

Fontaine, Lisa

From: Ray Furse [rayworks@charter.net]
Sent: Wednesday, May 27, 2009 8:01 AM
To: CSC-DL Siting Council; robert.marconi@po.state.ct.us; Mark Lyon; Susan Payne; Carrie V. Watson; cfisher@CUDDYFEDER.com; ken baldwin; David H. Wrinn; selectman@warren.org; gabriel seymour Seymour; Bachman, Melanie; Shannon, Lance; diane dupuis
Subject: Re: Docket 378

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Motion by Ray and Maryellen Furse to Deny SBA's Request to Postpone the June 2 Hearing

We join in the Motion by the Washington Conservation Commission to proceed with the hearing as scheduled, or to dismiss the Docket 378 SBA Application with prejudice and with costs to all parties.

To the arguments presented by the WCC we would add that we, who have had to take time away from our regular jobs to become a Party to these proceedings and who are not paid a handsome hourly fee for this work, have been given no choice but to adhere to the schedule set by the Siting Council.

We have done our best to gather our evidence and to rearrange our schedules to be able to present our testimony on June 2, accommodating the requests of the CSC. If we can prepare our case on time, professionals regularly engaged in this work should be able to do so as well.

Moreover, the request makes no logical sense. If our Motion to Dismiss and For Costs is granted, SBA will have all the time needed to research an alternate site (as they should have done before submitting the present, deeply flawed Application). If the Siting Council rejects our motion, and elects to continue with Docket 378 proceedings, it is very unlikely that presentation and cross-examination of all evidence will be completed on June 2. SBA will then *de facto* have its extension.

Respectfully submitted,

Ray and Maryellen Furse

Certificate of Service:

All parties will receive this motion by email directly from us. We will retain a hard copy showing the emails of parties and intervenors to whom this motion was sent on May 27, 2009.

Signed: Ray Furse On 5/27/09 7:37 AM

Fontaine, Lisa

From: Ray Furse [rayworks@charter.net]
Sent: Wednesday, May 27, 2009 9:28 AM
To: CSC-DL Siting Council; robert.marconi@po.state.ct.us; Mark Lyon; Susan Payne; Carrie L. Larson; cfisher@CUDDYFEDER.com; ken baldwin; David H. Wrinn; selectman@warren.org; gabriel seymour Seymour; Bachman, Melanie; Shannon, Lance; diane dupuis
Subject: Re: Docket 378
Attachments: To the Siting Council.doc

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RE: Docket 378: Application of SBA Towers II, LLC ("SBA") for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Telecommunications Facility at One of Two Alternate Sites at Rabbit Hill Road in Warren, Connecticut

MOTION TO DISMISS AND FOR COSTS

To The Council:

We, Ray and Mary Ellen Furse, are owners of property abutting the subject property of the above-named application and parties to the above-named Certification Proceeding. This letter constitutes our MOTION TO DISMISS AND FOR COSTS.

We became involved with opposing the SBA plan for a cell phone tower on the scenic and protected Tanner Farm atop Rabbit Hill when we attended a public "informational meeting" on September 26, 2008. Shortly thereafter (September 28) we wrote:

"We were also taken aback to hear them [SBA, then Optisite] freely admitted that they chose this site with full knowledge that it was on a property with a conservation easement, for which commercial development was prohibited, and that it violates numerous town planning and zoning regulations."

This letter was addressed to our Town Selectmen, who indicated at the meeting that opinions expressed in such letters would be conveyed to the Siting Council. This letter (attached) should be on file with the Siting Council. We availed ourselves of that appropriate channel to express our concerns. We never planned to or desired to become a formal Party to these proceedings; we did so only reluctantly because as taxpayers, we frankly felt ourselves to have been misled by our state government. What is the point of using our taxpayer money to preserve farmland, if all we are preserving are potential cell phone tower sites? As we investigated further, it became obvious that a loophole in the law was being exploited by SBA which, if allowed to succeed, would have devastating consequences on land preservation efforts throughout the state. Our Pre-Filed Testimony explains this in greater detail.

As time (very quickly) passed, and dismayed that other state agencies were not taking up this issue on behalf of the taxpayers, we reluctantly petitioned to become a Party and began to gather materials to present our opposition. This was not a decision undertaken lightly. Lacking the knowledge base to mount an appropriate legal opposition, we have had to "learn the ropes" on our own, spending significant amounts of time and money researching and writing, copying, collating, mailing, calling, and driving (to the town hall meetings, Staples), taking time away from our home business of solar installation, not to mention suffering a good deal of anxiety and many sleepless nights.

As the proceedings continued, we were able to read and hear more, and especially by the time of the last session held in Warren, a number of facts had become abundantly clear:

1. We will suffer a significant loss of time and out-of-pocket expenses to oppose this tower, and
2. Should our opposition fail, we will suffer significant devaluation of our property, a double loss, and
3. As taxpayers, we have contributed to the Farmland Preservation Program, which will have failed to avert this attempted encroachment on that program's goals, a triple loss, and

4. As taxpayers, we have paid our state government, through the Attorney General's office, to defend our rights (both as property owners and taxpayers), which will have failed to do so, a quadruple loss, and finally:

5. Even if we prevail, and the Siting Council turns down SBAs application, we still will suffer losses described in 1 and 4 above. And because the Siting Council chose to entertain an application for which there is no clear right to use of the property at issue, the mere act of entertaining the application will have caused these losses.

We feel that the Siting Council should have never agreed to entertain this SBA application in the first place, since SBA stated plainly that Site A was on land for which development rights had been sold to the state. This seems to us akin to a bank providing a mortgage for a home sale for which no title search has been conducted. It is an obvious attempt by SBA to exploit a carelessly worded, singular legislative exception to effect a self-serving end run around explicitly clear state land preservation policies; it is abusive to all parties, including the Siting Council, and indeed to all residents and taxpayers of Connecticut. SBA should first have consulted with the DoAG to clarify the development rights situation; judging from the present position taken by the DoAG, SBA surely would have been refused, and we would not have suffered the losses enumerated above.

CONCLUSION

For the foregoing reasons, Ray & Maryellen Furse respectfully request that the Siting Council grant our motion to dismiss the SBA Application, and to restore all costs, both of time and of out-of-pocket expenses, connected with defending against this Application that has affected the procedural and substantive due process and property rights of persons other than SBA.

Respectfully submitted,

Ray & Maryellen Furse

26 Jack Corner Road
Warren, CT 06777
Tel. (860) 868-7834
Fax (860) 868-0890 (fax/phone)
rfurse@alterisinc.com

Dear Warren Selectmen:

We attended the Warren Town Hall meeting held on September 26 to hear the proposal for a cell phone tower on Rabbit Hill Road in Warren.

We can honestly state that we went with open minds. We understand the desire for modern communications by most town residents; indeed, improved cell phone coverage is a professed goal of the Warren Town Plan. As well, we personally admire our neighbor Luke Tanner and think he could win honors for one of the hardest working men in the state. We also believe that supporting local farms is an important key to preserving the rural character of the area, so we would tend to look favorably on any way for the Tanner farm to secure additional revenue.

We were of course unhappy with the site choice, which is identified in the Town Plan as one of the several scenic local views deemed most worthy of preservation; indeed, it may be one of the most painted and photographed scenes in the county. But we assumed that this was the site that engineers and other experts had selected as best to provide coverage for our town.

Thus we were surprised to find out that the benefit to Warren is minimal, not even the goal of this installation, which is rather to provide cell phone coverage along Route 202, in fact, for the town of Washington (which also opposes it); this was pretty much conceded by the representatives from OptiSite. We were also taken aback to hear them freely admit that they chose this site with full knowledge that it was on a property with a conservation easement, for which commercial development was prohibited, and that it violates numerous town planning and zoning regulations.

At this point, the focus of our inquiry, and I must admit, irritation, shifted to OptiSite. These folks showed up at the meeting with no renderings of the proposed tower, no pictures showing what the installation would look like (easily created in Photoshop), no visuals

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at all except a ground plan. None could satisfactorily answer any of the technical questions posed about alternatives. (They did apologize for not bringing an RF engineer along, but wouldn't this have been simply sensible and considerate?) In fact, the OptiSite group pretty much huddled in the front rows, with their backs to the audience, only deigning to turn around or stand (so as to be heard) when asked to. It was patently clear that, expecting only opposition, they came to the meeting as a pro forma exercise, with no desire to convey to their audience the necessity or appropriateness of this particular site, nor to heed any citizen's views, no matter how reasonably expressed. We came prepared to listen and consider; it was obvious that they had no regard for the town's opinions; we left early.

Yes, we all know that cell service is desirable, federally mandated, and coming sooner or later, and we can assume the Siting Council's desire to move the program along in a harmonious way. But these OptiSite folks are bullies. Why deliberately choose a site whose singular (bad pun) beauty is so admired not only by town residents but by all who have had the pleasure of viewing it? Why deliberately choose a site with specific proscriptive usage covenants in place, that is, a choice sure to necessitate legal wrangling that a small town can ill afford? And why attempt to force such onerous choices on a town that will not even derive benefit from the degradation it must suffer? If we must mar the landscape of Warren with a cell tower, at the very least it should benefit the citizens of Warren.

If the Siting Council wants to see a smoother and less rancorous process of cell tower siting approval, it should put OptiSite and other tower installers on notice that this is the wrong way to go about it. They should be directed to propose choices that do not so patently fly in the face of clearly expressed and documented local preferences, plans, and legal agreements.

cc: