

**Bachman, Melanie**

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**From:** Keith Ainsworth [krainsworth@snet.net]  
**Sent:** Wednesday, October 12, 2011 10:51 AM  
**To:** Bachman, Melanie  
**Subject:** RE: CSC Proposed Amended Regulations

Melanie,

Please accept the following as my comments on the proposed CSC regulation changes.

With regard to 16-50j-15b which states that no person who is a party or intervenor or member of a non-profit organization may also make a limited appearance statement at the public comment session of the hearing, I believe this unduly restricts the public's rights to comment. For example, I often represent citizen groups or non-profits or municipalities which have two tiers of issues: 1. technical issues of RF coverage, tower height, visual mass, wetlands impacts and the like which require expert testimony and the access to cross examination provided by intervention and 2. issues of aesthetics and historic resources or scenic road impacts, neighborhood property value diminution (which can also fall into category 1) and the like which usually only require the written statement of a knowledgeable person.

The proposed regulation would force intervenors and intervening parties to either file formal pre-filed testimony and be subject to cross examination under oath at great inconvenience and expense relative to the parties' resources, or to abandon the comments altogether. This is especially so as the Council forbids argument in briefs that go outside the formal record.

Given that an organization which bothers to file an intervention usually represents the most dearly affected interests in a community, the practical effect is to create the paradoxical effect that the most interested entities will have reduced access to comments and the Council will be deprived of a portion of their voice.

The proposed regulation's impact could be strategically avoided by intervening entities designating certain persons who would otherwise be members as "non-members" simply for the purpose of making limited appearance comments, but the necessity for such tactics are the kind of thing that undermine the public's trust in the integrity of the process.

I suggest that the Council will create more net bureaucratic issues than it seeks to avoid by this portion of the amendment. It has not been my experience that the limited public comments offered by any of my client intervenors has posed such an untenable burden on the hearing process that the proposed limitation is necessary. In all candor, my clients almost universally have the impression that the Council proceedings are so unduly restrictive that they are not being given a true and fair opportunity to participate. The proposed regulation would codify a further erosion of that confidence.

RE: 16-50j-22a(d) Protective Orders. The critical infrastructure and proprietary information exemptions are two of the most odious results of the hard pendulum swing against open government since the 9/11 attacks. Like the Patriot Act, the erosion of public access to information being considered is a serious degradation of the very intent of a process that claims to provide public input. The water utilities have used the FOIA exemptions to avoid inquiry into their consolidation of all rights to public water sheds and the potential water drawdowns for the sale of water that harm riverine and surface water ecology. Rivers Alliance and others have been unable to adequately present a case for the public trust due to the exemptions for the utilities from having to disclose critical infrastructure -- which can encompass any utility structure -- and water supply plans. Similarly, the Council's proposed regulation travels down the same offensive (and I would posit un-American) path toward a process which provides the Council and Applicant with more information while the public whom the Council and Applicants serve are deprived of valuable information which would allow them to present a full and fair examination of the facts.

Already, Applicants abuse the protective order to keep private the financial terms of their lease agreements which the Council enabling legislation says should be disclosed.

This provision is something which fair minded people should oppose, especially in light of the fact that the

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location of cell towers and there designs is widely publicly available simply by driving through the state.

RE: 16-50j-88 Tower Sharing: I will simply say that this provision exempting all tower sharing from public process is an exemption from public scrutiny with a one-size-fits-all regulation. It is not true that tower sharing is in all instances the best solution for minimizing impact. In several dockets my clients have preferred the option of two shorter towers to a single larger or more densely (and therefore more visual mass impact) populated tower. the access to the public process on this is important for this reason.

My final note is the codification of the use of the Dept of EEP's Natural Diversity Database (NDDDB) in D&M plan proceedings for the identification of endangered and threatened species. This has always been a point of contention for me professionally as developers of all stripes tend to use the NDDDB as proof of a lack of listed species when the NDDDB is (by DEEP's own admission) grossly incomplete and in no way establishes the absence of species. At best the list establishes a likelihood of listed species, but it has become a convenient way to avoid the issue by inverting the appropriate use of the list. The codification of this unscientific perversion of the database is not something to propagate.

On a more positive note, the remainder of the changes appear to be neutral or positive. I support any evolution of the regulations which increase public participation, access to information, ease of use of process and fair decision-making which is so important in a body that is empowered to make decisions on a statewide basis through exemption from local regulation.

Sincerely,

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**From:** Bachman, Melanie [mailto:Melanie.Bachman@ct.gov]  
**Sent:** Wednesday, October 12, 2011 8:36 AM  
**To:** 'Keith Ainsworth'  
**Subject:** RE: CSC Proposed Amended Regulations

Good morning.

The Proposed Amended Regulations are posted on the website under Pending Proceedings, Other CSC Proceedings, Regulations Revisions at the bottom of the page. Attached is an electronic version of the Proposed Amended Regulations. If you have any questions, please feel free to contact me.

Thanks.

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