

Land Use Applications Before the Connecticut Siting Council: Effective Involvement by Municipalities

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Municipal land use boards throughout our state are staffed with some of the finest and most committed public service volunteers anywhere. They serve countless hours investigating, studying, and researching issues that can affect the environment and quality of life of their communities. They endure some of the longest, most intensive meetings that occur in any town hall.

And without exception, every single one of these public officials wants to do the best job possible for their respective city or town.

As someone who works with a state agency that has preemptive jurisdiction over municipal authority (and as a former selectman), I consider it my duty to do everything in my power to help facilitate municipal involvement to the greatest degree possible. I also understand that perhaps the most critical tool to aid municipal involvement is the delivery of accurate and complete information to local boards, commissions, and agencies.

To that end, I welcome every opportunity to explain our role and how our agency works. So before going any further, let me first say that I appreciate this opportunity to communicate to you, the members of Connecticut's Conservation and Inland Wetland Commissions, about the public mission and the process of the Connecticut Siting Council.

What is the Siting Council?

I'd like to first clarify that the Siting Council is an executive-branch agency of Connecticut state government. Our offices are in New Britain where we operate with ten employees and an annual operating budget of slightly more than \$2 million. Our agency is entirely self-funded in that we derive all of our revenues from the various companies that we regulate.

We employ five full-time siting analysts, each of whom has extensive education and experience in environmental matters. Their backgrounds include prior employment with the Department of Environmental Protection (DEP), the Department of Public Utility Control (DPUC), and municipal land use planning.

The Siting Council itself generally functions as a nine-member body comprised of seven members of the lay public and representatives of DEP and DPUC. DEP's designee is an environmental analyst with 18 years of experience.

Of the seven representatives of the public, two are appointed by the General Assembly and the remaining five are appointed by the Governor, including the Chairman. This group includes a

former mayor and former members of planning and zoning and inland wetlands commissions. And they live throughout our state – from Fairfield, to Norfolk, to Stonington, and all parts in between.

In the simplest of terms, the scope of the Siting Council's exclusive jurisdiction is to provide siting review with respect to proposals to develop large-scale electric utility infrastructure (such as power plants, sub-stations, and high-voltage transmission lines) and specific types of telecommunications facilities including cellular telephone towers. Although seldom invoked, our jurisdiction also includes certain hazardous waste facilities and ash residue disposal areas.

The public mission of the Siting Council is to act as an independent judicial arbiter that objectively balances the statewide need for these projects, at the lowest reasonable cost to consumers, with the need to protect the environment and ecology of the state. And that's where you, as members of local municipal land use boards, come in.

Municipal Involvement

In full recognition of the critical value that local input has to issues of siting, the Connecticut legislature was careful to provide for multiple opportunities for municipalities to engage in meaningful participation and provide input to the Siting Council process.

Perhaps the most important input occurs before an application is even filed with the Siting Council, during what is often called the municipal consultation period.

State law requires that before an application is made to the Siting Council the proponents must first present information about the project to the host municipality. If a project is within 2,500 feet of a neighboring municipality, the applicant must also provide project information to that municipality.

The applicant must make a good-faith effort to meet with the chief elected official (CEO). Once this is done the applicant may not file with the Siting Council until 60 days pass in order to permit the town sufficient time to study the proposal. This is where the first opportunity arises for local officials to become meaningfully engaged.

As a practical matter the CEO often refers the applicants to a key member of his or her staff; say, the town planner. Of course each town is different, but generally the applicant will be directed to meet with the various boards that will have an interest in the project based on the nature of the proposal.

It is during this time period (which again must last no less than 60 days) that local boards should fully scrutinize the proposed project. This is your time to ask questions, make suggestions, and express concerns.

Frankly, your engagement during this time is critical. By fully scrutinizing the proposal you may well cause the applicants to modify the application that is ultimately filed with the Siting Council.

The second important opportunity for municipalities to be involved in our process comes when the application is filed at the Siting Council.

“To Be (a Party) or Not to Be?”

Once an application is filed with the Siting Council, municipal participation can take one of two different forms. For the purposes of this discussion I will call them “comment only” and “party participation.”

Every application for a Certificate from the Siting Council involves a hearing. We hold the hearing at a suitable facility as close to the affected community as possible.

Once an application is received and a hearing is scheduled, the Siting Council Chairman sends a letter to the host municipalities’ CEO alerting him or her to the hearing schedule and explaining the different ways that the municipality may become involved.

The Chairman’s letter explains that the municipality may either offer comments at the public hearing or become a party to the evidentiary proceeding.

It is important to understand that with each proceeding there is both an evidentiary proceeding session and a public hearing session. (Of note, the Council’s evidentiary hearing often occurs during the afternoon and the public hearing occurs during the evening of the same day.)

The evidentiary hearing functions much like a court of law. Rules of evidence apply which means that once applicants and participants present their case they must also make themselves available for cross examination. During the public hearing session persons may speak (comment only) without concern for cross examination but also may not cross examine others.

All municipalities in which projects are proposed to be sited are permitted by law to become a party (party participation). As alluded to above, being a party brings significant legal privileges and prerogatives, but also some responsibilities.

For example, the Siting Council requires that all evidence be given to the Council and all other participants, including the applicant, several days before the evidentiary hearing. Ex parte communications, whether with Council staff or Council Members, are prohibited. And such party participants are required to respond to interrogatory questions presented by other participants, according to a set schedule.

Still, there are some other factors that should be considered before a municipality chooses not to become a party. With respect to projects that involve electric transmission line proposals there is a \$25,000 municipal participation fund to assist in legal expenses. This fund may only be accessed if a municipality is a party. And in the end, if a municipality appeals a decision made by the Siting Council to Connecticut Superior Court, such appeal may be dismissed for failure to exhaust administrative remedies if they did not fully participate when the matter was before the Siting Council.

Lastly, with respect to how a municipality may participate in Siting Council proceedings, I wish to point out that there is a provision {C.G.S. Sec. 16-50x(d)} which permits municipalities to issue an order to “regulate and restrict” certain types of electric utility infrastructure. This process has been seldom invoked but may be useful to local concerns in certain instances.

Transparency of Process

All creatures of government have a shared duty to provide for a fully transparent process. But this is especially true of agencies, such as the Siting Council, that review and deliberate upon highly-contested cases and render decisions that have the potential to leave people disappointed or unhappy.

In such circumstances, allowing for all stakeholders to see the record develop and have confidence in the integrity of the process is vital.

In today’s world transparency of process often means providing for public access via an easily navigable web-based platform. We think our website achieves that goal.

We post and maintain the complete evidentiary record for every contested case proceeding on our website [ct.gov/csc]. Within our “pending proceedings” section you will see a listing of every pending case and can review its associated record of evidence. You will also see easy-to-use links that you can use to email the assigned siting analyst, and access the forms necessary to become a Party to the proceeding. You can also review the application documents and all the evidence submitted by all participants.

Other notable aspects of our website are that you can read and review every decision and order ever issued by our agency (organized both by town and docket number) and you can register for e-alerts so that you receive notice whenever we issue an agenda for a future Siting Council meeting or the minutes of a past meeting.

Summary

The Siting Council serves an important public mission, balancing the potential environmental impact of certain types of infrastructure projects with their need (or benefit) to serve statewide interests. This work is often difficult and challenging, but we do our best to gather information and input from every possible source before rendering any decision. We also make every effort to do this work in an open and transparent fashion.

I hope this short introduction to our agency is helpful to you and serves to underscore the point that the participation of local municipal boards is more than simply invited – it’s essential and crucial to our work. If and when an opportunity arises for you to do so, we hope you will choose to fully participate in our process so that we may together make the best possible decisions for the betterment of our beautiful state.

The Connecticut Siting Council (Council) has jurisdiction to objectively balance the statewide public need for adequate and reliable services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the State. The Council is funded through application fees and assessments, and administrative assessments of the electric utilities, hazardous waste generators, and telecommunications providers of the State. The agency website is www.ct.gov/csc.