

**STATE OF CONNECTICUT**  
**CONNECTICUT SITING COUNCIL**

In Re:

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

DOCKET: 378

May 19, 2009

**PRE-HEARING BRIEF FILED BY**  
**CONCERNED RESIDENTS OF WARREN AND WASHINGTON**

The Role of the Connecticut Siting Council in certification proceedings is clearly set forth in the statute, Sec. 16-50p. Subsection (a)(3) of the statute provides in pertinent part as follows:

The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine:

- (A) \* \* \* a public need for the facility and the basis of the need;
- (B) The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including but not limited to, electromagnetic fields that, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife;
- (C) Why the adverse effects or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application;

Subsection (b)(1) provides in pertinent part:

Prior to granting an applicant's certificate \* \* \* the council shall examine \* \* \* (C) whether the proposed facility would be located in an area of the state which the council, in consultation with the Department of Environmental Protection and any affected municipalities, finds to be a relatively undisturbed area that possesses

scenic quality of local, regional or state-wide significance. The council may deny an application for a certificate if it determines that \* \* \* (iii) the proposed facility would substantially affect the scenic quality of its location and no public safety concerns require that the proposed facility be constructed in such a location.

CROWW has previously stated its opposition to the SBA application because of the sale of the site's development rights to the State and renews that objection and opposition here.

### **ADDITIONAL GROUNDS FOR CROWW'S OPPOSITION TO CERTIFICATION OF SBA APPLICATION**

#### **Scenic Quality**

It is evident to anyone who visits the area that erecting a tower on Rabbit Hill will "substantially affect the scenic quality of its location."

The evidence of irreversible damage to the scenic quality of the Rabbit Hill area caused by erection of a tower is overwhelming. The evidence comes from artists; art teachers; photographers; the 1935 WPA State Guide; the State's film office; National Geographic Traveler Magazine; local residents; town boards; planning reports and maps - all testifying to the fact that this relatively undisturbed area possesses a scenic quality of state-wide significance. No public safety concerns require construction of a tower in this location, and the Council should deny the application on this ground alone.

The Courts have recognized this as one of the major responsibilities of state and local government. See Sprint v. Willoth, 176 F3d 630 (2d Cir. 1999):

Aesthetics is generally a valid subject of municipal regulation....

The Board's decision to reject Sprint's application on aesthetic grounds will be impervious to attack in the courts where ... its findings and determination are supported by substantial evidence.

Sprint's contrary assertions notwithstanding, the evidence in the record before us is more than adequate to support the Planning Board's conclusion that Sprint's

three tower proposal would have a significant negative aesthetic impact...leading to a 10% to 25% reduction in property values.

### **Environmental Impact**

The evidence of adverse effects on the environment from construction of the proposed SBA tower include adverse effects on:

- the natural environment
- ecological balance
- public health and safety
- scenic values
- historic values
- recreational values
- forests
- water purity
- wildlife

All of these are issues the Council is obligated to consider. The totality of these adverse effects provides more than sufficient reason to deny the application.

### **Siting Council's Consultation Obligations**

Section 16-50j(h) requires the Siting Council to obtain written comments from various agencies on potential adverse environmental impacts of the proposed SBA tower prior to commencing any hearing on a cell tower application, and make such comments available to the parties:

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 Council on Environmental Quality, 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.

The Council has repeatedly violated the purpose and intent behind this legislative directive by simply mailing routine form letters to each agency, thereby assuring routine form responses in return.

"Consultation" does not mean sending a form letter. To carry out the purpose of the statute, some member of the Council or the Staff should speak directly with a knowledgeable environmental expert at each agency and discuss the location of the proposed tower site in a meaningful way. A face-to-face meeting would be preferable; a telephone discussion would be acceptable. A routine form letter is a wholly unacceptable means of "consultation" and simply invites a similar response instead of generating thoughtful and meaningful substantive comments on possible environmental effects that should be considered.

The basic problem is that the Council does not have a qualified environmentally-trained senior staff member to represent the interests of the public in siting investigations.

### **Council's Failure to Adopt Environmental Regulations**

The State Legislature has also directed the Siting Council to adopt regulations and standards relating to the "protection of fish and wildlife and other environmental factors."

(Section 16-50t(a))

The council shall prescribe and establish such reasonable regulations and standards \* \* \* as it deems necessary and in the public interest with respect to \* \* \* environmental standards applicable to facilities, including, but not limited to, regulations or standards relating to: (1) \* \* \* protection of fish and wildlife and other environmental factors.

No such Council regulations or standards exist. Although applicants are required to report potential adverse effects, these are necessarily biased and one-sided. No standards have been promulgated by the Council and no meaningful review is ever

reported to the public. Council site visits and reviews are superficial and lacking in any understanding or comprehension of conservation concerns, needs or goals. In particular, no regulation or standards deal with scientific issues affecting the protection of wildlife and endangered species from harmful effects of RF radiation emitted from cell tower operations.

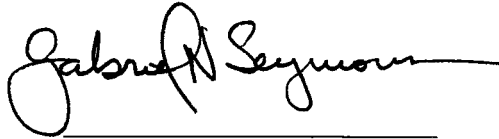
These omissions and failures by the Council to carry out its legal responsibilities in an even-handed, balanced fashion taint this entire proceeding, and foreshadow a Council decision made without any regard for protection of the environment, of wildlife, or of public health and safety.

It is not too late for the Council to adopt a more responsible public interest approach in considering the evidence in this case.

#### **Violation of Town of Warren Buffer Zone Requirement**

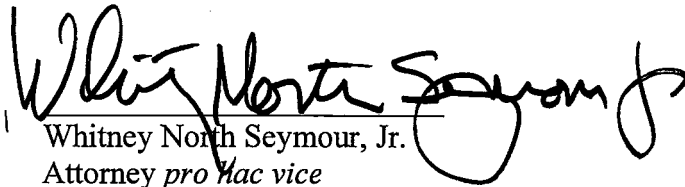
Both of the proposed SBA sites violate the Town of Warren's 1500-foot setback zoning rules adopted to protect residences. This buffer zone requirement is a reasonable and proper exercise of local government police power to protect public health and safety, in keeping with the 'precautionary principle' advocated by the international body of scientists in the Benevento Resolution. That concept already exists for overhead power lines in Section 16-50p(a)(3)(D) of the Connecticut General Statutes. The Town's setback rule does not prohibit wireless telecommunication services, but simply regulates the sensible and safe placement of those facilities. The Siting Council should support the enforcement of the Town of Warren Zoning Regulations in this case and consider adopting a regulation of its own requiring a similar buffer zone throughout the State to protect residences, schools and healthcare facilities.

Respectfully submitted,



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Gabriel North Seymour  
Juris No. 424367  
200 Route 126  
Falls Village, CT 06031  
Tel: 860-824-1412  
Fax: 860-824-1210  
Email: certiorari@earthlink.net



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Whitney North Seymour, Jr.  
Attorney *pro hac vice*  
425 Lexington Avenue, Room 1721  
New York, NY 10017  
Tel: 212-455-7640  
Fax: 212-455-2502  
Email: wseymour@stblaw.com

Counsel to CROWW

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, an original and fifteen copies of the foregoing Pre-Hearing Brief Filed by Concerned Residents of Warren and Washington was served on the Connecticut Siting Council by first class mail and copy of same was sent postage prepaid to:

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

Christopher B. Fisher, Esq., Cuddy & Feder LLP  
445 Hamilton Avenue, 14th Floor, White Plains, NY 10601

Kenneth Baldwin, Esq., Robinson & Cole LLP  
280 Trumbull Street, Hartford, CT 06103-3597

Hon. Mark E. Lyon, First Selectman, Bryan Memorial Town Hall  
P.O. Box 383, Washington Depot, CT 06794

Hon. Jack Travers, First Selectman  
Warren Town Hall, 7 Sackett Hill Road, Warren, CT 06754

Ray and Mary Ellen Furse, 26 Jack Corner Road  
Warren, CT 06777

Hon. F. Philip Prelli, Commissioner, Department of Agriculture  
165 Capitol Avenue, Hartford, CT 06106

David H. Wrinn, Esq., Assistant Attorney General  
55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120

Susan Payne, Chairperson, Conservation Commission  
Town of Washington, Bryan Memorial Town Hall  
P. O. Box 383, Washington Depot, CT 06794

Diane Dupuis, Chair, Cell Tower Committee  
Conservation Commission, Bryan Town Hall  
P. O. Box 383, Washington Depot, CT 06794-0383



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Gabriel North Seymour  
May 19, 2009