural error. As a matter of law, all individuals who were legally required to receive notice of the filing of the Petition with the Council received timely and adequate notice. UI complied with the notice requirements of RCSA § 16-50j-40(a), and the repeated assertions that UI provided insufficient and untimely notice are patently false. Throughout this proceeding, members of the public, elected officials and the Intervenors have alleged that the Company failed to provide notice of the Petition filing to abutting property owners at 192 Hawthorne Drive (“the Azarians”),⁴ and to Stacey Tournas, co-owner of 186 Schiller Road. A large number of individuals asserting the same thing does not make their statements true. The simple fact is the Azarians’ property does not abut the property upon which the Company seeks to undertake its modifications, and Stacey Tournas received actual notice in compliance with RCSA § 16-50j-40(a).

i. The Azarian Family

UI owns in fee simple the subject property where it proposes modifications to the Substation. The Azarian property does not abut the substation property. UI holds a non-possessory interest, in the form of an easement, on a parcel of land adjacent to the the Azarians’ property located at 192 Hawthorne Drive, so that UI may access the property housing the Substation as it is landlocked. The Azarians are not entitled, as a matter of law, to notice of the filing of the Petition under RCSA § 16-50j-40(a), simply because UI holds an easement on a

⁴ Most recently, State Sen. Hwang alleged that Gary Azarian at 192 Hawthorne Drive still had not received official notice. *See* Letter, Senator Hwang, May 14, 2015; *see also* Letter, Representative Devlin, May 20, 2015.

property adjacent to the Azarians, as their property is clearly beyond the reach of RCSA § 16-50j-40(a).⁵

UI's ownership in fee simple of the Substation Property and its easement interest for purpose of an access road are separate and distinct interests in two properties. Connecticut regulations require that petitioners seeking a declaratory ruling from the Siting Council, "shall, where applicable, provide notice to each person other than the petitioner appearing of record as an owner of property that abuts the proposed primary or alternative sites of the proposed facility, each person appearing of record as an owner of the property or properties on which the primary or alternative proposed facility is to be located..." RCSA § 16-50j-40(a). "[T]he fundamental reason for the requirement of notice is to advise all affected parties of their opportunity to be heard and to be apprised of the relief sought..." *Goldstar Medical Services, Inc. v. Dept. of Social Services*, 288 Conn. 790, 823 (2008). Although undefined within the statute, Black's Law Dictionary defines an abutter as (1) [t]he owner of adjoining land; one whose property abuts another's..." and (2) "[I]and that adjoins the land in question." ABUTTER, Black's Law Dictionary (10th ed. 2014). The Azarian's parcel fits neither definition.

ii. Stacey Tournas

It is undisputed that Ms. Tournas' brother and co-owner of the property received proper and adequate notice of the hearing. The Company conducted due diligence as to who owned the property located at 186 Schiller Road and, as set forth in Exhibit A, the Multiple Listing Service real estate database indicated that Jason Tournas owned the property. The Company had no reason to suspect the database was incorrect. Accordingly, UI addressed the letter that was sent

⁵ Taken to the extreme, adopting this novel argument would mean that if a company had an easement for a transmission line that tied into a substation, the company would be required to provide notice to every individual along that right of way would need to be provided notice of a petition for modifications to the substation.

on December 2, 2014 to Jason Tournas. UI Exhibit 2; UI Exhibit 14, Response GIA-1.⁶ Jason Tournas provided actual notice to Ms. Tournas who lives in Trumbull. *See* Stacy Tournas Pre-File Testimony. Jason and Stacey Tournas subsequently named their father their designated third-party representative and listed Ms. Tournas as a witness in Arthur Tournas' pre-hearing submission to the Council. Letter, Intervenor Tournas, March 20, 2015. Under these facts, the notice provided by the Company was sufficient and did not violate Ms. Tournas' due process rights in any way.

The Supreme Court of Connecticut has consistently ruled that notice to one co-owner is notice to all co-owners. *Katz v. Town of W. Hartford*, 191 Conn. 594, 600-601 (1983). The Supreme Court has even imputed notice to co-owners of property when the notice to all owners is statutorily mandated, finding that “[t]wo separate notices are not necessary to accomplish the purpose of the statutes.” *H&S Torrington Assoc. v. Lutz Engineering Co., Inc.*, 185 Conn. 549, 555 (1981). “In delving into these considerations, we find that the ‘fundamental reason for the requirement of notice is to advise all affected parties of the opportunity to be heard and to be apprised of the relief sought.’” *Jarvis Acres, Inc. v. Zoning Comm’n. of Town of East Hartford*, 163 Conn. 41, 47 (1972) (citing *Slagle v. Zoning Board of Appeals*, 144 Conn. 690, 693 (1957)); *Winslow v. Zoning Board*, 143 Conn. 381, 389 (1956). Since UI provided adequate notice pursuant to R.C.S.A. §16-50j-40(a) to one of the co-owners of the property, and the aggrieved party's actions were consistent with receiving actual notice, the Siting Council should deem that notice was properly served upon the aggrieved party.

In *Katz*, the plaintiff claimed that the town council lacked jurisdiction to exercise the powers of the town planning authority because of its failure to serve proper notice upon both co-

⁶Intervenor Tournas who also does not live at 186 Schiller Road but at 106 Woosely Avenue in Trumbull also became aware and participated in this proceeding notwithstanding the fact that no formal notice of the filing of the petition was provided to him.

trustees of a property that abutted a proposed road extension. *Katz*, 191 Conn. 594, 600 (1983). The Connecticut Supreme Court held that when notice is provided to one of two co-fiduciaries, as well as to joint tenants and tenants in common, it is deemed notice to the other with respect to matters relating to the real estate that they own. *Id.* at 600-601 (also citing *Conrad v. Hawk*, 122 Cal.App. 649, 653, (1932) and *Bronnenberg v. Indiana Union Traction Co.*, 59 Ind.App. 495, 499 (1915)).

Likewise, in *H&S Torrington*, a property owner attempted to discharge a subcontractor's mechanic's lien placed on his property that was held jointly with a co-owner of the property, stating that two separate notices were required under the Connecticut General Statutes, which reads, in relevant part, "[w]hen there are two or more owners, or two or more original contractors, the notice shall be so served on each owner and on each original contractor." Conn. Gen. Stat. § 49-35(a). The court rejected the argument, holding that the intent of the statutory requirement had been achieved and finding that "a subcontractor may comply simultaneously with both notice requirements." *H&S Torrington Assoc.*, 185 Conn. 549, 555 (1981).

In *Jarvis Acres*, the Supreme Court of Connecticut explained that statutory notice requirements to be published in a newspaper do not require actual notice, but only constructive notice. *Jarvis Acres*, 163 Conn. 41, 47 (1927). The plaintiffs contended that notice published in two different newspapers, instead of one newspaper twice, failed to satisfy the notice requirements of Conn. Gen. Stat. § 8-3. When interpreting statutes, however, the "cardinal rule is that statutes are to be construed so as to carry out the expressed intent of the legislature." *Id.* at 46. In its ruling, the Court stated that the "fundamental reason for the requirement of notice is to advise all affected parties of the opportunity to be heard and to be apprised of the relief sought"

and accordingly found that publishing in multiple papers in no way frustrated the purpose of the statute, and thus rejected the plaintiff's claim. *Id.* at 47.

B. *Even If the Notice Provided Did Not Satisfy the Notice Requirements of § 16-50j-40(a), the Aggrieved Parties' Knowledge of the Hearing Cured The Defect*

Even if the notice provided was defective in that it failed to specifically name the aggrieved party, it is well established under Connecticut law that “[d]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council*, 215 Conn. 474, 484 (1990); *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *Mathews v. Eldridge*, 424 U.S. 319, 324-25 (1976). The Supreme Court has routinely held that “[notice] is adequate if it fairly and sufficiently apprises those who may be affected of the nature and character of the action proposed, so as to make possible intelligent preparation for participation in the hearing” *Goldstar Medical Services, Inc. v. Dept. of Social Services*, 288 Conn. 790, 823 (2008).

In *Concerned Citizens of Sterling*, the Supreme Court of Connecticut affirmed the lower court's decision, holding that the notice provided by the Council as required by Conn. Gen. Stat. §§ 16-50l, 16-50m and 4-177 was sufficient. The plaintiffs contended that the Council's failure to provide adequate notice violated their constitutional rights and deprived them of a meaningful opportunity to be heard. *See Concerned Citizens of Sterling*, 215 Conn. 474, 483 (1990). The court in acknowledging the need for flexibility in the interpretation of procedural due process rights, ruled that the plaintiffs' rights were not violated, because the notice received “in fact enabled them to appear at, and to participate in, the hearings held by the Council.” *Id.* at 484.

Similarly in *Goldstar*, the Supreme Court of Connecticut held that the Department of Social Services did not violate the plaintiff's due process rights when the original notice provided to the plaintiffs was amended multiple times. The court, in rendering its decision to

affirm the trial court's decision, focused on the fact that the plaintiffs "were well aware of the charges against them, which further supports the trial court's conclusion that the department did not violate the plaintiffs' due process rights." *Goldstar*, 288 Conn. 790, 825 (2008); *see also*, *Grimes v. Conservation Commission*, 243 Conn. 266, 274 (1997) (observing that "[t]he purpose of administrative notice requirements is to allow parties to prepare intelligently for the hearing" [internal quotation marks omitted]). In *Goldstar*, the plaintiff was so familiar with the charges against him that he was able to draft a "plan of correction" in response to the violations pending before the department.

i. The Azarian Family

Even if the Council determines that the Azarians are abutters for the purposes of RCSA § 16-50j-40(a) because their property is next to a property upon which the Company has a non-possessory easement interest, they have received adequate constructive notice, making any failure to provide formal notice inconsequential. Connecticut's Appellate Court held in *Town of Preston v. Connecticut Siting Council*, 20 Conn. App. 474 (1990) that "the purpose of notice by publication to the general public is to 'advise all affected parties of their opportunity to be heard and be apprised of the relief sought.'" *Id.* at 481 (quoting *Slagle v. Zoning Board of Appeals*, 144 Conn. 690, 693, 137 A.2d 542 (1957)).

In *Preston*, an abutter to a proposed project was not initially noticed as required by RCSA § 16-50j-40(a). However, after becoming aware of the project, the abutter became an intervenor to the proceeding. *The court held that by participating in the action before the Council, the purpose of § 16-50j-40(a) was satisfied and the late-noticed abutter waived any remaining defect. Id.* (emphasis supplied).

Here, the Azarians have participated in this proceeding in numerous ways:

- The May 14, 2015 brief of the Concerned Citizens of North Stratfield was filed on behalf of the Azarians, among others.
- The Azarians provided a letter to the Council about the Project in which they acknowledge that they were aware of the Petition and indicate they reviewed material concerning the project. *See* February 20, 2014 (sic.) letter from Gary and Jackie Azarian.
- The Azarian family attended a meeting and presentation on the proposed project. April 23, 2015 Tr. at 58.
- Mr. Azarian was scheduled to be a witness in the public hearing concerning Petition 1120. April 23, 2015 Tr. at 44; March 31, 2015 Hearing Program, at 8.

So even if the Azarians were entitled to receive notice of the filing – which they were not – they were not prejudiced or harmed by the notice and their participation in the Petition cures any procedural defect. *Town of Preston v. Connecticut Siting Council*, 20 Conn. App. 474, 481 (1990).

ii. Stacey Tournas

Ms. Tournas is a co-owner of a parcel of land abutting the property that is the subject of the Petition filed with the Siting Council. UI provided actual notice upon Ms. Tournas' brother and co-owner of the property, Jason Tournas. Both parties took action consistent with having actual notice of the Petition by having their father, and previous owner of the property, represent them at the hearing. Ms. Tournas also submitted pre-file testimony dated February 19, 2014 (sic.), was a named witness at the hearing (April 23, 2015 Tr. at 44; March 31, 2015 Hearing Program, at 8) and although she did not attend the hearing, her representative (her father) testified to her knowledge of the notice provided and clearly demonstrated that the notice

provided her with the opportunity to be heard and apprised of the relief sought.⁷ April 23, 2015
Tr. at 60.

RCSA §16-50j-40(a) does not specify any particular format for the notice that is required to be provided by the petitioner. The purpose of the notice requirement is to reach as much of the populace as possible that own lands abutting the site of the proposed facility; to inform them of the proposed plan; and to provide them with an opportunity to be heard. The notice provided to the co-owner of the property, at the address of the property, satisfied the intent of the regulation, clearly evidenced by Ms. Tournas' subsequent actions in naming a representative and being a named witness at the hearing. Since notice was adequately provided pursuant to RCSA §16-50j-40(a) to one of the co-owners of the property and the intent of the notice requirements of RCSA § 16-50j-40(a) were clearly met, the Council should deem that notice was properly served upon Ms. Tournas.

⁷ The May 14, 2015 brief of the Concerned Citizens of North Stratfield was filed on behalf of Stacey Tournas, among others. In his response to the Company's opposition to his request for intereviewer status, Arthur Tournas states, "I am representing the Group the 'Concerned Citizens of North Stratfield' to get precise details of the proposed UI modification and expansion project so the neighbors understand the full scope of the project." So Mr. Tournas is representing the Concerned Citizens of North Stratfield which includes his daughter.

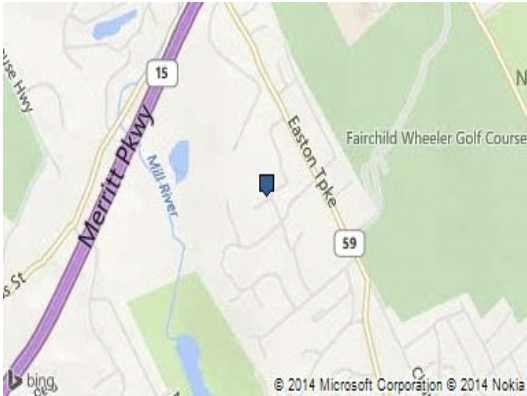
Tax Property Agent - Full Public Record
Public Records & Tax Report

EXHIBIT A

186 Schiller Rd, Fairfield, CT 06825-1140
 Property ID: 200M051L031X
 Property Usage: 1-Fam Res
 Census Block: 1002

Assessor's APN: 51 31
 Zoning: R3
 Census Tract: 060200

County: Fairfield
 Latitude: 41.212604
 Longitude: -73.251034
 Carrier Route: C040



Current Ownership Information

Owner(s): Jason Tournas
 How Related:
 Owner's Address: 186 Schiller Rd, Fairfield, CT 06825-1140
 Owner Occupied: Unknown
 Closing Date: 01/03/1996
 Type of Deed:
 Sale Price:
 Recorded: Vol: 1553, Page: 42
 Amt. Borrowed:
 Lender:
 Nominal Sale:

Most Recent Mortgage
 Date Originated:

Transaction Details
 Type of Sale:
 Arms Length Sale:

Most Recent Tax & Assessment Information

Tax Amount: \$7,391.00	Base Mil Rate: 24.400	Assessed Land Value: \$240,590
Tax Year: July 2014-June 2015	<u>Tax Dist. Mil Rate:</u> N/A	<u>Assessed Building Value:</u> \$62,300
Fiscal Year: 2014	Total Mil Rate: 24.400	Total Assessed Value: \$302,890
	Municipal Tax District:	

Property Characteristics

<u>Lot & Exterior</u>			
Lot Size in Acres: 0.70	Lot Size in Sq Ft: 30,440	Common Ownership %:	
Type of Parking:	# of Parking Spaces:		
<u>General Construction:</u>			
# of Buildings: 1	Building Style: Ranch	Year Built: 1956	
Type of Construction:	Building Condition: Average	Last Major Renovation:	
Exterior Covering: Wood Side/Shing	Type of Roof: Gable	Roofing Material: Shngls&Asphalt	
Type of Basement:	Heating System: Forced HW	Heating Fuel: Oil	
<u>Building Size Information</u>			
Gross Building Sq Ft: 3,450	# of Units: 1	Unit is on Floor #:	
Living Area in Sq Ft: 1,365	First Floor Sq Ft:	Attic Area in Sq Ft:	
Basement Area in Sq Ft:	Unfinished Bsmt Sq Ft:	# of Floors: 1	
# of Rooms: 6	# of Bedrooms: 3	# of Full Baths: 1	
# of Half Baths: 1			
<u>Property Amenities</u>			
Number of Fireplaces:	Additional Amenity: Outbuildings	Additional Amenity: Air Conditioned	

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