

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:	:	
	:	
APPLICATION OF SBA TOWERS II, LLC	:	DOCKET NO. 378
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 AT RABBIT HILL ROAD, WARREN,	:	
CONNECTICUT	:	May 19, 2009

MOTION TO COMPEL INTERVENOR’S INTERROGATORY RESPONSES

SBA Towers II (“SBA”) seeks an order compelling intervenor “Concerned Residents of Warren and Washington” (“CROWW”) to respond to SBA’s First Set of Pre-Hearing Interrogatories. The information sought concerning the membership and organization information of CROWW are relevant, CROWW has provided no valid basis for the withholding of such information and SBA will be prejudiced if such information is not provided.

I. BACKGROUND

On February 27, 2009, SBA filed this application for a certificate of environmental compatibility and public need in connection with the proposed construction and operation of a telecommunications facility located at one of two sites on Rabbit Hill Road in the Town of Warren (the “Property”). The “Concerned Residents of Warren and Washington” (“CROWW”) was made a party to this proceeding at the Council meeting held on April 23, 2009. In its request to become a party, CROWW purports to be a non-profit association formed “in part to promote conservation, to protect the environment, personal health and biological values and to preserve historical sites.” See Party Request dated April 7, 2009. CROWW further purports to be in a

position to represent “the interests of many members of the community in conservation and environmental protection concerns” and that “its members are familiar with the Warren and Washington topography. . .” Id.

In its first set of Interrogatories to CROWW, SBA requested that CROWW identify any and all members of the organization. On or about May 12, 2009, CROWW filed its responses to SBA’s first set of Interrogatories. CROWW “respectfully declined” SBA’s request that CROWW identify its members based on purported and undefined First Amendment and Fourteenth Amendment claims. In addition, SBA requested that CROWW provide documentation of its creation, which it responded does not exist.

The Council scheduled the public hearing concerning this docket for May 21, 2009. SBA pre-filed its Witness list and Pre-Filed testimony for its four witnesses on May 14, 2009. Pursuant to CROWW’s request for an extension of time, the Council extended the pre-file deadline for CROWW to May 28, 2009, one week after the public hearing is scheduled to open on this docket.

II. ARGUMENT

A. The Information Sought by SBA is Relevant to this Docket and CROWW has Provided No Valid Basis for its Withholding.

As discussed above, through its interrogatories, SBA sought information concerning the names and addresses of the members of CROWW and documentation regarding the creation and existence of CROWW. The information sought is clearly relevant to this proceeding and CROWW should be required to provide such information prior to the opening of the public hearing on this docket for the foregoing reasons. In addition, CROWW has provided no valid basis for the withholding of this information. Finally, the withholding of this information will prejudice SBA in this proceeding.

1. The Information Sought Is Relevant to CROWW's Standing in This Proceeding.

Pursuant to Conn. Gen. Stat. § 16-50n (a), only certain individuals or entities are permitted to become parties to a certificate proceeding. Those include, inter alia: 1) the applicant; 2) each person entitled to receive a copy of the application under 16-50l; 3) “any domestic or qualified nonprofit corporation or association formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups or to promote the orderly development of the area in which the facility is to be located.” If an individual or group does not fall into one of the listed categories, they can still participate in a proceeding as an intervenor. See Conn. Gen. Stat. § 16-50n (b).

CROWW claims to fall into the third category, a “domestic nonprofit association formed in part to promote conservation and natural beauty, to protect the environment, personal health and biological values and to preserve historical sites.” See Party Request. In addition, CROWW claims to represent the interests of “many members of the community.” Id. Both of these claims go directly to CROWW's legal standing to participate as a party in this proceeding. Therefore, CROWW should be required to provide a list of the names and addresses of its members and information concerning its formation.

2. CROWW has Provided No Valid Basis for the Withholding of the Requested Information.

In response to SBA's interrogatories, CROWW has cited vague and unsupported claims of violation of First Amendment and Due Process rights as its basis for withholding. In its brief filed on May 19, 2009, CROWW provides no valid basis to withhold the requested information. In its brief, CROWW claims that the First Amendment protects CROWW's right to associate.

SBA does not dispute this. However, CROWW has still given no valid basis for the withholding of the information sought by SBA – a list of the names and addresses of its members and documentation regarding CROWW’s formation. CROWW has not provided a valid basis because it cannot. References to civil rights decisions of the 1950s and 1960s are completely out of place in this proceeding. CROWW has voluntarily inserted itself in this proceeding and therefore cannot claim any type of privacy right to this information. In addition, as discussed above, the information sought is directly relevant to CROWW’s standing as a party in this proceeding. CROWW’s comparison between its members and disclosure of the names of stockholders of SBA is entirely misplaced. If SBA stockholders were speaking in this matter, their identity would be revealed. There is no harassment potential present in this matter, nor is there any justification for those interested in expressing an opinion to refuse to identify themselves. To suggest that SBA’s request is for the purpose of “unethical contact” between SBA and CROWW members is offensive and without any justification. To suggest that the failure to disclose the names of CROWW members is remedied because CROWW will disclose the identity of all members who will speak is cold comfort now, when the hearing is less than two days away and no such disclosure has been made.

3. SBA will be prejudiced by the withholding of the requested Information.

Standard Council procedure prevents any individual or entity who has obtained legal status in a pending proceeding from commenting during the public comment session of the hearing, as such comments are not subject to cross-examination. Instead, the Council requires all such individuals or entities to pre-file testimony and be subject to cross-examination. SBA has filed a list of its witnesses, pre-filed testimony for each witness, and each witness will be available for cross-examination at the scheduled hearing date. CROWW has requested and

received party status in this proceeding. Thus, similarly, the statements of CROWW members who wish to speak regarding this application should be included in CROWW's pre-filed testimony, and those individuals should be subject to cross-examination. To allow members of CROWW to speak both at the public comment session hearing (May 21, 2009) and to later pre-file their testimony (by May 26, 2009) would effectively allow such members to present their case twice—once without being subject to any questions from SBA or other parties to this proceeding. CROWW should not be permitted to use vague First or Fourth Amendment claims to do an end-run around standard Council procedure. This would clearly be prejudicial to SBA and other parties and intervenors in this proceedings, who will only be given one opportunity to present their arguments. Compelling CROWW to list its members will ensure that the public hearing is truly reserved for commentary from the public, and that parties with legal status in this proceeding are abiding by the same rules and procedures. Thus, a list of CROWW's members is relevant to this proceeding, and CROWW should be compelled to provide such a list prior to the May 21, 2009 hearing date.

III. Conclusion

For the foregoing reasons, SBA respectfully moves that CROWW be compelled to provide complete responses to SBA's previously issued interrogatories.

Respectfully Submitted,

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Certification

This is to certify that a copy of the foregoing has been mailed this date to all parties and intervenors of record.

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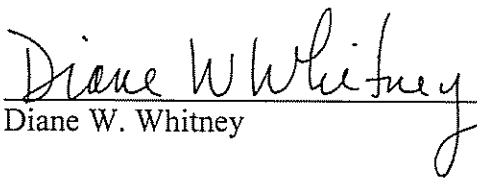
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