



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)

[www.ct.gov/csc](http://www.ct.gov/csc)

September 23, 2011

Daniel M. Laub, Esq.  
Cuddy & Feder, LLP  
445 Hamilton Avenue, 14<sup>th</sup> Floor  
White Plains, New York 10601

RE: **DOCKET NO. 420** - SBA Towers III and New Cingular Wireless PCS, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and management of a telecommunications facility at one of three sites located at 49 Mountain Avenue; 23/25 Northwest Corner Road; or 350B Cossaduck Hill Road, North Stonington, Connecticut.

Dear Attorney Laub:

At a public hearing held on September 20, 2011, the Council approved the Motion for Protective Order, dated September 19, 2011, related to the disclosure of monthly rent contained within the lease agreements consistent with the Conclusions of Law adopted in Docket 366-Danbury, dated April 23, 2009 (copy enclosed).

Please feel free to call Linda Roberts, Executive Director if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Robert Stein".

Robert Stein  
Chairman

RS/MP/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.”<sup>1</sup> 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 ...”<sup>2</sup> 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

<sup>1</sup> *Rosa v. Conn. Siting Council*, 2007 Conn. Super. LEXIS 590, \*20 (Conn. Super. 2007).

<sup>2</sup> 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)).

statutes.”<sup>3</sup> For interpretive guidance, courts will also look to the legislative history. In 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.”<sup>4</sup> 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”<sup>5</sup> and “statement” as “a formal and exact presentation of facts.”<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> However, as Danbury points out in its objection, the Council is permitted to consider the likelihood of an applicant securing a proposed site.<sup>9</sup> 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.<sup>10</sup> 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

<sup>3</sup> CONN. GEN. STAT. §1-2z (2009).

<sup>4</sup> THE AMERICAN HERITAGE DICTIONARY 1332 (Houghton Mifflin Co. 1976).

<sup>5</sup> BLACK’S LAW DICTIONARY 300 (7<sup>th</sup> ed. 1999).

<sup>6</sup> *Id.* at 1416.

<sup>7</sup> CONN. GEN. STAT. §16-50p(b)(1) (2009).

<sup>8</sup> 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.”)

<sup>9</sup> *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...”)

<sup>10</sup> H.B. 6954, 2001 Sen. Reg. Sess. (2001).

consideration therefor... in connection with the construction and operation of the 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.”<sup>11</sup> 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).<sup>12</sup>

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.”<sup>13</sup> 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.”<sup>14</sup>

<sup>11</sup> BLACK’S LAW DICTIONARY 1235 (7<sup>th</sup> ed. 1999).

<sup>12</sup> CONN. GEN. STAT. §1-210(b)(5)(A) (2009).

<sup>13</sup> *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).

<sup>14</sup> *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;<sup>15</sup> 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.

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<sup>15</sup> 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").

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:  
APPLICATION OF SBA TOWERS III (SBA) AND  
NEW CINGULAR WIRELESS PCS, LLC (AT&T)  
FOR A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR  
THE CONSTRUCTION, MAINTENANCE AND  
OPERATION OF A TELECOMMUNICATIONS  
TOWER IN NORTH STONINGTON,  
CONNECTICUT

DOCKET NO.420

*Sept. 20*, 2011

**PROTECTIVE ORDER**

WHEREAS, the financial provisions in the lease agreements between SBA and A) Tucker Village LLC; B) Eric H. Berg, Jr., Eric John Berg and Evan E. Berg and C) Paul R. Buehler (collectively the "leases") are proprietary, confidential and commercially valuable information ("Confidential Information");

WHEREAS, the Confidential Information qualifies as "trade secrets" as defined by Connecticut Law;

WHEREAS, SBA would be harmed by the disclosure of the Confidential Information;

WHEREAS, SBA is willing to provide the Confidential Information to the Siting Council subject to a protective order;

NOW, THEREFORE, it is hereby ordered that a protective order enter with respect to the Confidential Information and that the following is adopted for the protection of the Confidential Information:

1. The Confidential Information shall be governed by the terms of this Order.
2. The Confidential Information is proprietary, confidential and constitutes trade secrets.
3. The Confidential Information shall be given solely to the Siting Council and its staff and the Siting Council and its staff shall take all reasonable precautions to maintain the confidentiality of the Confidential Information.

4. The Confidential Information is subject to this Order and shall in no event be disclosed to any person or entity.

5. The Confidential Information shall be delivered in a sealed envelope to the Siting Council and marked as follows: "Confidential: Disclosure of the Contents is Bound by Protective Order Issued by the Siting Council."

6. Nothing herein shall be interpreted as a determination that any of the Confidential Information will be admissible as substantive evidence in this proceeding or at any hearing or trial. Any party seeking to change the terms of this Order shall do so by motion and serve all parties. No information protected by this Order shall be made public until the Siting Council rules on any such motion to change the terms of this Order.

7. The Siting Council and its staff shall not access, use or disclose the Confidential Information in any proceeding, nor make the Confidential Information available to any party, intervenor or interested individual or entity in any proceeding.

8. The Confidential Information shall remain confidential and proprietary after the conclusion of all proceedings in this docket.

9. All copies of the Confidential Information shall be returned to SBA no later than thirty (30) days after the expiration of all appeal periods applicable to the final decision rendered in this proceeding.

CONNECTICUT SITING COUNCIL

By: 

Dated: Sept. 20, 2011

**LIST OF PARTIES AND INTERVENORS  
SERVICE LIST**

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
<b>Applicant</b>	<input checked="" type="checkbox"/> U.S. Mail	SBA Towers III (SBA) and New Cingular Wireless PCS, LLC (AT&T)	<p>Daniel M. Laub, Esq. Christopher B Fisher, Esq. Cuddy &amp; Feder LLP 445 Hamilton Avenue, 14<sup>th</sup> Floor White Plains, NY 10601 (914) 761-1300 (914) 761-5372 fax <a href="mailto:dlaub@cuddyfeder.com">dlaub@cuddyfeder.com</a> <a href="mailto:cfisher@cuddyfeder.com">cfisher@cuddyfeder.com</a></p> <p>Hollis Redding SBA One Research Drive, Suite 200C Westborough, MA 01581 <a href="mailto:hredding@sbsite.com">hredding@sbsite.com</a></p> <p>Michele Briggs AT&amp;T 500 Enterprise Drive Rocky Hill, CT 06067-3900 <a href="mailto:michele.g.briggs@cingular.com">michele.g.briggs@cingular.com</a></p>
<b>Party (granted 09/20/11)</b>		<p>Peter R. and Gisele A. Buehler 350D Cossaduck Hill Rd. North Stonington, CT 06359</p> <p>16247 Fringe Tree Drive Spring Hill, FL 34610 (860) 245-5050 or (727) 856-1963 <a href="mailto:buehlerga@comcast.net">buehlerga@comcast.net</a></p>	