

The Honorable Robert S. Lasnik

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

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

11 Plaintiff,

12 v.

13 THE CITY OF MEDINA, WASHINGTON,

14 Defendant.

No. 2:14-CV-1455-RSL

SETTLEMENT AGREEMENT

15
16 The plaintiffs, T-Mobile West LLC ("T-Mobile") and Independent Towers Holdings,
17 LLC ("Independent Towers"), and the defendant, City of Medina, Washington ("City") hereby
18 agree as follows:

19 WHEREAS, Independent Towers entered into a lease agreement with the City for a
20 structure, base station and related wireless communication facilities (collectively, "Proposed
21 Tower") at Fairweather Park and Nature Preserve, located at 2994 Evergreen Point Road,
22 Medina, Washington ("Park");

23 WHEREAS, T-Mobile entered into a sublease agreement with Independent Towers to
24 locate its antennas and equipment at the Proposed Tower;

25 WHEREAS, on September 25, 2013, pursuant to Medina Municipal Code ("MMC")
26 Chapter 20.37 and Chapter 20.72, and Section 332(c)(7)(B) of the federal Communications
27 Act, 47 U.S.C. § 332(c)(7)(B), Independent Towers applied to the City for a special use permit

1 and variance to allow the installation, operation and maintenance of the Proposed Tower at the
2 Park ("Application");

3 WHEREAS, after a public hearing, the City's Hearing Examiner denied the Application
4 due to a lack of substantial evidence to establish that 80 feet was the minimum tower height
5 necessary to avoid a significant service gap on the SR-520 bridge as required by MMC
6 20.37.070.B.3.b, and after a further hearing on Independent Towers' request for
7 reconsideration, on October 10, 2014 filed with the City Clerk a written decision denying
8 reconsideration and such determination is a "final action";

9 WHEREAS, T-Mobile and Independent Towers timely appealed under Section
10 332(c)(7)(B)(v) of the Communications Act, (the "Communications Act"), 47 U.S.C. §
11 332(c)(7)(B)(v), from the denial by the City of the Application ("TCA Case");

12 WHEREAS, T-Mobile has produced an expert report that demonstrates that T-Mobile
13 has a significant gap in its ability to provide personal wireless service and that the proposed
14 tower at a height of at least eighty (80) feet above ground level will remedy T-Mobile's
15 significant gap in its ability to provide personal wireless service, and the City has had a third
16 party radio frequency expert confirm the analysis and conclusions in the T-Mobile expert
17 report;

18 WHEREAS, under the City's Code Sections 20.37.070 and 20.37.080, a personal
19 wireless service facility in the City outside of Fairweather Park, including in the public right of
20 way and the Washington Department of Transportation ("WSDOT"), cannot be taller than
21 thirty five (35) feet above ground level and therefore there is no feasible alternative for locating
22 an 80 foot tower outside of Fairweather Park;

23 WHEREAS, in an effort to settle the TCA case, Independent Towers has agreed to
24 undertake further improvements to the Park, and the City has concluded that in light of the
25 public interest in promoting collocation of wireless facilities to minimize the number and
26 impact of such facilities and in light of the mitigation measures agreed to by Independent
27 Towers herein, the Proposed Tower and the additional conditions agreed to by Independent

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1 Towers create the least intrusive means of remedying the significant gap in T-Mobile's service,
2 and therefore, the City has agreed to approve the Application with those mitigating conditions,
3 which are set forth below;

4 WHEREAS, the Court has subject matter jurisdiction over this case pursuant to 47
5 U.S.C. §332(c)(7)(B)(5) and 28 U.S.C. §1331;

6 WHEREAS, federal courts encourage settlement between wireless providers and local
7 jurisdictions with zoning authority in appropriate circumstances; *see Brehmer v. Planning*
8 *Board of the Town of Wellfleet*, 238 F.3d 117, 121 (1st Cir. 2001) (under the Communications
9 Act, it is "not unreasonable for the board to settle with the applicant on the terms most
10 favorable to the town"; such settlements "are fully consistent with the [Act]'s aims"); *Town of*
11 *Amherst v. Omnipoint Communications*, 173 F.3d 9, 16-17 (1st Cir. 1999) ("[I]t is in the
12 common interest of [zoning boards] and [telecommunications companies] to find ways to
13 permit the siting of towers in a way most congenial to local zoning"); *Patterson v. Omnipoint*
14 *Communications, Inc.*, 122 F. Supp. 2d 222, 228 (D. Mass. 2000) (in appropriate
15 circumstances, "it behooves the board to settle with the Plaintiff company on the most
16 favorable terms possible; rather than spend more on litigation, with the potential to receive less
17 favorable terms from a judgment");

18 WHEREAS, without any admission of fact, law or liability, the parties hereto now
19 desire to settle the above-captioned litigation to permit the Court-ordered construction and
20 operation of the Proposed Tower at the Park in the City of Medina, subject to and on the terms
21 set forth herein;

22 WHEREAS, there is no just cause for delay and both parties wish to avoid protracted
23 litigation;

24 NOW THEREFORE, the parties hereto agree to undertake all necessary actions and
25 fulfill all applicable requirements under federal, state and local law on an expedited time frame,
26 including but not limited to the following:

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1. Simultaneously with the execution of this Settlement Agreement, the parties hereto will execute the Stipulated Judgment, which is attached hereto as Exhibit ____.
2. Plaintiffs will file the Stipulated Judgment in the District Court in the TCA Case within 10 days after execution of this Settlement Agreement.
3. After entry of the Stipulated Judgment by the District Court, and pursuant to the Stipulated Judgment, the City will approve the Application and issue the special use permit and variance requested in the Application. The height, design, and other characteristics of the Proposed Tower shall be approved by the City as specified in the Project Drawing Plans submitted with the Application.
4. Pursuant to the Stipulated Judgment, the City's approval of the Application will be conditioned upon and subject to Independent Towers mitigating the impacts on the use of Park property by constructing the following improvements: (a) Field Re-Surfacing as specified in Exhibit A attached hereto; and (b) Drainage System as specified in Exhibit B attached hereto (collectively "Mitigation Improvements"). The Mitigation Improvements shall be constructed by Independent Towers at its sole cost and expense, by such contractors or subcontractors as Independent Towers may choose in its sole discretion, subject to the specifications set forth in Exhibits A and B attached hereto. Independent Towers will be responsible for obtaining relevant construction permits. The City will have the right to confirm that the Mitigation Improvements are being performed to the specifications identified in Exhibits A and B hereto and any conditions set forth in the permits.
5. The City agrees to stay any enforcement action against the existing temporary Independent Towers and T-Mobile wireless communications facility located in the Park and to allow such temporary facility to continue in operation until the Proposed Tower is completely constructed as contemplated in this Settlement Agreement and T-Mobile has installed and commenced operation of its personal wireless services

1 antennas and equipment on such Proposed Tower as contemplated in this Settlement
2 Agreement.

3 6. The City agrees that money originally designated for lighting purposes currently
4 held in escrow in connection with the lease entered into between Independent
5 Towers and the City shall be released to Independent Towers.

6 7. The parties hereto each agree to support the terms of this Settlement Agreement and
7 the Stipulated Judgment, and to take all actions and execute all documents as may
8 be reasonably necessary to carry out the terms of this Settlement Agreement and the
9 Stipulated Judgment.

10 8. In the event Intervenors oppose this Settlement Agreement or the Stipulated
11 Judgment, Plaintiffs and the City will support the request for the District Court to
12 approve this Settlement Agreement and the Stipulated Judgment, but it is
13 understood further that Independent Towers and T-Mobile will be responsible for
14 taking the lead in defending this Agreement and the Stipulated Judgment, provided
15 that in the event required and if requested by Independent Towers and T-Mobile, the
16 City agrees to prepare and file with the Court such documents as are reasonably
17 necessary to support this Agreement and the Stipulated Judgment. The City shall
18 refrain from taking any action to oppose this Agreement or the Stipulated Judgment
19 or that may be contrary to the terms of this Agreement.

20 9. If the Court in the TCA Case refuses to accept this Settlement Agreement and enter
21 the Stipulated Judgment, the terms of this Settlement Agreement shall become null
22 and without effect.

23 10. Each party hereto represents and warrants that this Agreement has been duly
24 authorized by all necessary votes, actions, and other requirements of each party, and
25 constitutes a legal, valid and binding obligation in accordance with its terms, and
26 that no consent or permission related to the obligations assumed in this Agreement
27 is required under any covenant, agreement or encumbrance or under any law or

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regulation of any governmental entity or jurisdiction. Without limitation, the undersigned Counsel represent and warrant that they have been authorized by their respective clients to execute and do hereby execute this Agreement settling the TCA Case.

11. The rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with the Telecommunications Act and, subject thereto, in accordance with the laws of the State of Washington.

12. This Agreement constitutes the entire agreement with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

13. The City, Independent Towers and T-Mobile agree to cooperate and to act in good faith to achieve the terms of this Agreement.

14. The individuals executing this Settlement Agreement on behalf of the respective Parties have express and lawful authority to do so, and it may be executed in counterparts.

DATED this 11 day of May, 2015.

CITY OF MEDINA

INDEPENDENT TOWERS HOLDINGS, LLC

By: [Signature]
Michael Sauerwein, City Manager

By: [Signature]
John Stevens, Managing Member

Attest:

T-MOBILE WEST LLC

[Signature]
Aimee Kellerman, City Clerk

By: [Signature]
Darcey Estes
Senior Director, Engineering Development

Approved As To Form:
[Signature]
Kari L. Sand, City Attorney
Kenyon Disend, PLLC

[Signature]
Melanie Kiely
Digitally signed by Melanie Kiely
Date: 2015.05.07 13:08:05 -07'00'
Legal Approval

City of Medina

Fairweather Park Athletic Field Improvement

Project Description

<i>Item No</i>	<i>Description</i>	<i>Unit</i>	A. Field Re-surfacing, Irrigation and Drainage System <u><i>Proposed Project Elements:</i></u> Install sand based surface and sand subgrade to help alleviate wet field conditions <i>Quantity</i>
	Total Field Area (SF) =	31,360	
FIELD RE-SURFACING			
	Install sand 6" deep throughout field area	SF	31,360
	Install playfield soil 6" deep throughout field area including reseeding	SF	31,360

City of Medina

Fairweather Park Athletic Field Improvement

Project Description

Item No	Description	Unit	C. Drainage System	
			<i>Proposed Project Elements:</i> Install underdrain system to alleviate wet field conditions	Quantity
DRAINAGE SYSTEM				
	Total Field Area (SF) =	31,400		
	Mobilization	LS		1
	TESC	LS		1
	Layout	LS		1
	2" Diameter Perforated Plastic Tubing	LF		2040
	8" Diameter Perforated Plastic Tubing	LF		340
	8" Diameter Plastic Pipe	LF		30
	"Y" Fitting, 8"x8"x8" Diameter	EA		1
	Tee Fitting, 8" Diameter	EA		1
	Clean Out	EA		17
	Clean Out Cover	EA		17
	Trench Excavation Incl. Haul	CY		70
	Drainage Material, 3/4" Gravel	CY		14
	Sand	CY		40
	Connect to Existing Catch Basin	EA		1
	Reseeding	LS		1