TOWN OF HARRISON

Meeting Date: 10/05/2021

Committee: Legal

Resolution #: R-2021-158

Presented by Councilperson: Ellen Mendoza

HUDSON COUNTY

A RESOLUTION AUTHORIZING AND APPROVING A SETTLEMENT OF LITIGATION WITH T-MOBILE NORTHEAST LLC

WHEREAS: T-Mobile Northeast LLC ("T-Mobile") filed a lawsuit in federal court, Docket No. 21-cv-13627 (the "Lawsuit"), challenging the decision of the Harrison Zoning Board of Adjustment (the "Board") denying T-Mobile's application to locate a certain wireless communications facility (the "Facility") on the rooftop of 600 Frank E. Rodgers Blvd. N. (the "Application"); and

WHEREAS: The Lawsuit alleges that denial of the Application was, among other things, violative of the Federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(ii); and

WHEREAS: The Town of Harrison (the "Town") was made a party to the Lawsuit vis-à-vis the Town's local zoning regulations; and

WHEREAS: T-Mobile, the Board and the Town (the "Parties") have agreed that federal law preempts local regulation, and the Parties wish to amicably settle this matter to avoid protracted and costly litigation, and for the reasons set forth in the proposed Consent Order attached hereto (the "Consent Order").

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Harrison, Hudson County, New Jersey, as follows:

THAT: The Mayor is authorized to execute the Consent Order in the form attached hereto with such changes as may be advisable after consultation with counsel, and to execute any other document necessary to effectuate the terms of the settlement.

Town Council	Moved	Seconded	Yes	No	Abstain	Absent
L. BENNETT	☐	☐	☒	☐	☐	☐
M. CAMANO	☐	☐	☒	☐	☐	☐
M. DOLAGHAN	☐	☒	☒	☐	☐	☐
J. DORAN	☒	☐	☒	☐	☐	☐
J. HUARANGA	☐	☐	☒	☐	☐	☐
E. MENDOZA	☐	☐	☒	☐	☐	☐
F. NASCIMENTO	☐	☐	☒	☐	☐	☐
E. VILLALTA	☐	☐	☒	☐	☐	☐
J. FIFE	☐	☐	☒	☐	☐	☐

JF

James A. Fife, Mayor

I hereby certify this to be a true and correct copy

Paul J. Zarbetski, Town Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY- NEWARK VICINAGE

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T-MOBILE NORTHEAST LLC,

Plaintiff,

-against-

TOWN OF HARRISON, and TOWN OF HARRISON ZONING BOARD OF ADJUSTMENT,

Defendants.

CONSENT ORDER

Docket No. 21-cv-13627

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WHEREAS, on or about December 3, 2020 plaintiff T-Mobile Northeast LLC ("T-Mobile") filed an application with the Town of Harrison Zoning Board of Adjustment (the "Board") seeking height and use variances, bulk variances, design waivers and preliminary and final site plan approval to install a wireless communications facility (the "Facility") on the rooftop of the existing building at 600 Frank E. Rodgers Boulevard North, Harrison, New Jersey 07029 (the "Premises") (the "Application"), which Application is incorporated by reference;

WHEREAS, the Board conducted public hearings on the Application on March 17, 2021, April 21, 2021 and May 19, 2021;

WHEREAS, at the conclusion of the hearing on May 19, 2021 the Board denied the Application, which denial was memorialized in a written resolution enacted on June 15, 2021, which is incorporated by reference;

WHEREAS, on July 14, 2021 T-Mobile filed this action challenging the Board's denial of its Application as violative of the Federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(ii), and for other reasons;

WHEREAS, after further review T-Mobile and the defendants (the "Parties") have agreed federal law pre-empts local regulation of the Application;

WHEREAS, because of federal pre-emption, and for other reasons including the early settlement of costly protracted litigation, the Parties have agreed to amicably resolve this matter without admission of fault of liability;

WHEREAS, the Parties acknowledge and confirm that T-Mobile has a significant gap in personal wireless services in the areas surrounding the Premises;

WHEREAS, the Parties have reviewed alternate locations and designs for the Facility and have concluded that the Facility at the Premises, as proposed in T-Mobile's application, is the least intrusive means available to remedy the significant gap in personal wireless services identified in T-Mobile's network in the areas surrounding the Premises;

WHEREAS, without the Facility T-Mobile will be materially inhibited from providing its services;

WHEREAS, by resolution dated _____ and incorporated by reference, the Town approved entry into this Consent Order with execution by its counsel;

WHEREAS, by resolution dated _____ and incorporated by reference, the Board approved entry

into this Consent Order with execution by its counsel; it is

On this ____ day of October, 2021,

ORDERED THAT:

1. The Facility at the Premises as proposed in T-Mobile's application is the least intrusive means available to remedy the identified significant gap in personal wireless services; and without the Facility T-Mobile will be materially inhibited from providing its services amounting to an effective prohibition of the provision of personal wireless services, in violation of the TCA;
2. The Application is declared approved;
3. The Town shall issue a building permit for the Facility at the Premises within 30 days of receipt of an application for a building permit by T-Mobile provided any such application is complete and complies with all applicable laws;
4. The Parties acknowledge that this Consent Order was the product of negotiation by all parties through their counsel, including negotiation as to the language set forth herein, and, as such, to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Settlement, the ambiguity shall not be resolved on the basis of who drafted the Settlement;
5. If Defendants fail to comply with this Consent Order, or if a third-party action is commenced with respect to the approval of the Facility pursuant to this Consent Order, this Court shall retain jurisdiction and Plaintiff may seek enforcement of this Consent Order by this Court;
6. The Parties' attorneys are authorized to execute this Consent Order which shall be binding upon the Parties; and
7. The complaint is dismissed without prejudice and without fees, costs, disbursements, damages, interest or attorneys' fees against any party. The Court shall retain jurisdiction over this matter until: (i) all permits and approvals required to install and operate the Facility have been issued, including, without limitation, all building permits and certificates of occupancy and (ii) the time for any legal challenge to the approvals for the Facility, and any associated local approvals has expired. Upon the last of the foregoing to occur, this action will be dismissed with prejudice.

By: _____ Date: _____

Gregory J. Castano Jr.
CASTANO QUIQLEY LLC
Attorney for Defendants
155 Passaic Avenue – Suite 340
Fairfield, NJ 07003
(973) 808-1234

By: _____ Date: _____

Robert D. Gaudioso, Esq.

SNYDER & SNYDER, LLP
Attorney for Plaintiffs
94 White Plains Road
Tarrytown, NY 10591
(914) 333-0700

SO ORDERED:

By:_____ Date: _____

HON. ESTHER SALAS
United States District Judge
Newark, New Jersey