

The Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T-MOBILE WEST LLC and INDEPENDENT
TOWERS HOLDINGS, LLC,

Plaintiff,

v.

THE CITY OF MEDINA, WASHINGTON,

Defendant.

No. 2:14-CV-1455-RSL

STIPULATED JUDGMENT AND
ORDER

Pursuant to Section 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. § 332(c)(7) (the “Communications Act” or “Act”), the parties’ Settlement Agreement filed with this Court, the documents and information submitted in this action, and based on applicable law, the Court finds and orders as follows:

Plaintiffs T-Mobile West LLC (“T-Mobile”) and Independent Towers Holdings, LLC (“Independent Towers”) (collectively “Plaintiffs”) allege that Defendant City of Medina, Washington (“Defendant” or “City”) unlawfully denied Plaintiffs’ application to construct a wireless telecommunications facility in Medina. Plaintiffs allege that the City’s denial is not supported by substantial evidence contained in a written record and effectively prohibits

1 personal wireless service in the vicinity of the proposed facility, all in violation of Section
2 332(c)(7)(B) of the Act.

3 Plaintiffs and Defendant have entered into and executed a Settlement Agreement to
4 settle and resolve the claims by Plaintiffs in this matter.

5 This Court has subject matter jurisdiction over this case pursuant to 47 U.S.C.
6 §332(c)(7)(B)(5) and 28 U.S.C. §1331.

7 In light of the agreement of the Parties in the Settlement Agreement, , **the Court holds**
8 that T-Mobile has a significant gap in its ability to provide personal wireless service in an area
9 around Fairweather Park, and the terms of the Settlement Agreement are the least intrusive
10 means of remedying T-Mobile's significant gap in service. Accordingly, pursuant to 47 U.S.C.
11 § 332(c)(7)(B)(i)(II), failure to allow Plaintiffs to construct the proposed tower, as set forth in
12 the Settlement Agreement, would effectively prohibit T-Mobile from providing wireless
13 service in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II).

14 Therefore, IT IS ORDERED that within 21 days after the entry of this Stipulated
15 Judgment, **the Defendant shall grant Independent Towers' Application for a special use permit**
16 **and variance to allow the installation, operation and maintenance of an eighty (80) foot tall**
17 **monopole at the Fairweather Park and Nature Preserve, located at 2994 Evergreen Point Road,**
18 **Medina, Washington ("Park"), as set forth in Independent Towers' application,** subject only to
19 the following conditions: Independent Towers shall mitigate the impacts on the use of Park
20 property by constructing the following improvements: (a) **Field Re-Surfacing** as specified in
21 Exhibit A attached hereto; and (b) **Drainage System** as specified in Exhibit B attached hereto
22 (collectively "Mitigation Improvements"). The Mitigation Improvements shall be constructed
23 by Independent Towers at its sole cost and expense, by such contractors or subcontractors as
24 Independent Towers may choose in its sole discretion, subject to the specifications set forth in
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1 Exhibits A and B to the Settlement Agreement. Independent Towers will be responsible for
2 obtaining relevant construction permits. The City will have the right to confirm that the
3 Mitigation Improvements are being performed to the specifications identified in Exhibits A and
4 B to the Settlement Agreement and any conditions set forth in the permits.

5 IT IS FURTHER ORDERED that The City shall not take any enforcement action
6 against the existing temporary Independent Towers and T-Mobile wireless communications
7 facility located in the Park and shall allow such temporary facility to continue in operation until
8 the Proposed Tower is completely constructed as contemplated in this Stipulated Judgment and
9 the Parties Settlement Agreement and T-Mobile has installed and commenced operation of its
10 personal wireless services antennas and equipment on such Proposed Tower as contemplated in
11 this Stipulated Judgment and the Parties Settlement Agreement.
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13 IT IS FURTHER ORDERED that as a result of the Defendant's action in response to
14 this Order, granting the Independent Towers' Application, Independent Towers shall be
15 authorized to construct, operate, maintain, and use a personal wireless service facility located at
16 the Park, as proposed in its Application to the City that is the subject of this action. No other
17 relief except that provided according to the provisions of this Judgment and the Settlement
18 Agreement entered into by the parties is granted hereby. No costs and/or attorney's fees are to
19 be sought by or awarded to any party.
20

21 Dated: May 14, 2015

Respectfully submitted,

22 /s/ Linda Atkins

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So Ordered:

Judge Honorable Robert S. Lasnik
United States District Court

Dated: _____, 2015