STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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Daniel F. Caruso
Chairman

May 12, 2009

Carrie L. Larson, Esq.
Pullman & Comley LLP
90 State House Square
Hartford, CT 06103-3702

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 at one of two sites on Rabbit Hill Road, Warren, Connecticut.

Dear Attorney Larson:

At a public meeting held on May 7, 2009, the Council approved the Motion for Protective Order, dated April 27, 2009, related to the disclosure of monthly rent contained within the lease agreement consistent with the Conclusions of Law adopted in Docket 366-Danbury, dated April 23, 2009 (copy enclosed).

Please feel free to call S. Derek Phelps, Executive Director if you have any questions.

Very truly yours,

Daniel F. Caruso
Chairman

DFC/RDM/laf

c: Parties and Intervenors

DOCKET NO. 366 - Optasite Towers LLC and Omnipoint Communications, Inc. application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 52 Stadley Rough Road in Danbury, Connecticut.	Connecticut Siting Council

April 23, 2009

Conclusions of Law Re Motion for Protective Order to Not Disclose the Exact Monthly Rent in Lease Agreement

1. The plain language of C.G.S. §16-50o(c) requires disclosure of the rent amount contained in telecommunication tower lease agreements.

C.G.S. §16-50o(c) states: "The applicant shall submit into the record the *full text of the terms* of any agreement, and a *statement of any consideration* therefor, if not contained in such agreement, entered into by the applicant and any party to the certification proceeding, or any third party, in connection with the construction or operation of the facility. This provision shall not require the public disclosure of proprietary information or trade secrets." (Emphasis added).

In its motion for protective order and at a public hearing on October 28, 2008, Optasite Towers, LLC (Optasite) argued that C.G.S. §16-50o(c) requires a general statement as to the rent paid rather than the exact amount. However, in a 2004 application for the construction and operation of a proposed telecommunications tower in Litchfield, Sprint Spectrum, L.P. (Sprint), in accordance with C.G.S. §16-50o(c), "produced an unredacted copy of its lease agreement with the property owner and records relating to the compensation between the property owner and various carriers."[1] In its objection, the City of Danbury (Danbury) argued that the statute clearly means disclosure of the exact rent amount without limitations. In support of its position, Danbury cites to a redevelopment statute pertaining to the taking of property at fair market value which requires "a statement of compensation… setting forth the amount ..."[2] However, C.G.S. §16-50o(c) pertains to the record of a Siting Council (Council) hearing rather than a compensation mandate.

When interpreting a statute, the starting point is the statute's plain meaning. C.G.S. §1-2z provides in relevant part, "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes."[3] For interpretive guidance, courts will also look to the legislative history. In

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[1] *Rosa v. Conn. Siting Council,* 2007 Conn. Super. LEXIS 590, *20 (Conn. Super. 2007).
[2] CONN. GEN. STAT. §8-129(a)(3) (2009) ("The redevelopment agency shall file a statement of compensation… setting forth the *amount* of such compensation…") (Emphasis added).
[3] CONN. GEN. STAT. §1-2z (2009).

determining common usage, courts often look to the dictionary definition of a term. The American Heritage Dictionary defines "text" as "the wording or words of something written or printed."[4] Optasite has a written lease with Christ the Shepherd Church (Church). Black's Law Dictionary defines "consideration" as "something of value (such as an act, a forbearance or a return promise) received by a promisor from a promisee"[5] and "statement" as "a formal and exact presentation of facts."[6] Taken together, the phrase "statement of consideration" may be interpreted as an exact presentation of the value to be received by Optasite from the Church. According to the plain language of C.G.S. §16-50o(c), the applicant is required to submit the entire lease agreement including the exact rent amount.

C.G.S. §16-50o(c) is directly related to C.G.S. §16-50p. The applicant argues that the rent amount in the lease agreement is not relevant to the Council's statutory criteria under C.G.S. §16-50p. However, under C.G.S. §16-50p(b)(1), the Council must examine the economic feasibility at fair market rates of the shared use of the facility.[7] The applicant also argues that C.G.S. §16-50p(g) prohibits the Council from considering an applicant's interest in property proposed for a telecommunications tower.[8] However, as Danbury points out in its objection, the Council is permitted to consider the likelihood of an applicant securing a proposed site.[9] Therefore, according to the statutory criteria, the exact rent amount paid for an applicant's interest in property proposed for a tower is a factor for consideration at the Council's discretion.

In its motion for a protective order, Optasite states that C.G.S. §16-50o(c) was adopted by the legislature in an effort to address Cross Sound Cable's private agreements with oystermen related to their opposition to the proposed project in Docket 208 and that C.G.S. §16-50o(c) was amended on the floor to exclude the disclosure of confidential, proprietary information in those agreements.[10] According to Optasite, the legislation requires disclosure of how the landowner will be paid rather than the precise rent amount. According to Danbury, the legislation requires public disclosure of the precise rent amount. Public Act 04-246 moved the language of present C.G.S. §16-50o(c) from C.G.S. §16-50p(a) to facilitate its application to proposed telecommunications towers, as well as transmission lines. Therefore, the legislature clearly intended the language of C.G.S. §16-50o(c) to apply to the public disclosure of "the full text of the terms" contained in lease agreements between an applicant and a third party, and a "statement of consideration therefor… in connection with the construction and operation of the

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[4] THE AMERICAN HERITAGE DICTIONARY 1332 (Houghton Mifflin Co. 1976).
[5] BLACK'S LAW DICTIONARY 300 (7th ed. 1999).
[6] *Id.* at 1416.
[7] CONN. GEN. STAT. §16-50p(b)(1) (2009).
[8] CONN. GEN. STAT. §16-50p(g) (2009) ("In making its decision as to whether or not to issue a certificate, the council shall in no way be limited by the fact that the applicant may already have acquired land or an interest therein for the purpose of constructing the facility which is the subject of its application.")
[9] *Corcoran v. Conn. Siting Council*, 50 Conn. Supp. 443, 452 (Conn. Super. 2006), *affirmed by* 284 Conn. 455 (2007) ("the language of 16-50p(g) is that of an enlargement of the council's discretion, not a limitation…")
[10] H.B. 6954, 2001 Sen. Reg. Sess. (2001).

facility." However, the statute specifically exempts proprietary information or trade secrets from public disclosure.

2. The rent amount contained in telecommunication tower lease agreements meets the definition of "proprietary information" and "trade secret."

In its motion for a protective order, Optasite states that the rent amount is proprietary information. Danbury suggests that rent amounts may be "low hanging fruit" that create a disincentive for applicants to explore alternative sites. The city also argues that proprietary information is narrowly defined and typically includes scientific and technical data. However, at a public hearing on December 8, 2008, Danbury and Optasite agreed to the release of the rent amount under a protective order.

"Proprietary information" is defined in Black's Law Dictionary as "information in which the owner has a protectable interest."[11] DPUC defines "proprietary information" as information that may be exempt from public disclosure pursuant to C.G.S. §1-210(b). The Connecticut Freedom of Information Act (FOIA) defines "trade secret" as:

> "information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by, other persons who can obtain economic value from their disclosure or use, *and* (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy..." (Emphasis added).[12]

The Connecticut Supreme Court defined "trade secret" as consisting of any "... compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it."[13] The Court set out several factors to be considered in determining whether given information qualifies as a trade secret, which are: 1) the extent to which the information is known outside of the business; 2) the extent to which it is known by others involved in the business; 3) the extent of measures taken to guard the secrecy of the information; 4) the value of the information to the business and competitors; 5) the amount of effort expended in developing the information; and 6) the ease or difficulty with which the information could be properly acquired or duplicated by others."[14]

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[11] BLACK'S LAW DICTIONARY 1235 (7th ed. 1999).
[12] CONN. GEN. STAT. §1-210(b)(5)(A) (2009).
[13] *Dept. of Public Utilities of the City of Norwich v. Freedom of Information Commission,* 55 Conn. App. 527, 530 (Conn. App. 1999), citing *Town & Country House & Homes Service, Inc. v. Evans*, 150 Conn. 314, 318-19 (1963).
[14] *Id.*

Applying the criteria to this docket, it is found that: 1) the applicant, as well as telecommunications industry representatives responding to the Council's request for comment, view the information as confidential; 2) persons in the business with knowledge of the exact rent amount in the lease agreement are Charles Regulbuto, Optasite's Director of Northeast Development, who negotiated the lease, James H. Ross, III, Optasite's President and COO, who executed the lease, and Christopher Fisher, Optasite's counsel, who submitted a redacted version of the lease to the Council; 3) Optasite's counsel filed a Notice of Lease on the City of Danbury Land Records that complied with the recording requirements under C.G.S. §47-19 and submitted a redacted version of the lease to the Council as part of Optasite's application;[15] 4) the rent amount in the lease agreement has independent economic value that, if generally known, would be a disadvantage to the applicant and would be an advantage to market competitors and future site hosts; 5) Optasite incurred transaction costs in Charles Regulbuto's negotiations and execution of the lease agreement; and 6) the exact rent amount is not contained or required in the Notice of Lease that is recorded on the City of Danbury Land Records.

Based on the criteria, the exact rent amount in the lease agreement between Optasite and the Church qualifies as a trade secret.

As such, pursuant to C.G.S. §16-50o(c), the exact rent amount in the subject lease agreement shall be disclosed to the Council under a protective order.

[15] CONN. GEN. STAT. §47-19 (2009) ("No lease of any... land... for a term exceeding one year... shall be effectual against any persons other than the lessor and the lessee and their respective heirs, successors, administrators and executors, unless it is in writing, executed, attested, acknowledged and recorded in the same manner as a deed of land, provided a notice of lease in writing, executed, attested, acknowledged and recorded in the same manner as a deed of land and containing (1) the names and addresses, if any are set forth in the lease, of the parties to the lease, (2) a reference to the lease, with its date of execution, (3) the term of the lease with the date of commencement and the date of termination of such term, (4) a description of the property contained in the lease, (5) a notation if a right of extension or renewal is exercisable, (6) if there is an option to purchase, a notation of the date by which such option must be exercised, and (7) a reference to a place where the lease is to be on file shall be sufficient").

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	☒ 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)	☒ U.S. Mail	New Cingular Wireless PCS, LLC (AT&T)	Christopher B. Fisher, Esq. Cuddy & Feder LLP 445 Hamilton Avenue, 14th Floor White Plains, NY 10601 (914) 761-1300 (914) 761-6405 fax cfisher@CUDDYFEDER.com
Intervenor (granted on 04/07/09)	☒ 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)	☒ 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)	☒ 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)	☒ 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)	☒ 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)	☒ 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

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Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Party (granted on 04/23/09)	☒ U.S. Mail	Town of Washington, Conservation Commission	Susan Payne, Chairperson Conservation Commission Town of Washington Bryan Memorial Town Hall P.O. Box 383 Washington Depot, CT 06794
	☒ U.S. Mail		Diane Dupuis Chair, Cell Tower Committee Conservation Commission Bryan Memorial Town Hall P.O. Box 383 Washington Depot, CT 06794-0383 (860) 868-7750 Dd9art@sbcglobal.net