

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051


Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

www.ct.gov/csc

DATE: April 28, 2009

TO: Parties and Intervenors

FROM: S. Derek Phelps, Executive Director 

RE: **DOCKET NO. 378** – SBA Towers II, LLC application for a Certificate of Environmental Compatibility and Public need for the construction, maintenance and operation of a telecommunications facility located on one of two sites at Rabbit Hill Road, Warren, Connecticut.

At a publicly-noticed meeting of the Siting Council (Council), held on Thursday, April 23, 2009, the Council considered and decided the following issues attendant to the above-referenced proceeding.

1. Request by Town of Washington and Town of Washington Conservation Commission for an additional 60-day municipal consultation period pursuant to C.G.S. §16-50l(e) pertaining to Site B of the application.

In a letter dated February 27, 2009, received from the Town of Washington (Washington), and in a letter dated April 21, 2009, received from the Town of Washington Conservation Commission (Conservation Commission), both entities requested a full technical report and an additional 60-day consultation period pursuant to C.G.S. §16-50l(e) to examine the Site B proposal, which both entities consider to be a new application.

C.G.S. §16-50l(e) states in pertinent part: “...*at least sixty days prior to the filing of an application with the council*, the applicant shall consult with the municipality in which the facility may be located and with any other municipality required to be served with a copy of the application...concerning the proposed and alternative sites of the facility... At the time of the consultation, the applicant shall provide the chief elected official with any technical reports concerning the public need, site selection process and the environmental effects of the proposed facility. The municipality may conduct public hearings and meetings as it deems necessary for it to advise the applicant of its recommendations concerning the proposed facility. Within sixty days of the initial consultation, the municipality shall issue its recommendations to the applicant...” (Emphasis added).

The record reflects that the applicant, SBA Towers, II, LLC (SBA), submitted a technical report to the chief elected officials, the First Selectman of the Town of Warren (Warren) and the First Selectman of Washington, on August 20, 2008. (Application page 22). The applicant met with the First Selectmen to discuss the proposed facility on September 11, 2008. (Application page 22). The applicant also attended public informational sessions in both towns and as a result of the municipal consultations, investigated the possibility of Site B, located on the same parcel of land, as an alternate site and conducted a balloon float on November 20, 2008 at both proposed Site A

and Site B. (Application page 22). Thereafter, on February 27, 2009, the application proposing both Site A and Site B was filed with the Council.

Moreover, in a letter dated April 1, 2009, Warren indicated that an additional 60-day municipal consultation period does not apply to Site B because it is an alternative to the original site proposed in a different location on the same parcel of land.

Therefore, based on the evidence in the record and the correspondence from Warren, the Council determined that the applicant has fully complied with the requirements under C.G.S. §16-50l(e) and denied the request.

2. Request by Town of Washington Conservation Commission for the Council to order an environmental impact study.

In a letter dated April 21, 2009, the Conservation Commission requested the Council order an immediate environmental impact study. C.G.S. §16-50n(e) states in pertinent part: "Upon receipt of the application, the Council *may* employ one or more independent consultants to study and measure the consequences of the proposed facility on the environment." (Emphasis added).

The term "may", used in the construction of the statute, indicates that the legislature intended the employment of consultants to be in the discretion of the Council. Evidence of environmental impact is elicited and becomes part of the record of the proceeding through interrogatories and written comments solicited from state agencies under C.G.S. §16-50j(h).

Therefore, the Council determined that employment of an independent consultant to study the environmental impact would be duplicative in this docket and denied the request.

3. Request by Concerned Residents of Warren and Washington (CROWW) for the Council to consult and obtain written comments from the state agencies listed in C.G.S. §16-50j(h) by conducting direct personal face-to-face meetings with those agencies.

In a letter dated April 22, 2009, CROWW specifically requested that the Council conduct direct meetings with the state agencies listed in C.G.S. §16-50j(h). CROWW alleges that the consultation requirement under that statute is not "satisfied by mailing form letters to these agencies as the Council has done in the past."

C.G.S. §16-50j(h) states in pertinent part: "Prior to commencing any hearing pursuant to section 16-50m, the Council shall consult with and solicit written comments from the Department of Environmental Protection, the Department of Public Health, the Department of Agriculture, the Department of Public Utility Control, the Office of Policy and Management, the Department of Economic and Community Development and the Department of Transportation... Copies of such comments shall be made available to all parties prior to the commencement of the hearing. Subsequent to the commencement of the hearing, said departments and Council may file additional written comments with the Council within such period of time as the Council designates. *All such written comments shall be made part of the record provided by section 16-50o.* Said departments and Council shall not enter any contract or agreement with any party to the proceedings or hearings described in this section or section 16-50p, that requires said departments or Council to withhold or retract comments, refrain from participating in or withdraw from said proceedings or hearings." (Emphasis added).

The statute explicitly refers to written comments from the listed agencies to be made part of the record. On April 14, 2009, the Council, pursuant to the requirements of C.G.S. §16-50j(h), sent a notice to the listed agencies seeking written comments and consultation specifically related to this docket on or before May 14, 2009. To date, the Council has not received any comments.

Direct, personal, face-to-face meetings are unnecessary, burdensome, and arguably rise to the level of ex parte communications considering the Department of Agriculture is a party to this docket. Therefore, the Council determined that the notice sent to the agencies listed under C.G.S. §16-50j(h) seeking their consultation and written comments fulfills the requirements of the statute and thus denied the request.

4. Request by parties, Ray and Mary Ellen Furse, CROWW, and Conservation Commission, whose status was approved April 23, 2009, for the Council to extend the pre-file testimony deadline.

During the pre-hearing conference held on Wednesday, April 22, 2009, Mr. Ray Furse (Furse) submitted a written statement requesting additional time to prepare his case on the basis that his party status had not been granted as of that date. Also during the pre-hearing conference, CROWW and the Conservation Commission expressed concern as to the time limitation for preparing their cases by the May 14, 2009 pre-file deadline.

Considering the hearing scheduled for May 21, 2009, in Warren shall commence with the applicant's case and cross examination, followed by intervenors, New Cingular Wireless PCS, LLC (Cingular) and Cellco Partnership d/b/a Verizon Wireless (Verizon), and considering the 7:00 P.M. session is reserved primarily for the public, it is not likely that there will be enough time for Furse, CROWW, and the Conservation Commission to go forward at that time. The date for the continuation of the hearing has been set for Tuesday, June 2, 2009, at the Council offices in New Britain.

Therefore, the Council determined that an extension of time to Furse, CROWW and the Conservation Commission would not impede the proceeding and that an extension of the pre-file date to May 26, 2009, in preparation for the June 2, 2009, hearing would be reasonable. The request for an extension was granted. (Please also note that although they did not seek to associate themselves with this request, this extended deadline is equally applicable to the Connecticut Department of Agriculture, given that their status was also not granted until April 23, 2009.)

Notwithstanding the above, the Council urges all participants to undertake all good-faith efforts to present interrogatory questions on a schedule sufficient to facilitate responses in time to meet the May 14, 2009, pre-file deadline associated with the hearing scheduled in Warren on May 21, 2009.

5. Request of participants at the Pre-Hearing Conference, held of April 22, 2009, regarding E-Mail Service of Documents.

The e-mailing of documents, rather than traditional U.S. mail, was suggested and agreed to by many of the participants at the pre-hearing conference. This is an optional service. In order to formally receive correspondence via e-mail only, the attached form must be completed and returned to the Council Office. As stated on the attached form, please note that this does not eliminate the requirement to send the original and 15 copies of each document filed to the Council for staff and Council member distribution.



LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	<input checked="" type="checkbox"/> U.S. Mail	SBA Towers II, LLC	Carrie L. Larson, Esq. Pullman & Comley, LLC 90 State House Square Hartford, CT 06103-3702 (860) 424-4312 (860) 424-4370 fax clarson@pullcom.com
Intervenor (granted on 04/07/09)	<input checked="" type="checkbox"/> U.S. Mail	New Cingular Wireless PCS, LLC (AT&T)	Christopher B. Fisher, Esq. Cuddy & Feder LLP 445 Hamilton Avenue, 14 th Floor White Plains, NY 10601 (914) 761-1300 (914) 761-6405 fax cfisher@CUDDYFEDER.com
Intervenor (granted on 04/07/09)	<input checked="" type="checkbox"/> E-mail	Cellco Partnership d/b/a Verizon Wireless	Kenneth C. Baldwin, Esq. Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 (860) 275-8200 (860) 275-8299 fax kbaldwin@rc.com
Party (granted on 04/07/09)	<input checked="" type="checkbox"/> U.S. Mail	Town of Washington	The Honorable Mark E. Lyon First Selectman Bryan Memorial Town Hall P.O. Box 383 Washington Depot, CT 06794 (860) 868-2259 (860) 868-3103 – fax mark.lyon@washingtonct.org

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Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Intervenor (granted on 04/07/09)	<input checked="" type="checkbox"/> U.S. Mail	Town of Warren	The Honorable Jack Travers First Selectman Warren Town Hall 7 Sackett Hill Road Warren, CT 06754 (860) 868-7881 ext. 102 selectman@warrenct.org
Party (granted on 04/23/09)	<input checked="" type="checkbox"/> U.S. Mail	Ray and Maryellen Furse 26 Jack Corner Road Warren, CT 06777 (860) 868-7834 (860) 868-0890 – fax rfurse@alterisinc.com rayworks@charter.net	
Party (granted on 04/23/09)	<input checked="" type="checkbox"/> U.S. Mail	Concerned Residents of Warren and Washington (CROWW)	Gabriel North Seymour 200 Route 126 Falls Village, CT 06031 (860) 824-1412 (860) 824-1210 fax certiorari@earthlink.net Bruce Coleman President, CROWW P.O. Box 2426 New Preston, CT 06777 (860) 318-5551 (860) 868-0890 - fax Croww.org@charter.net
Party (granted on 04/23/09)	<input checked="" type="checkbox"/> U.S. Mail	State of Connecticut Department of Agriculture	F. Philip Prelli Commissioner Department of Agriculture 165 Capitol Avenue Hartford, CT 06106 (860) 713-2500 (860) 713-2514 – fax Lance.shannon@ct.gov

