

BILL H.527 PUBLIC COMMENT re: Section 248a Telecom Tower Siting

Dear Senate Finance Committee Chair Ann Cummings and Committee Members,

I am writing to urge you **to not make Section 248a permanent, but rather sunset Section 248a and enact legislation allowing Act 250 to incorporate a municipal telecommunications bylaw or ordinance into its decision-making process.** Continuing the 248a process as it is now would enable telecom corporations to continue acting in violation of and disregarding Vermont municipalities's ordinances and recommendations. A good example of this happening is the ongoing Industrial Tower and Wireless (ITW) tower case in Westmore, now being appealed in the Vermont Supreme Court. At the very least, please only extend Section 248a to sunset in two or three years, giving time to find a more equitable process which includes the interests of our state's municipalities and residents, rather than those of profiteering corporations.

I have been a testifying witness in PUC Case No. 24-1755-PET (Petition of Industrial Tower and Wireless, LLC requesting a Certificate of Public Good (CPG), pursuant to 30 V.S.A. § 248a, for a telecommunication tower in Westmore, Vermont). My resume and testimony as an aesthetic witness are attached below. The experience of Westmore intervenors, witnesses, Westmore Planning Commission, Westmore Selectboard and the more than 100 people who submitted Public Comment on ePUC portal has been complete frustration in navigating the 248a process used by PUC to grant a CPG for siting telecommunications towers. (For the record I know that at least half of the 100 comments submitted on ePUC by the public were from year round and seasonal resident/taxpayers of Westmore and neighboring towns in Orleans County; three were members of Westmore Fire Department, three were Selectboard members, at least three were members of the Planning Commission including the Chair.) Unfortunately Section 248a has pitted corporate power, highly paid attorneys, money and influence against the small rural Town of Westmore and its residents making for an extremely contentious process.

This more than two year long process in Westmore continues to be one of legal obfuscation, deliberate misrepresentation, and obstruction by the corporate attorneys. The case for ITW's telecom tower has been based primarily on procedural issues rather than the issues of substance, ie., town plan, telecommunication ordinance, scenic aesthetic importance of a rare National Natural Landmark (NNL), and benefits to the public. ITW has set forth no specific benefits for the Public Good that would come from this two-way radio tower, which so far has only one party colocating (rent free). They have made only general references to an overall state plan and unsubstantiated suggestions that one day there might be a co-locating cell provider. Already the area has Broadband coming in which is much more viable for future technological advances than towers.

The entire 248a process has proven to be overwhelming for a small town and its residents in order to have their voices heard, especially if they choose to intervene because a telecom project violates their municipal plan and regulations. We've had to go through one hurdle after

another: Motion to Intervene, Hearings, Pre-Filed Testimony, Discovery, Evidentiary Hearing, Briefs and Reply Briefs, Responses to ITW Motions to Eliminate Testimony, Public Comments, Response to Proposal for Decision and Final Order, Oral Argument, Motion to Amend, Reply to Response to Motion to Amend, etc. - an exhausting process which continues as the intervenors/appellants are now appealing in the Vermont Supreme Court.

This contentious litigation process has been enabled by 248a allowing corporations to simply circumvent municipal regulations in applying for a CPG to site a telecom tower. According to the PUC under 248a "substantial deference" is to be given to municipalities in granting a CPG, but no clear guidelines are provided for how and when municipality recommendations and comments are to be received and what attention they are to be given by the PUC. Because procedure is not spelled out in Section 248a the ITW attorneys have been able to completely deny the Town's input and have used tactics such as suing the PUC commissioners in December 2024 for not making the 150 day shot-clock, then dropping the suit against them one week after they issued the Final Order to grant ITW a CPG (both documents attached).

One wonders if the PUC Commissioners even read any of the witnesses' and intervenors' testimonies given their very brief response to our response to their Final Order. In fact their Final Order basically repeats the Hearing Officer's Proposal for Decision along with its numerous errors. At the Oral Argument not one PUC commissioner asked a question of the intervenors' *pro se* Representative. They could not have had time to thoroughly read the Westmore intervenors' Reply to the ITW Response to the intervenors's Motion to Amend, as their Motion to Dismiss the Motion to Amend came within a few hours of the Motion to Amend being filed on ePUC. One can only assume that the PUC commissioners had already made up their minds and were not going to listen to the Westmore residents. They never did allow a public hearing even though the Westmore Planning Commission asked for one.

Throughout this whole process it appears that for some reason the PUC, DPS, and ANR rubber-stamped the corporate lawyers. Our state agencies to protect the public interests never even questioned the public good for Westmore and, for that matter, the state of Vermont given that Westmore has one of the most spectacular viewsheds in New England, Lake Willoughby, designated in 1968 by the U.S. Department of the Interior as a NNL. For over 150 years Willoughby has been lauded repeatedly for its pristine natural beauty and awe-inspiring glacially formed gap with accolades such as "the last piece of paradise in the lower 48" (more citations in attached testimony and exhibits).

An additional problem with the PUC process under 248a has to do with the issue of aesthetics: its reliance on the Quechee Analysis in order to determine the aesthetic impact of a telecommunications tower. What is supposed to be an objective analysis, was interpreted subjectively in the Westmore case. **The evaluation of just one individual, the DPS-hired aesthetic expert, was treated as absolute objective truth.** While the DPS-hired aesthetic expert admitted that the ITW Project failed the first part of the Quechee Analysis because of

Lake Willoughby's sensitive nature as a scenic treasure and NNL, he manipulated answers to satisfy passing the second part, saying it:

- (1) complied with Town Plan and Telecom, which it clearly did not
- (2) adverse visual effects were mitigated, which they were not
- (3) the average person wouldn't be offended. Neither he, nor ITW has given a satisfactory definition for "an average person" while many commented or testified on ePUC that they would find a 154' tower in the "well above average" Willoughby viewshed highly offensive.

Even though only one of the above requirements needed to fail in order to fail the Quechee test for an "undue" adverse impact on the aesthetics of the area, the project failed on all three of these points.

I truly hope that you will find a way to allow Act 250 to incorporate a well thought out municipal telecom bylaw or ordinance into its decision-making process for siting telecommunication towers instead of making 248a permanent and, by doing so, carry on Vermont's legacy of protecting its distinctive rural character and non-industrialized landscape from speculative projects that trample over towns' and cities' careful land management planning and zoning.

Thank you for giving us residents/taxpayers the opportunity to be heard.

Respectively,

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