



Daniel F. Caruso
Chairman

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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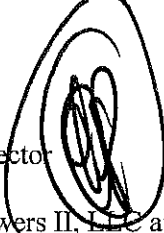
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DATE: May 29, 2009

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 the public hearing of the Siting Council (Council), held on Thursday, May 21, 2009 at the Warren Town Hall, and at a Council Meeting on Thursday, May 28, 2009, in Newtown, the Council considered and decided the following procedural matters related to the above-referenced proceeding.

1. SBA Towers, II (SBA) Motion to Compel Intervenor's Interrogatory Responses.

In a motion dated May 19, 2009, SBA sought an order compelling the Concerned Residents of Warren and Washington (CROWW) to respond to SBA's interrogatories concerning the membership and organization information of CROWW. In its brief dated May 19, 2009, CROWW indicated its declination to identify all of its members on constitutional grounds.

The Council decided to defer a decision on the Motion to Compel to the continued hearing date of June 2, 2009 in New Britain.

2. Department of Agriculture's (DOAg) Motion to Dismiss the Application.

In a motion dated May 14, 2009, DOAg moved for dismissal of SBA's application on the grounds that the Council lacks subject matter jurisdiction over the application based on SBA's failure to comply with C.G.S. §47-42d. In its objection dated May 19, 2009, SBA argued that failure to give DOAg notice is not a jurisdictional defect and that siting the tower on proposed Site A does not violate the terms of the Farmland Preservation restriction.

The Council decided to defer a decision on the DOAg's Motion to Dismiss to allow further development of the evidentiary record. If the applicant, parties and intervenors believe that further evidence may affect the Council's determination on the motion, such participants may file additional briefs on or before June 11, 2009.

3. CROWW's Motion to Dismiss the Application.

In a motion dated May 19, 2009, CROWW moved for dismissal of SBA's application on the grounds that the State owns the development rights to the property, that SBA failed to meet the statutory requirements under C.G.S. §16-50p(a)(3)(G), that SBA failed to comply with the 60-day

municipal consultation requirement for Site B and that the proposed site violates the Town of Warren's zoning regulations. In its objection dated May 20, 2009, SBA argued that the property owners retained the right to lease the property, that the Council is to determine whether the requirements are met under C.G.S. §16-50p(a)(3)(G), that SBA complied with the 60-day municipal consultation requirement for Site B and that compliance with the local zoning regulations is not required.

Consistent with the decision on DOAg's Motion to Dismiss, the Council decided to defer a decision on CROWW's Motion to Dismiss to allow further development of the evidentiary record. If the applicant, parties and intervenors believe that further evidence may affect the Council's determination on the motion, such participants may file additional briefs on or before June 11, 2009.

4. CROWW'S Motion to Strike SBA's Request for Administrative Notice.

In a motion dated May 19, 2009, CROWW moved to strike SBA's Request for Administrative Notice dated May 14, 2009 of the full record in Docket 329 and the Conclusions of Law in Docket 360. CROWW argued that it was not a party to either proceeding and cannot be bound by the record in either proceeding.

The Council denied CROWW's Motion to Strike and granted SBA's Request for Administrative Notice with the condition that the pending complaints in New Britain Superior Court and the U.S. District Court challenging the Council's decision in Docket 360 be administratively noticed with the Conclusions of Law.

5. SBA's Motion to Preclude Evidence on Radio Frequency (RF) Emissions.

In a motion dated May 19, 2009, SBA moved to preclude any and all evidence related to effects of RF emissions associated with either of the telecommunications towers proposed in SBA's application. In order to ensure due process and a fair hearing, the Council determined that it should allow for the introduction of evidence relevant to the evaluation of both proposed sites. The Council denied SBA's Motion to Preclude.

6. Schedule for Filing Briefs

The Council acted to deny SBA's Request to Postpone the June 2, 2009 hearing date and set June 11, 2009 as the deadline date for the additional briefs.

**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	First Selectman	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	David H. Wrinn Assistant Attorney General Juris No. 085168 55 Elm Street, P.O. Box 120 Hartford, CT 06141-0120 (860) 808-5020 (860) 808-5347 David.wrinn@po.state.ct.us

