



# OLR RESEARCH REPORT

May 30, 2012

2012-R-0214

## SITING TELECOMMUNICATIONS TOWERS

By: Kevin McCarthy, Principal Analyst

You asked for a description of the law on the Siting Council process for approving a telecommunications tower, as amended by sHB 5271, which has passed both houses but has not yet been signed by the governor.

### SUMMARY

Under [CGS § 16-50g](#) et seq., a Siting Council certificate is required to build a variety of energy and telecommunications facilities, including towers used to provide cell phone and cable TV service. Before a certificate application can be filed with the council, the applicant must consult with the prospective host municipality.

In reviewing certificate applications, the council must consider the need for the facility and a wide range of environmental and other impacts. Before it can grant a certificate for a tower, it must consider the feasibility of requiring an applicant to share an existing tower. In addition, it must consider whether the proposed tower would be located in an area which the council, in consultation with the Department of Energy and Environmental Protection (DEEP) and affected municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional, or statewide significance.

Among other things, sHB 5271 requires telecommunications tower developers to begin consulting with potentially affected municipalities 90, rather than 60, days before applying to the council for a certificate approving the tower's location. It also expands the scope of this consultation. It generally prohibits the council from approving a telecommunications tower's installation within 250 feet of a school or commercial child day care. The act specifies that the council's decision must be consistent with federal law and regulations when applying these criteria. It also expands the factors the council must consider when approving telecommunications towers and equipment.

The council's website has a guide for citizen participation in its proceedings, available at <http://www.ct.gov/csc/cwp/view.asp?a=947&Q=405204&PM=1&cscNav=1>.

## **PRE-APPLICATION PROCESS**

The law generally requires the developer of any facility under the council's jurisdiction to consult with potentially affected municipalities at least 60 days before filing its application with the council (CGS § 16-50l(e)). sHB 5271 increases this period to 90 days in the case of proposed cell phone towers. By law, the consultations must include any municipality where the developer proposes to locate the facility or an alternative site, and any adjoining municipalities within 2,500 feet of the primary or alternative site. The consultation must include good faith efforts to meet with the municipality's chief elected official. The developer must provide the official with any technical reports concerning the site selection process and the need for, and environmental effects of, the facility. The municipality can hold hearings and, within 60 days of its initial consultation, issue its recommendations to the developer. Within 15 days after submitting its application to the council, the developer must give the council the material it provided to the municipality and a summary of the consultations, including the municipality's recommendations.

sHB 5271 requires the technical reports provided to the municipality to also be given to the municipality's planning commission, zoning commission, or combined planning and zoning commission, and inland wetland agency. The reports must include:

1. a map showing the area to be served by the tower;
2. the location of existing surrounding facilities;

3. a description of the site selection process, including a detailed description of the proposed site, alternate sites being considered, and sites that were considered and rejected;
4. the location of schools near the proposed site, an analysis of the tower's aesthetic impact on the schools, and a discussion of measures to be taken to lessen these impacts; and
5. the proposed facility's potential environmental effects.

sHB 5271 requires municipalities to provide telecommunications tower developers with alternative sites to consider within 30 days of the initial consultation. The developer must include its evaluation of these alternatives in its application to the council and can present any of them to the council for formal consideration.

sHB 5271 allows the municipality to hold public information meetings on the proposed facility within 60 days of the initial consultation. (As discussed above, the law also requires the municipality to issue recommendations to the developer within 60 days of the initial consultation.) If the municipality holds meetings, sHB 5271 makes the developer responsible for (1) notifying anyone on record as an owner of property next to a proposed or alternate site and (2) publishing a notice for the meeting in a general circulation newspaper at least 15 days before the meeting.

## **APPLICATION**

Under *CGS § 16-50l*, the applicant must serve a copy of the application to a wide range of individuals and organizations. Among others, these include each municipality where any part of the facility will be located, either as the primary proposed and an alternative location, and any adjoining municipality having a boundary not more than 2,500 feet from the facility. A copy of the application must go to the chief executive officers of the affected municipalities; their planning, zoning, and conservation commissions; and their inland wetlands agencies. A copy must also go to the relevant regional planning agencies, the attorney general, and each member of the legislature whose assembly or senate district includes the primary or alternative site for the facility.

A notice of the application must be given to the general public, in municipalities described above, by publishing a summary of the application and the date when it will be filed. The notice must be published in local newspapers to provide the public notice of the

application in time to allow them to prepare for and to be heard at the hearing. In addition, for most facilities, including towers, the applicant must send notice of the application, by certified or registered mail, to each person who owns property that abuts the proposed primary or alternative sites where the facility would be located.

## **HEARINGS**

Under [CGS § 16-50m](#), the council must set the date and location for a hearing on a tower application between 30 and 150 days after it receives the application. At least one session of the hearing must be held at a location selected by the council in the county where the facility will be located. The hearing must have a session after 6:30 p.m. for the convenience of the general public. The council may hold additional hearing sessions at other locations. The council must issue notices of the date and location of each hearing to be mailed, within one week of fixing their date and location, to the applicant and each person entitled to receive a copy of the application. The general notice to the public must be published in a local paper in at least 10-point boldface type.

In practice, there are two parts to the hearing process; the public evidentiary hearing and the public comment hearing. The evidentiary hearing, with participation by parties and intervenors, is typically held in the afternoon and the public comment hearing, with participation by the general public, in the evening.

Under [CGS § 16-50a](#), the parties to a certification proceeding are:

1. the applicant;
2. each person entitled to receive a copy of the application who files a notice with the council of his or her intent to be a party;
3. any nonprofit corporation or association formed to (a) promote conservation or natural beauty; (b) protect the environment, personal health, or biological values; (c) preserve historical sites; (d) promote consumer interests; (e) represent commercial and industrial groups; or (f) promote the orderly development of the areas where the facility is to be located, in each case if it has filed with the council a notice of intent to be a party; and
4. other persons the council deems appropriate. The council may permit any person to participate as an intervenor.

All participants can attend both parts of the hearing, but actual participation is limited to the appropriate session of the proceeding.

## **DECISION**

The council must act on tower applications within 180 days after the application is filed, unless the applicant agrees to an extension of up to an additional 180 days.

For most facilities, including towers, the council may not grant a certificate, either as proposed or as modified by the council, unless it determines:

1. the public need for the facility and the basis of the need;
2. the nature of the facility's probable environmental impact, alone and cumulatively with existing facilities, including a specification of every significant adverse effect and any conflicts with state environmental, public health, and safety policies;
3. why these adverse effects or conflicts are not sufficient reason to deny the application.

In addition, for tower applications, the council must examine:

1. the feasibility of requiring the applicant to share an existing tower, provided shared use is technically, legally, environmentally, and economically feasible and meets public safety concerns;
2. whether the proposed tower, if built, could be shared with any public or private entity which provides telecommunications or cable TV service, so long as shared use is (a) technically, legally, environmentally and economically feasible at fair market rates, (b) meets public safety concerns, and (c) the parties' interests have been considered; and
3. whether the proposed tower would be located in an area of the state which the council, in consultation with DEEP and any affected municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional, or state-wide significance.

sHB 5271 additionally requires the council to consider the (1) manufacturer's recommended safety standards for any of the facility's equipment, machinery, or technology and (2) latest design options meant to minimize the facility's aesthetic and environmental impact.

By law, the council may deny an application if it determines that (1) shared use of an existing tower is feasible or (2) the applicant does not agree to cooperate regarding the future shared use of the proposed facility. Under prior law, the council could also deny a certificate if the proposed tower would substantially affect the scenic quality of its location and no public safety concerns require that it be built there. sHB 5271 expands the latter provision to include instances where the tower would substantially affect the surrounding neighborhood's scenic quality, as long as public safety concerns do not require the tower to be in its proposed location.

sHB 5271 prohibits the council from approving a telecommunications tower's installation within 250 feet of a school or commercial child day care center unless the (1) municipality's chief elected official approves the location or (2) council finds that it will not have a substantial adverse effect on the aesthetics or scenic quality of the school's or day care center's neighborhood. sHB 7271 specifies that the council's decision must be consistent with federal law and regulations when applying these criteria. The Federal Communications Commission (FCC) has set exposure electromagnetic field (EMF) limits for various telecommunications facilities. With regard to facilities used to provide cell phone and related services, federal law limits the ability of states and municipalities to regulate the location of cell phone towers and antennas based on their EMF emissions. Specifically, section 704 of the Telecommunications Act of 1996 bars state and local governments from regulating the placement, construction, and modification of cell phone and other personal wireless service facilities on the basis of the environmental effects of their emissions to the extent that such facilities comply with the FCC regulations concerning such emissions.

KM:dy