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February 12, 2024

VIA FEDERAL EXPRESS
Honorable Planning Board
Borough of Wanaque
579 Ringwood Avenue
Wanaque, NJ 07465

Re: T-Mobile Northeast LLC & Mobilitie
Lakeland Regional High School
205 Conklintown Road (Block 210, Lot 1.01)

Dear Members of the Board:

This firm represents Co-Applicants T-Mobile Northeast LLC ("T-Mobile") and Mobilitie (collectively "Co-Applicants") in connection with the above-referenced application. I am writing on behalf of the Co-Applicants to address the objectors' intention to call Kent A. Chamberlin, Ph.D. as a witness on at the Board's hearing on February 15, 2024.

With respect to Mr. Chamberlin, the Board will recall that the objectors initially informed the Board that they intended to call a health expert as a witness. When the Board's counsel properly rejected that proposition holding that the Board is preempted from considering that issue under applicable law, the objectors reformulated their position to be that that they would call Mr. Chamberlin to discuss alternative technologies. In reviewing Mr. Chamberlin's curriculum vitae, it appears that the objectors may have been somewhat disingenuous and may attempt to introduce health concerns despite their statements to the contrary.

The Co-Applicants reiterate the law set forth in their legal memorandum to the Board dated January 9, 2024, and remind the Board that the New Jersey Supreme Court has made it clear that "the Telecommunications Act … has preempted local **consideration of EMF radiation emissions**. 47 *U.S.C.A.* §332(c)(7)(B)(iv)." Smart SMR v. Fair Lawn Bd. of Adj., 152 N.J. 309, 334 (1998).

The Telecommunications Act is clear:

> "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions."

47 *U.S.C.A.* §332(c)(7)(B)(iv). "Similarly, the Radiation Act, like the Telecommunications Act, preempts local regulation of EMF radiation emissions, so long as those emissions comply with applicable regulations." Id.at 326. See N.J.S.A. 26:2D-17. The New Jersey Supreme Court went on to hold that [i]n light of state and congressional legislation, the Board exceeded its authority in giving credence to the perception of neighbors that EMF radiation emissions may cause long-term health effects. At the time when the Board heard Smart's application, the Radiation Act already preempted the Board's consideration of EMF radiation emissions that fell within applicable government safety standards." Id. at 333. Accord, Ocean County Cellular Telephone Co. v. Twp. of Lakewood Bd. of Adj., 352 N.J. Super. 514, 519 (App. Div. 2002); ExteNet Sys. v. Twp. of N. Bergen, Civil Action No. 20-15098 (May 19, 2022). The record in the matter before the Wanaque Planning Board is clear. The RF emissions from the facility will be in compliance with both state and federal standards by a wide margin. As a result, the Board is preempted from further consideration of this issue and should not permit Mr. Chamberlin to testify on same.

With respect to the objectors' plan to discuss alternative technologies, that topic is irrelevant to the matter before the Board. Here, the Co-Applicants' are proposing a permitted use. While the issue of alternative technology is relevant in a use variance case, it is simply irrelevant where, as here, the use is permitted. Moreover, even in a use variance case, an alternative such as a network of small wireless facilities, is not a less intrusive alternative to the type of facility proposed by the Co-Applicants as each such antenna facility would require its own use variance because they are not listed as permitted uses in the Wanaque Code. See Sprint Spectrum, L.P. v. Zoning Bd. of Adjustment of Paramus N.J., 606 Fed. Appx. 669 (3rd Cir. 2015)(ZBA's denial of use variance application to build a wireless monopole tower, based on the possibility of implementing a distributed antenna system (DAS) instead, was not supported by substantial evidence, as the DAS was not a feasible alternative to the monopole; therefore, the district court correctly found that the ZBA's ruling constituted an effective prohibition of wireless service in violation of 47 U.S.C.S. § 332(c)(7)(B) of the Telecommunications Act of 1996.)

To summarize, the application is in compliance with all state and federal standards for RF emissions and the requirements of the Wanaque Zoning Ordinance. Under these circumstances, the Board may not impose its own legislative judgment and must grant site plan approval. Once again, the law is clear - a "planning board shall, if the proposed development complies with the ordinance and this act, grant preliminary site plan approval." N.J.S.A. 40:55D-46(b). "[A] planning board's authority in reviewing a site plan application is limited to determining whether the plan conforms with the municipality's zoning and site plan ordinances." Sartoga v. Borough of W. Paterson, 346 N.J. Super. 569, 581, (App. Div.), certif. denied, 172 N.J. 357 (2002); accord Pizzo Mantin Group v. Tp. of Randolph, 137 N.J. 216, 230 (1994); PRB Enter., Inc. v. S. Brunswick Planning Bd., 105 N.J. 1, 7 (1987).

Thank you for your consideration of the above matters. We look forward to concluding this matter on February 15th.

Very truly yours,

Gregory D. Meese

Gregory D. Meese

cc: Areej Raiput, Esq. via email
Steven Veltri, Esq. via email
Robert J. Berg, Esq. via email
Mr. Kyle Russell via email
Mr. Chris Connell via email
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