

VOGEL, CHAIT, COLLINS & SCHNEIDER, P.C.  
25 Lindsley Drive, Suite 200  
Morristown, New Jersey 07960  
(973) 538-3800  
Attorneys for Plaintiffs T-Mobile Northeast LLC  
and New York SMSA Limited Partnership d/b/a  
Verizon Wireless

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CIVIL DIVISION

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T-MOBILE NORTHEAST LLC  
(f/k/a Omnipoint Communications, Inc.)  
a wholly owned subsidiary of  
T-Mobile USA, Inc.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MORRIS COUNTY  
DOCKET NO.  
CIVIL ACTION  
**COMPLAINT IN LIEU OF  
PREROGATIVE WRITS**

and

NEW YORK SMSA LIMITED  
PARTNERSHIP, a New York Limited  
Partnership, d/b/a Verizon Wireless

Plaintiffs,

vs.

BOROUGH OF MENDHAM  
ZONING BOARD OF ADJUSTMENT

Defendant

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Plaintiff, T-Mobile Northeast LLC, (hereinafter "T-Mobile") a Delaware limited liability company, successor to Omnipoint Communications, Inc. a Delaware Corporation, (hereinafter "OCI") and New York SMSA Limited Partnership d/b/a Verizon Wireless (hereinafter "Verizon Wireless"), by way of Complaint in Lieu of Prerogative Writs against the Defendant, Borough of Mendham Zoning Board of Adjustment (hereinafter "Board"), says:

**THE PARTIES**

1. T-Mobile has its principal office at 12920 SE 38<sup>th</sup> Street, Bellevue, Washington

98006, and an operating office at 4 Sylvan Way, Parsippany, New Jersey 07054. At all times relevant to this matter, OCI and T-Mobile Northeast LLC were wholly-owned subsidiaries of T-Mobile USA, Inc. with its principal office at 12920 SE 38<sup>th</sup> Street, Bellevue, Washington 98006. T-Mobile Northeast LLC has acquired all or substantially all of the assets of OCI including all right, title and interest in and to the application that is the subject matter of this litigation. Verizon Wireless has its principal office located at One Verizon Way, Basking Ridge, New Jersey 07920, and an operating office at 141 Industrial Parkway, Branchburg, New Jersey 08876. Verizon Wireless is a for profit limited partnership of the State of New York.

2. The defendant Board is a duly authorized Board of Adjustment for the Borough of Mendham pursuant to N.J.S.A. 40:55D-69.

3. T-Mobile, through licenses held by related T-Mobile USA, Inc. entities, and Verizon Wireless have been granted licenses by the Federal Communications Commission ("FCC") to provide wireless services as those terms are defined by federal law to the market area which includes the Borough of Mendham and the surrounding geographical area.

4. In conformity with their respective FCC licenses, both T-Mobile and Verizon Wireless are each actively building their own respective network of wireless communications facilities consisting of antennas and related equipment to send and receive radio signals for the services offered by each Plaintiff enabling their subscribers to make and receive wireless transmissions. If there are not particular locations where such facilities can operate, then the respective subscribers will be unable to make or receive calls, calls in progress may be dropped, or certain services will be unable to be used by its subscribers. In actively building their respective network of wireless communications facilities, even though in competition with each other, T-Mobile and Verizon Wireless seek to co-locate on existing or new proposed structures

where feasible to avoid construction of multiple sites for their facilities. Such co-location is recognized by the FCC and recognized by many local governing bodies including, in this case, the Borough of Mendham as reflected in Ordinance 4-08.

### **THE PROPERTY**

5. The property that is the subject of this litigation is designated as Block 801, Lot 20 on the tax maps and is located off of Route 24 in the Borough of Mendham (the "Property"). It is most commonly referred to as the "Kings Shopping Center". The Property consists of 13.65 acres with 508 feet of frontage on Route 23, a/k/a East Main Street, and extending northerly to a depth of approximately 1,198 square feet. The Property is improved in pertinent part by four (4) separate buildings designated respectively as Buildings A, B, C, and D. Buildings A and C are devoted to retail and service businesses, such as an apothecary, bank, restaurant, deli, liquor store, dry cleaner, book store, jeweler, and other similar uses. Building B comprises 27,500 square feet and is utilized solely as a Kings Supermarket. Building D, located behind a "lease agreement line" comprising 53,914 square feet, is devoted for use as a tennis club. To the rear of Building D is an in ground pool and a designated gravel play area. The Property is located in the Borough's East Business Zone District.

6. In the area surrounding the Property, there are predominantly commercial uses to the east and south, residential uses to the west, and woodlands to the north.

### **THE ORIGINAL APPLICATION**

7. On or about September 20, 2007, the Plaintiffs filed a joint application for approval of a Facility at the Property. The Plaintiffs sought approval of a 120 foot communications tower proposed to be "stealthed" as a flagpole, including a flag, with all proposed antennas located inside the flagpole. Both T-Mobile and Verizon Wireless would

maintain their radio equipment at the base of the flagpole in equipment cabinets and shelters. The flagpole and all the related equipment (collectively, the "Facility") will be located behind a 6 foot high chain link fence with privacy slats. All details pertaining to the design of the Facility and relevant portions of the Property were contained on site plans prepared originally by Damiano Long, consisting of five (5) sheets and bearing an original date of 4-12-07 ("Original Plans").

8. The Facility, as reflected in the Original Plans, was originally proposed to be located behind Building C, a one-story frame and masonry building containing 28,528 square feet. At the time the application was filed, the Borough of Mendham had no ordinance regulating the siting of wireless communication facilities, and therefore the application, as originally filed, sought a use and height variance pursuant to N.J.S.A. 40:55D-70d(1) and d(6), as well as any additional variance, design standard or waiver relief deemed necessary by the Board, and preliminary and final site plan approval.

#### **THE BOROUGH OF MENDHAM WIRELESS COMMUNICATION ORDINANCE**

9. Before the first public hearing on the application held on June 4, 2008, the Borough of Mendham adopted its first wireless telecommunications ordinance (Ordinance No. 4-08) on or about May 5, 2008. (A true copy of Ordinance No. 4-08 is attached as Exhibit A.)

10. Section B of Ordinance 4-08 designates certain locations and zone districts where wireless telecommunications facilities are permitted conditional uses subject to the specified conditions. The East Business Zone District is the only zone district within the eight (8) zone districts of the Borough of Mendham where a wireless communication facility is conditionally permitted. The siting of a wireless communication facility at any other location or in any other

zone district other than those specified in the Ordinance is prohibited, and would require use variance relief pursuant to N.J.S.A. 40:55D-70d(1).

11. The Property is located in the East Business Zone District, where the Facility is a permitted conditional use subject to meeting the conditions specified in the Ordinance.

**THE ORIGINAL LOCATION AND REQUEST FOR VARIANCE RELIEF**

12. Under Ordinance 4-08, the Plaintiffs' application did not meet two (2) of the specified requirements for conditional use. The two (2) conditions not met based on the Original Plans were as follows:

a. Section B(8) of Ordinance #4-08 requires that in any zone where the wireless communication facilities are conditionally permitted, such facilities must meet the applicable minimum setback requirements of the zone district plus one (1) foot of additional setback for each foot of tower height. As applied to the original location of the Facility behind Building C, a 135 foot setback would be required, whereas 42.68 feet was originally proposed.

b. Section B(9) of Ordinance No. 4-08 requires that wireless communication towers only be located within the rear yard of developed lots. A rear yard is defined under the Ordinance as a space extending across the full width of the lot between the rear lot line and the nearest part of any building on the lot. Under the Ordinance, the rear yard of the Property is the area behind Building D.

13. The location of the Facility designated in the Original Plans, required a use variance pursuant to N.J.S.A.40:55D-70d(3) as a result of the location not being in compliance with those two (2) specified conditions of the conditional use locational requirement.

14. On July 1, 2008 (the second of 22 public hearings), the Board discussed re-locating the Facility in the rear yard of the Property, near the rear northwest portion of the Property behind Building D, so that the Facility would comply with Section B(9) of Ordinance No. 4-08. The facility could not be located behind Building D in the rear yard without creating a setback variance from Section B(8) of the Ordinance. As applied, that section of the Ordinance would have required the facility to be located 170 feet from the rear yard property line and 145 feet from the side yard property line, placing the facility squarely in the footprint of Building D. Two deviations from the conditional use requirements would therefore have been created as a result of this location. At that hearing, recognizing that the facility would be closer to a number of residence, the Board acknowledged the impact that location would have on adjoining property owners; the existence of residential property owners located adjacent to the rear corner of the Property; the requirement for a buffer between the Facility and the closest residence; and the environmental constraints associated with existing wetlands located to the rear northwest portion of the Property.

15. Following its discussion, the Board determined at the July 1, 2008 public hearing locating the Facility in the rear yard of the Property would require additional variances and would upset the neighbors. Therefore, the Board took this option off the table and no further request was made of the Plaintiffs to locate the proposed Facility in the rear yard to eliminate the deviation necessitated by Section B(9) of Ordinance 4-08 at any time during the remaining 20 public hearings on the application.

**THE REVISED LOCATION AND AMENDED REQUEST FOR VARIANCE**

**RELIEF**

16. After rejecting placement of the Facility in the rear yard, the Board requested the Plaintiffs to consider yet another location for the Facility in front of Building D, which was memorialized in another set of plans prepared by CMX, consisting of six (6) sheets, bearing a latest revision date of 11-9-08 ("Revised Plans"). The revised location in front of Building D eliminated the setback deviation from Section B(8) of Ordinance #4-08. The only remaining deviation from the required condition for conditional use under the Ordinance was that the revised location in front of Building D is not located in the rear yard of the Property.

17. After the Plaintiffs agreed to place the Facility in front of Building D, as requested by the Board, the Board further requested that the Plaintiffs increase the height of the flagpole from 120 feet to 130 feet, resulting in a second deviation from the conditional use standards under Section C(2) of Ordinance #4-08. The Board also requested that the Plaintiffs eliminate the flag from the design of the facility. The request for a 130 foot structure was based on the Board's stated intent to maximize co-location of antennas on a wireless communication tower as provided for under Section C(3) of Ordinance #4-08. The Board acknowledges that its requested consideration of the 130 foot height is not a basis for its negative decision.

**EVIDENCE SUBMITTED DURING THE PUBLIC HEARING PROCESS**

18. During the course of the public hearing process, the Plaintiffs presented the expert testimony of an expert Radio Frequency Engineer establishing the existence of a gap in wireless communication coverage for both carriers in the area surrounding the Property,

including the major transportation corridor of Route 24; that the proposed Facility at the respective heights on the flagpole to be located by both Plaintiffs would eliminate that gap; that there were no existing wireless communication facilities or structures available to eliminate the gap; and that there were no available locations in the priority schedule set forth under Section B(1) that could be utilized to eliminate the gap. The testimony of the Radio Frequency expert further established that there were no available municipally owned properties to eliminate the gap in wireless communication coverage.

19. The Board retained the services of an independent Radio Frequency Expert, Dr. Bruce A. Eisenstein, PH.D, P.E., a Professor of Electrical and Computer Engineering at Drexel University, to review the expert testimony presented by Plaintiffs' Radio Frequency expert. Pursuant to Exhibit entitled "Report on Proposed Antennas, Omnipoint Communications and Verizon Wireless, Property Located at Kings Shopping Center, Block 801, Lot 20, Borough of Mendham Zoning Board of Adjustment, prepared by Dr. Bruce A. Eisenstein, PH.D, P.E., Dated October 19, 2009", Dr. Eisenstein concluded, "there is a gap in coverage at a reasonable power level of -85 dBm in the vicinity of the proposed facility for both Plaintiffs; the proposed antenna placements will ameliorate the gap to the greatest extent possible; the proposed antenna placements are at the minimum heights possible to achieve this amelioration; and that the site will be in full compliance with all FCC regulations."

20. The Resolution of denial dated July 7, 2010 (attached hereto as Exhibit B) concluded in factual finding number 20, "that a gap in appropriate design coverage exists and the proposed facility is located to address that deficiency."



21. The Plaintiffs presented the expert testimony of its Site Plan Engineer in support of all site plan details required by the relevant Ordinance provisions and to the extent applicable, review comments contained within the municipal review reports of the Borough Engineer and Borough Planner. The Board in its Resolution of denial makes no finding of fact or conclusion of law that would be in contravention to the expert testimony of the Plaintiffs' Site Plan Engineer.

22. The Plaintiffs presented the expert testimony of its Professional Planner, who also submitted a May 21, 2008 Planning Report. The testimony and documentary submissions of the Plaintiffs' Professional Planner established that in accordance with the applicable statutory criteria, the deviations from the two (2) specified conditions of the conditional use did not affect the suitability of the Property for the proposed Facility. The Plaintiffs' Professional Planner further testified that the application met the negative criteria by establishing that the variance can be granted without substantial detriment to the public good and zone plan and zoning ordinance of the Borough of Mendham, and that the application otherwise met the applicable statutory criteria pursuant to Coventry Square v Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994) and Sica v Board of Adjustment, 127 N.J. 152 (1992).

23. The Board had its own Professional Planner, who offered no contradictory opinion to that proffered by Plaintiffs' Professional Planner, and the Board's Resolution of denial contains no factual finding or conclusion of law disputing that Plaintiffs have satisfied the "special reasons" test pursuant to the applicable statutory criteria.

24. At the Board's June 2, 2010 public hearing, the Board voted seven (7) to zero (0) to deny Plaintiffs' application on the sole basis that the Facility was not located in the

rear yard as required under the Ordinance. The Board's articulated sole basis for denial completely ignored the Board itself determined at the second public hearing that placement of the Facility in the rear yard is not a feasible siting alternative and further ignored the fact the Board specifically requested that Plaintiffs locate the Facility at the front of Building D, and not in the rear yard.

### COUNT ONE

25. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1 through 24 as though more fully set forth herein.

26. The Board's Resolution of denial, adopted on July 7, 2010 specifically found the following:

- a. The Plaintiffs have no obligation under the certain facts of this case to install any alternative telecommunications systems;
- b. The Board takes into account the conclusion by its own independent Radio Frequency expert that a gap and appropriate design coverage exists and the proposed facility is located to address that deficiency;
- c. The Board has considered that the Borough of Mendham has declined to make the municipal police station property available to the Plaintiffs for installation of a wireless communication facility;
- d. The Board has imputed knowledge that at least a portion of a permitted 120 foot monopole in the East Business District would be visible from the main street corridor and various historical relevant location in the Borough;
- e. The Board acknowledged that it requested consideration of the 130 foot monopole height and confirms that it is not basis for the negative decision;

f. The “inability” of the Facility to comply with the rear yard condition renders the Property unsuitable for a use a wireless communication facility.

27. The decision of the Board of Adjustment to deny the Plaintiffs’ application was arbitrary, capricious and unreasonable based, *inter alia*, on the fact that the Board:

- a. Ignored uncontroversial, factual and expert testimony presented by Plaintiffs during the course of the public hearings;
- b. Adopted a Resolution of denial containing findings and conclusions not based upon the competent, creditable evidence by Plaintiffs;
- c. Misinterpreted and misapplied relevant legal standards applicable to this application;
- d. Otherwise acted in an arbitrary, capricious and unreasonable manner and in violation of law;

**WHEREFORE**, Plaintiffs, T-Mobile and Verizon Wireless, demand judgment against the Defendant, The Borough of Mendham Zoning Board of Adjustment as follows:

- A. Declaring that the Board’s denial of Plaintiffs’ application as memorialized in a Resolution of denial dated July 7, 2010 contravenes the relevant provisions of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. as well as relevant case law, and is otherwise, arbitrary, capricious and unreasonable and without any legal force or effect;
- B. Reversing the Board’s Resolution of denial and directing the Zoning Board of Adjustment to grant Plaintiffs’ application;
- C. For cost of suit and reasonable attorney’s fees;

- D. For such other and further relief as the Court may deem just and equitable under the circumstances.

VOGEL, CHAIT, COLLINS & SCHNEIDER  
A PROFESSIONAL CORPORATION  
ATTORNEYS FOR PLAINTIFFS  
T-MOBILE NORTHEAST LLC  
AND NEW YORK SMSA LIMITED  
PARTNERSHIP D/B/A VERIZON WIRELESS

  
By: Richard L. Schneider

Dated: August 20, 2010

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Richard L. Schneider, Esquire, of the law firm of Vogel, Chait, Collins and Schneider, P.C. is hereby designated as trial counsel for plaintiff.

**CERTIFICATION**

Pursuant to Rule 4:5-1, the undersigned hereby certifies that this matter is not the subject of any other action pending in any Court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. The undersigned further certifies that he is not aware of any non-party who should be joined in this action pursuant to Rule 4:28 or who is subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

**CERTIFICATION**

Pursuant to Rule 4:69-4, the undersigned hereby certifies that all necessary transcripts of local agency proceedings in the cause have been ordered.

Date: 8/20/10

  
By: Richard L. Schneider

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CIVIL DIVISION

**BOROUGH OF MENDHAM  
MORRIS COUNTY, NEW JERSEY  
ORDINANCE #4- 08**

REVISED 3/12/08  
REVISED 4/30/08

**WIRELESS TELECOMMUNICATIONS ORDINANCE  
MENDHAM BOROUGH, NEW JERSEY**

BE IT ORDAINED by the Borough Council of the Borough of Mendham, in the County of Morris and State of New Jersey as follows:

**SECTION 1. Article I. Section 215-1 Word Usage and Definitions is hereby amended to add the following new definitions:**

**DEFINITIONS:** As used in this ordinance, the following terms shall have the meanings indicated:

**APPROVING AUTHORITY.** The Planning Board or Board of Adjustment, as the case may be, shall be the approving authority for applications submitted under §215-12.5.

**WIRELESS TELECOMMUNICATIONS TECHNOLOGY ("WT Technology")** Any personal wireless services as defined in the Telecommunications Act of 1996 which includes FCC-licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed. It does not include any amateur radio facility that is owned and operated by a Federally-licensed amateur radio station operator, or is used exclusively for receive-only antennas, nor does it include non-cellular telephone services. Collectively, the term refers to all wireless technology antennas, equipment, compounds and towers.

**WIRELESS TELECOMMUNICATIONS FACILITIES ("WT facilities")** Collectively any WT antennas, WT equipment, WT equipment compound and WT towers.

**WIRELESS TELECOMMUNICATIONS ANTENNA ("WT antenna")** Any antenna of any type of design, which is or may be used for the delivery of wireless telecommunications, except for any radio antenna, dish antenna, or satellite receiving station as may be regulated elsewhere in Chapter 215.

**WIRELESS TELECOMMUNICATIONS EQUIPMENT ("WT equipment")** Any building, structure, or equipment, including without limitation, transmitters, power sources, or other equipment, except antennas or towers, which are or may be used for the delivery of wireless telecommunications.

**WIRELESS TELECOMMUNICATIONS COMPOUND ("WT equipment compound")**. The area which houses any combination of WT equipment.

**WIRELESS TELECOMMUNICATIONS TOWERS ("WT towers")**. A vertical structure which is or may be used to support any WT antenna or other WT equipment, whether freestanding or attached to any existing structure.

**WIRELESS TELECOMMUNICATIONS SERVICE PROVIDER ("WT service provider")**. Any person, business organization, or other entity, of any kind whether public or private, which seeks to install, operate, or maintain any combination of WT technology within the boundaries of the Borough of Mendham, or which already operates or maintains such WT technology as of the effective date of this ordinance.

**SECTION 2. Chapter 215 Zoning of the Land Use Code of the Borough of Mendham is hereby amended to add a new §215-12.5 Wireless Telecommunications Technology to read in its entirety as follows:**

**A. Purposes.** The purposes of this Section are to:

- (1) regulate, as a conditional use, the location, placement, use and modification of wireless telecommunications facilities as permitted and subject to the limitations of Section 704 of the Telecommunications Act of 1996.
- (2) advance the goals and objectives of the Borough Master Plan
- (3) preserve and protect the general visual, historic and natural environment within the Borough of Mendham and prevent adverse visual impacts from wireless communications towers antennas and other facilities within areas zoned or used for residential purposes along public streets, within historic sites and districts, within public parks and along ridgelines, skylines, natural open spaces and other ecological and natural features of the Borough
- (4) preserve and protect property values.
- (5) minimize the total number and height of wireless telecommunications towers within the Borough of Mendham.
- (6) mitigate, to the greatest extent practicable, by siting, screening and landscaping, the adverse visual impacts from WT towers, antennas and other facilities.
- (7) eliminate safety hazards associated with wireless telecommunications towers and other facilities, including but not limited to, attractive nuisances and risks of falling ice and other objects.
- (8) require the removal of wireless telecommunications service facilities when no longer in use.

**B. General conditional use requirements.**

- (1) Locations where conditionally permitted. All WT facilities shall be conditional uses to be located in the following orders of priority and in these locations only:
  - (a) Location of antennas and equipment on existing buildings or structures in or on:
    - (i) Existing WT facility sites and power transmission towers in surrounding areas capable of providing WT coverage in the Borough and existing WT facility sites within the Borough - first priority
    - (ii) Municipally-owned properties and facilities not reserved or dedicated for open space or public recreational purposes - second priority
    - (iii) East Business District - third priority
    - (iv) West Morris Regional High School property and other public and private educational institutional sites in the 3-Acre and 5-Acre Residence Zones - fourth priority
  - (b) Location of new WT towers in the following places:

- (i) Municipally-owned properties and facilities not reserved or dedicated for open space or public recreational purposes – first priority
  - (ii) East Business District – second priority
  - (iii) West Morris Regional High School property and other public and private educational institutional sites in the 3-Acre and 5-Acre Residence Zones – third priority
- (2) WT facilities permitted on lots with other principal uses. WT facilities may be located either on lots containing no other principal use or on lots that contain one or more separate principal uses.
- (3) WT facilities are prohibited in all zones and locations other than those specified in §215-12.5(B)(1) above, and are specifically prohibited in the Historic Business and Historic Overlay Zones and in any residential zone or property other than as conditionally permitted above.
- (4) WT facilities expressly prohibited within residential zones and other related properties. WT facilities are expressly prohibited upon or within any lot used or zoned for residential purposes other than as permitted by §215-12.5(B)(1) above. Residential zones shall include zones permitting single-family, two-family, or multi-family residences, assisted living residences, nursing homes, and/or residential health care facilities. Nothing in this subsection shall be interpreted to imply permission to locate WT facilities in any other location not expressly permitted by §215-12.5B.(1) above.
- (5) Proof of necessity for WT facilities required. No WT facilities shall be erected, installed, constructed, moved, reconstructed or modified within the Borough of Mendham unless the applicant proves that such facility or activity is necessary to avoid prohibiting or having the effect of prohibiting the provision of WT services.
- (6) Siting priorities for WT antennas. No WT antenna shall be erected, installed, constructed, moved, reconstructed or modified within the Borough of Mendham unless it complies with the siting priorities of this subsection. Before proposing a site within the Borough of Mendham for WT facilities it shall be demonstrated to the approving authority that the general conditional use requirement of §215B.(1)(a) has been satisfied. Compliance with these site priorities shall not relieve the applicant from its obligation to comply with all other applicable ordinance requirements.
  - (a) WT antennas shall be located upon an existing WT facility building or structure unless the applicant demonstrates that compliance with this site requirement would result in prohibiting or having the effect of prohibiting the provisions of WT services.
  - (b) If a WT antenna cannot be located in conformance with subsection B(6)(a) above, the antenna shall be located only upon municipally-owned facilities not reserved or dedicated for open space or public recreational purposes, unless the applicant demonstrates that compliance with this site requirement would result in prohibiting or having the effect of prohibiting the provision of WT services.



- (c) If a WT antenna cannot be located in conformance with subsections B(6)(a) or B(6)(b) above, the antenna shall be located only upon an existing building or structure in the East Business District unless the applicant demonstrates that compliance with this site requirement would result in prohibiting or having the effect of prohibiting the provision of WT services.
  - (d) If a WT antenna cannot be located in conformance with subsections B(6)(a) or B(6)(b) or B(6)(c) above, then the antenna shall be located only upon an existing public or private educational institutional building or structure, not containing a WT antenna, unless the applicant demonstrates that compliance with this siting requirement would result in prohibiting or having the effect of prohibiting the provision of WT services.
  - (e) If a WT antenna cannot be located on an existing building or structure in conformance with any preceding site priority above, only then shall the antenna be located upon a new tower as conditionally permitted herein.
- (7) Minimum lot area. No WT building or structure shall be installed or erected upon any lot having less than the minimum required lot area for the zone in which the lot is located. In no event shall WT facilities be set back less than 150 feet from the street right-of-way line and not less than 250 feet from any residential dwelling in any direction.
  - (8) Setback requirements for WT facilities. In any zone where conditionally permitted, WT facilities shall be located in compliance with the applicable minimum setback requirements plus one foot of additional setback for each foot of tower height. In no event shall WT facilities be set back less than 150 feet from the street right-of-way line and not less than 250 feet from any residential dwelling in any direction.
  - (9) Additional setback and location requirements for WT towers. WT towers shall only be located within the rear yard of developed lots or within the rear half of the building envelope for undeveloped lots.
  - (10) Housing of WT equipment. All WT equipment shall be located within an enclosed building, equipment cabinet or other structure as will be approved by the Borough Planning Board or Board of Adjustment as the case may be.

**C. Additional conditional use requirements for WT towers.**  
WT towers shall meet the following requirements:

- (1) No WT tower shall exceed the maximum permitted height in the zone in which it is located unless the applicant establishes that the additional height requested is necessary to avoid prohibiting or having the effect of prohibiting, the provision of WT services.
- (2) No WT tower shall exceed a height of 120 feet.
- (3) Unless technologically infeasible, WT towers shall be designed to permit co-location of WT antennas for not less than three (3) WT service providers. Co-location of public emergency communications services shall also be provided for where necessary.
- (4) No WT tower shall be constructed higher than is necessary for the WT provider to achieve its FCC-mandated coverage and to accommodate up to two additional identified co-locating WT

service providers. All such construction shall be accomplished within the maximum height limit of 120 feet of subsection C(2) above. Where co-locating carriers are not yet identified and where applicant's antennas are not at the overall 120 foot maximum height, the WT tower shall be designed to permit its construction in phases and to permit the extension of tower height as additional WT service providers obtain approval by the Borough to locate on the tower.

- (5) WT towers shall be limited to monopole designs, including flag poles or designs camouflaged to resemble trees, bell towers or cupolas where visually and architecturally appropriate. Lattice and guyed towers of any kind are expressly prohibited.
- (6) No WT tower shall be lighted except for lights required by regulations of the Federal Aviation Administration (FAA).
- (7) No sign, display or advertisement of any kind shall be mounted, erected or placed on any WT tower unless the applicant demonstrates that such sign display or advertisement is required by law. Any such sign, display or advertisement shall be restricted to the minimum size required by such law.
- (8) WT towers shall be constructed of standard dull-finished galvanized steel unless the reviewing board determines, in its discretion, that due to certain site circumstances, alternate camouflaged methods will minimize the visual impact of the tower.

**D. WT towers compounds:** Height of WT facilities other than antennas and towers. All WT facilities shall be contained within a WT compound meeting the following requirements:

- (1) WT compounds shall be enclosed within a locked security fence at least six feet (6') and not more than eight feet (8') in height. The security fence shall be wood or vinyl coated slatted chain-link. Razor ribbon and/or barbed wire fences are prohibited. The requirements of this subsection shall not apply where WT facilities are mounted on a building or structure containing a second principal use.
- (2) Landscaping shall be provided along the outside perimeter of all fenced WT compounds to provide, at the time of planting and thereafter, a solid visual barrier between the WT compound and adjoining properties and public rights-of-way. Required front yard setback areas shall also be appropriately landscaped for the same purpose. All WT equipment compounds shall be screened by double staggered rows of evergreen trees eight (8') feet or two feet (2') or more in excess of the height of the security fencing at the time of planting which shall be arranged to visually screen the compound and its required security fence. Other combinations of screening materials which are acceptable to, and approved by, the reviewing board may also be used.
- (3) No WT facilities, except antennas and/or towers shall exceed twelve (12') feet in height. The height of ground-mounted WT facilities shall be measured from average surrounding grade within five (5') feet of the perimeter of the facility. The height of roof-mounted WT facilities shall be measured from the top of the roof's surface. All roof-mounted WT facilities shall be screened in a manner approved by the reviewing board.
- (4) No WT compound shall contain any permanent emergency electric generators other than those fired by natural gas or propane. All generator equipment shall comply with current

state noise standards. All test runs of the equipment shall occur on weekdays between 9 A.M. and 5 P.M.

- (5) Only low-wattage shielded and downward directed lighting for facility maintenance as will be approved by the approving authority shall be permitted within any WT tower compound.

**E. Screening and landscape.** No WT facilities shall be approved unless the applicant demonstrates that all reasonable efforts have been employed to camouflage and minimize the visual impact of the WT facilities in accordance with the following standards.

- (1) WT facilities shall be located and oriented on the site in a manner that creates the least visual impact on residential areas and public rights-of-way located within the area from which the WT facilities may be seen (referred to herein as the "WT facilities viewshed or simply the "viewshed"). To satisfy this standard, the applicant shall analyze all potential visual impacts within the viewshed. Vegetation, topographic features and/or natural or man-made structures, shall be employed to obscure view of the WT facilities from these areas to the maximum extent feasible.
- (2) Historic districts, historic sites, historically significant views, streetscapes, and/or landscapes (referred to herein collectively as "historic areas") shall be protected from the visual impacts of WT facilities in accordance with the requirements of the National Environmental Policy Act (NEPA). No WT facilities shall be approved unless the applicant demonstrates that such facilities will have no adverse visual impact upon historic areas.

**F. Access and parking requirements.**

- (1) All WT facilities shall be served by an on-site access driveway, a turn-around suitable for fire trucks and other emergency vehicles and a parking area to accommodate at least one (1) vehicle. The access driveway, turn-around and parking area shall be paved unless the reviewing board determines that paving is not necessary to provide adequate emergency and service access to the WT facilities. In meeting the requirements of this subsection, existing driveways, turn-around areas and parking areas shall be used to the maximum extent practicable in order to avoid unnecessary impervious coverage.
- (2) Fire Department access: Fire Department access shall be provided and maintained to all facilities and sites. Fire Department access roadway shall be of an approved surface material capable of providing emergency vehicle access and support at all times, and shall be a minimum of 18 feet in unobstructed width. The access roadways shall provide a minimum turning radius capable of accommodating the largest fire apparatus of the jurisdiction and a minimum vertical clearance of 13 1/2 feet.

**G. Application requirements.**

- (1) Applications for development of WT facilities shall include all materials required for submission of a complete application for preliminary and final site plan approval and all materials required by the checklist for conditional use approval of wireless communications facilities.

**H. Experts.**

- (1) The reviewing board shall retain a qualified radio frequency engineer to review all application materials and expert

testimony submitted or presented by the applicant in connection with each application for development of WT facilities. The costs of such engineer shall be paid by the applicant from its escrow account.

- (2) The applicant shall present expert testimony based upon appropriate studies from a qualified radio frequency engineer demonstrating:
- (i) that the proposed WT facilities are necessary to enable the applicant to provide personal wireless services in conformance with its FCC license, and that the site priority requirements of this ordinance have been fully met.
  - (ii) that all applicable State and Federal health and safety requirements are fully met

I. **Proof of continuing facility operation and compliance with radio frequency emissions limits and proof of continuing need.** Every operator of any WT facility within the Borough of Mendham shall operate such facility at all times in compliance with FCC and NJDEP radio frequency exposure limits. Each calendar year, the WT facility owner shall submit to the Borough Engineer competent documentary proof of such continuing operation and compliance with all applicable standards and conditions of approval.

J. **Compliance with Uniform Construction Code.** All WT facilities shall be constructed and installed in conformance with all applicable requirements of the New Jersey Uniform Construction Code.

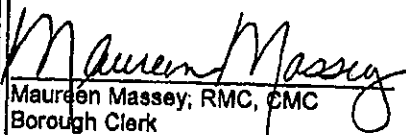
K. **Maintenance.** All WT facilities sites and structures shall be appropriately maintained in a safe, orderly and neat condition at all times by the WT carriers.

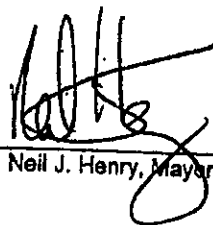
L. **Removal of WT Facilities.** WT facilities that have not been used for the provision of WT services for a period of six (6) consecutive months shall be removed at the sole cost and expense of the owner of the facilities. Such removal shall include site and/or building restoration to the conditions which existed prior to the installation of WT facilities as determined by the Borough Engineer.

Introduced: March 18, 2008

Adopted: May 5, 2008

ATTEST:

  
Maureen Massey, RMC, CMC  
Borough Clerk

By:   
Neil J. Henry, Mayor

**CHECKLIST APPLICATION FOR  
WIRELESS TELECOMMUNICATIONS FACILITIES**

	Complete	Incomplete	Waiver Requested
Report by qualified radio frequency engineer demonstrating compliance with siting priority requirements of Ordinance Section 215-12.5B.			
A needs analysis, demonstrating that the proposed WT facilities are necessary to avoid (a) unreasonable discrimination among providers of functionally equivalent WT services, and/or (b) prohibiting or having the effect of prohibiting the provision of WT services. The needs analysis shall include, without limitation, a map of the applicant's existing WT facilities located within, or able to serve any part of, the Borough of Mendham. The map shall also show the applicant's proposed WT facilities. Existing signal strength plottings for all existing base stations shall be shown on the map. Proposed signal strength plottings resulting from the proposed WT facilities shall also be shown. Signal strength plottings for all of the applicant's other WT facilities that are approved but not operational, or that are filed but not approved, or that are planned but not filed, shall be shown.			
All results and supporting data derived from or relating to tests conducted by the applicant to determine (a) actual existing signal coverage at the time of application, and (b) projected signal coverage after the proposed WT facilities become operational.			
A radio frequency study of the area in which the WT facilities are proposed, prepared by a qualified RF Engineer, and overlaid on a background map demonstrating the area within the zone where the WT facilities are proposed in order to provide acceptable signal strength to the target cells.			
Applicant shall submit a report prepared by a qualified Radio Frequency Engineer demonstrating that the proposed WT facilities will comply with applicable FCC and NJDEP radio frequency exposure limits.			
Map of other WT service providers' WT facilities sites able to serve the Borough of Mendham where WT facilities exist or are proposed, to the extent such facts are known to the Applicant.			
A Visual Environmental Assessment Study demonstrating compliance with the requirements of Section 215-12.5B. The studies shall include assessment of impacts from all residential property, public rights-of-way, and historic areas within the WT facilities viewshed.			
Whenever an application is submitted to construct a new WT tower, applicant shall submit a written commitment, signed by the applicant and owner of the proposed tower, to rent or lease available space on the tower for co-location, at prevailing market rates in northwestern New Jersey, for so long as the tower shall exist, without discrimination as to other WT service providers, unless such co-location is legally prohibited or technologically infeasible.			
Graphic presentation of color(s) of all proposed exterior WT facilities, including antennas and towers.			
Graphic presentation of stealth and/or camouflage methods to be used to minimize visual impacts of all WT facilities.			
All information required by preliminary and final site plan approval checklists.			

## RESOLUTION OF FINDINGS AND CONCLUSIONS

### BOARD OF ADJUSTMENT BOROUGH OF MENDHAM

WHEREAS, OMNIPPOINT COMMUNICATONS, INC. and NEW YORK SMSA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS have applied to the Board of Adjustment of the Borough of Mendham for a Use Variance and Site Plan Approval to permit the construction and installation of a Wireless Telecommunications Facility at the King's Shopping Center located on East Main Street which property is also known as Lot 20 in Block 801 on the Tax Map of the Borough of Mendham and, which premises are in the East Business Zone; and

WHEREAS, the Board, after carefully considering the testimony, reports, exhibits, questions, opinions and legal arguments presented by the Applicants, the Board Consultants and various Interested Parties at a series of Public Hearings held on June 4, 2008, July 1, 2008, September 3, 2008, October 7, 2008, December 2, 2008, February 3, 2009, March 3, 2009, April 7, 2009, May 13, 2009, June 3, 2009, July 7, 2009, August 4, 2009, September 1, 2009, October 6, 2009, November 4, 2009, November 17, 2009, December 1, 2009, January 5, 2010, February 2, 2010, March 2, 2010, April 6, 2010 (Attorney Summations) and June 2, 2010 (Board Deliberations and Vote) has made the following factual findings:

1. According to the public record and the application materials the subject property is currently owned by V-Fee Realty Investment, LLC (Thomas Maoli, Managing Member). The Record indicates that the current owner purchased the property from Mendham Investment Company, LP on or about December 20, 2005.
2. The prior owner(s) have processed several applications before the Borough Boards over the years and the Borough files contain a "Sealed Survey" prepared by Gary V. Marmo (NJ License # 37599) as an employee of D.P. Sweeney & Associates. This Survey is originally dated September 26, 2005 and it has been revised through May 25, 2007.
3. Based upon the D.P. Sweeney Survey (hereafter "the Survey") and the various Exhibits in this Record, the Board is able to deduce that the property (which is most commonly referred to as "the King's Shopping Center") is 13.65 acres and it is located on the northerly side of the primary east/west roadway running through the Borough of Mendham which is known as East Main Street, Route 24, County Road #510, etc.
4. The Survey indicates that the shopping center has 508 feet of frontage on East Main Street and extends northerly to a depth of approximately 1,198 feet. The first 750 feet of the property contain the "King's Shopping Center" which generally includes three (3) separate primary buildings along with the parking areas and access driveways

associated with the supermarket (which occupies all of one 27,504 square foot building). The other two buildings shown on the Survey contain several retail and service businesses including: the Bank; the Apothecary; four (4) eat in restaurants; a deli; a liquor store; a dry cleaner; a book store; a jeweler; and, other similar uses.

The rear 450 feet of the property contains separate additional improvements and parking areas commonly known as the "Mendham Health and Racquet Club". These additional improvements include a 53,914 square foot building, an outdoor swimming pool with related patios and play areas, a 677 square foot trailer (that appears to be used as a babysitting facility) and a small to moderate sized physical therapy facility in the left rear (northwest corner of the principal building).

5. The applicants, Omnipoint and Verizon Wireless, with the consent of the Owner, have requested municipal zoning permits and approvals as necessary conditions precedent to obtaining construction permits to install and erect a Wireless Telecommunications Facility at the King's Shopping Center site.

6. In late 2007, when the Borough of Mendham became aware of the applicants' intention to file this joint request for Variance and Site Plan approvals, it advised counsel for the applicants that the Borough Governing Body and the Borough Planning Board were in the final stages of developing and adopting a "Wireless Telecommunications Ordinance" in furtherance of the 2006 review and update of the Public Utilities Plan Element of the Borough of Mendham Master Plan. The final version of the Borough's first Wireless Telecommunications Ordinance (Ordinance #4-08) was adopted by the Borough Council after second reading on May 5, 2008. As noted above, the first of several Public Hearings on this matter was conducted one month later on June 4, 2008.

7. The applicants presented expert testimony and approximately 29 Exhibits to the Board in connection with radio frequency and system design issues related to the desired location and height of their proposed monopole/stealth flag pole, the related equipment compound, the site design and engineering issues related to placement of the facilities, the criteria and methodology related to site selection for this facility, photographs of the proposed site from various perspectives and related photographs depicting possible views of a simulated version of the stealth flag pole tower.

8. The Board spent considerable time reviewing what became a six (6) page set of drawings that were signed and sealed by Robert J. Foley, Prof Engineering License #GE-038356 on behalf of the CMX engineering firm. The Drawings were originally dated April 12, 2007 and were eventually revised through November 19, 2008. Mr. Foley's Site Plan materials refer back to the above mentioned D.P. Sweeney Survey as a data source. Sheet 2 of 6 of the CMX plans labeled Z-1 "Site Plan & General Notes" sets forth the Bulk/Setback requirements of the East Business Zone and the additional setback related Conditions associated with a Wireless Telecommunications Facility which are now codified at Section 215-12.6B (7) & (8) of the Mendham Code.

9. The applicants initially proposed, and the CMX plans depicted, a 120 foot flagpole style monopole to be located at the northerly end of Building "C", where the

“Apothecary” business is located. That initial monopole was proposed at 59.9 feet from the side property line, as opposed to 135 feet, as required by the Conditions of the Wireless Telecommunications Ordinance. That initial location also failed to comply with Section 215-12.6B (9) which states:

WT towers shall only be located within the rear yard of developed lots or within the rear half of the building envelope for undeveloped lots. {The Board interprets this property to be a developed lot.}

10. In an effort to avoid interference with the use of parking lot aisles, parking spaces and with customer foot traffic, the Board requested that the applicants amend their plans to locate the monopole and equipment shelter to an area further north and away from Building “C”. The alternate location was adjacent to the semi landscaped parking median to the rear of Building “B” (King’s) and in front of Building “D” (the Health & Racquet Club). This alternate location still required a variance from Section 215-12.6B (9) as not being in the Rear Yard of the property, as that term is defined in Section 215-1 of the Mendham Code.

11. In an effort to minimize the total number of wireless telecommunications towers within the Borough, the Board requested that the applicants investigate the possibility of increasing the height of the monopole to 130 feet even though Section 215-12.6C (2) sets forth the Condition that:

No WT tower shall exceed a height of 120 feet.

12. The applicants amended their plans to reflect the alternate location for the Equipment Compound and the monopole and they added the additional 10 feet of height to the monopole. The applicants technically amended their application to request a deviation from the Height Condition and deleted the need for a deviation from the side setback Condition. As noted above, relief from the Rear Yard Condition was still necessary.

13. In addition to the input and reports customarily received from the Borough Engineer and the Borough Planner, the Board enlisted the services of Bruce A. Eisenstein, Ph.D., P.E. of The Consulting Group. Dr. Eisenstein is a Professor of Electrical and Computer Engineering at Drexel University in Philadelphia, PA. The Board has relied upon Dr. Eisenstein’s advice and expertise in interpreting the testimony, exhibits and arguments related to radio frequency propagation, telecommunications and cellular telephony.

14. In support of their burden to prove that the property remains suitable to be used by each of them as a Wireless Communications Facility despite an inability to comply with one or more Conditions of the Mendham Wireless Telecommunications Ordinance, the applicants presented Testimony and 29 Exhibits from: Glenn Pierson, General Manager of PierCon Solutions LLC; Robert A. Foley, P.E. from CMX engineering in connection with the above described Site Plans; Timothy M. Kronk, a NJ licensed Professional Planner who provided a May 21, 2008 Planning Report and an



April 25, 2008 Visual Analysis; and, an RF Compliance Assessment and Report by Daniel F. Collins of Pinnacle telecom Group, LLC.

15. Mr. Irving Isko, who is a long time resident of Mendham Borough and a former member and Chairman of the Board of Adjustment, participated as an Interested Party during the hearings and deliberations on this application. Mr. Isko was represented by counsel who participated by cross examining the applicants' radio frequency expert, presented a separate radio frequency expert in rebuttal, cross examined Dr. Eisenstein, presented a separate planning expert in rebuttal and set forth several legal arguments generally in opposition to the application. Mr. Isko presented approximately 26 Exhibits into the Record including various resolutions, transcripts and pleadings from other wireless applications in the Borough and other municipalities.

16. In addition to the foregoing, Mr. Isko and his former counsel, David Schechner, Esquire, presented Testimony and presented several of the above described pleadings and transcripts in support of an argument that one or more of the applicants before the Board had made a binding and enforceable agreement or settlement that included a stipulation that they, or it, would not construct any additional Wireless Telecommunications Facilities in the Borough of Mendham. Due to the paucity of any clear and precise documentation related this technical legal argument, the Board is unable to arrive at an informed finding and conclusion. The Board also notes its reservation as to whether it has jurisdiction to make such a determination. The Board has not factored this issue into its final decision herein.

17. Several other members of the public attended many of the Public Hearings. As the Transcripts indicate, the members of the public raised various questions and made several statements related to their concerns and preferences related to the application.

18. Mr. Frank Lupo who resides on Dean Road in Mendham Borough, elected to vigorously participate in the proceedings. Mr. Lupo was not represented by counsel, although he was given considerable leeway to question witnesses, present Exhibits (approximately 29), make statements and champion the cause of Alternative Telecommunications Systems, particularly what are known as Distributed Antenna Systems (DAS). Mr. Lupo was particularly vigilant with regard to reviewing the antenna design specifications.

19. The Board reviewed the relevance of Alternative Telecommunications Systems with its expert and it is in favor of continued follow up of that concept by the Governing Body. The Board does not find that the current applicants have an obligation to install such technology.

20. The Board has considered the conflicting testimony regarding the quality of service in around the proposed site and whether a "gap" exists. The Board has considered the opposing views on how testing and modeling should occur in connection with

determining the need for an additional tower. The Board is cognizant that these technical conclusions should not be determined by anecdotal evidence. The Board takes into account the conclusion by Dr. Eisenstein that a gap in appropriate design coverage exists and the proposed facility is located to address that deficiency.

21. The Board has considered the fact that the applicants are both FCC licensed carriers.

22. The Board has considered that the Borough has declined to make the Police Station property available to the applicants for installation of a wireless telecommunications facility.

23. The Board is aware that numerous parties have objection to the visibility of a monopole at this location. The Board has attempted to balance that objection with the imputed knowledge that the Planning Board and the Governing Body would have understood that at least a portion of any permitted 120 foot monopole in the East Business District would be visible from the Main Street Corridor and various historically relevant locations in the Borough

24. The Board does, however, find that the combined uses of the King's Shopping Center and the Mendham Health & Racquet Club on this one property do render it the busiest public use property in the Borough. The only property that might compare in size and intensity of public use would be the High School on a busy school/activity day.

25. The Board interprets the Rear Yard Condition to address a dual zoning and planning purpose: A) assistance with the goal of visual screening by having a WT facility behind a building; and, B) removal of a WT facility from the busiest pedestrian use areas of a property by having it in the rear yard.

WHEREAS, the Board has determined that the Use Variance and related Site Plan Approval requested by the Applicants, OMNIPOINT COMMUNICATIONS, INC. and NEW YORK SMSA PARTNERSHIP d/b/a VERIZON WIRELESS, cannot be granted without substantial detriment to the public good or without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the following reasons:

1. After considering all of the factual testimony, expert testimony, and expert opinion and after reviewing and analyzing all of the Exhibits, the Board finds that the inability to comply with the Rear Yard Condition due to the unique and expansive development of the King's Health Club property renders it unsuitable for this Conditional Use.

2. After considering all of the factual testimony, expert testimony, and expert opinion and after reviewing and analyzing all of the Exhibits, the Board concludes that there are no available conditions or alternatives that it might suggest or impose to ameliorate the degree and impact of the deviation from the Rear Yard Condition.
3. The Board interprets the recent amendments to the Borough Zone Plan to indicate the legislative intent that Wireless Telecommunications Facilities are now permitted Conditional Uses in the East Business District. The Board however, finds that the unique facts of this property render it inappropriate to accommodate this additional use.
4. The Board acknowledges that it requested consideration of the 130 foot monopole height and confirms that is not a basis for this negative decision.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Borough of Mendham on this 7th day of July 2010, that the Decision made by this Board on June 2, 2010 to DENY, for the reasons set forth herein, the Use Variance applications (the related Site Plan application having become moot) of OMNIPOINT COMMUNICATIONS, INC. and NEW YORK SMSA PARTNERSHIP d/b/a VERIZON WIRELESS, be MEMORIALIZED herein in accordance with the requirements of N.J.S.A. 40:55D-10g.

Board of Adjustment  
Omnipoint/Verizon

I hereby certify that the above is a true copy of a resolution adopted by the Mendham Borough Board of Adjustment at its regular meeting of July 7, 2010. This resolution memorializes action taken by the Board of Adjustment at its regular meeting of June 2, 2010.

The vote on June 2, 2010 was 7 to 0 as follows:

In Favor: Palestina, Peck, Schumacher, Smith, Ritger, Seavey, Santo

Opposed: None

Abstentions: None

The resolution vote of eligible voters on July 7, 2010 was 5 to 0 as follows:



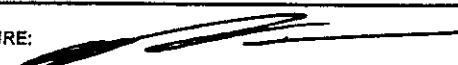
In Favor: Schumacher, Smith, Ritger, Seavey, Santo

Opposed: None

Abstentions: None

  
Diana Callahan  
Board Secretary

**Appendix XII-B1**

	<b>CIVIL CASE INFORMATION STATEMENT (CIS)</b>  Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> <b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>,                  if information above the black bar is not completed                  or attorney's signature is not affixed</b>		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
	ATTORNEY / PRO SE NAME Richard L. Schneider, Esq.	TELEPHONE NUMBER (973) 538-3800	COUNTY OF VENUE Morris
	FIRM NAME (if applicable) Vogel, Chait, Collins & Schneider, PC		DOCKET NUMBER (when available)
	OFFICE ADDRESS 25 Lindsley Drive, Suite 200 Morristown, New Jersey 07960		DOCUMENT TYPE Complaint  JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
NAME OF PARTY (e.g., John Doe, Plaintiff) T-Mobile Northeast, LLC and New York SMSA Limited Partnership d/b/a Verizon Wireless (Plaintiffs)	CAPTION T-Mobile Northeast LLC (f/k/a Omnipoint Com- munications Inc.) a Wholly Owned Subsidiary of T-Mobile USA, Inc. and New York SMSA Limited Part- nership, a New York Limited Partnership d/b/a Verizon Wireless v Borough of Mendham Zoning Board of Adjustment (Defendant)		
CASE TYPE NUMBER (See reverse side for listing)  701	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)  N/A <span style="float:right;"><input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN</span>		
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION	
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, FOR WHAT LANGUAGE?	
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE: 			



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

## CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

### Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

### Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

### Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

### Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

### Centrally Managed Litigation (Track IV)

- 280 Zelnorm
- 285 Stryker Trident Hip Implants
- 288 Prudential Tort Litigation

### Mass Tort (Track IV)

- |                                       |  |
|---------------------------------------|--|
| 248 CIBA GEIGY                        | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX                            |
| 271 ACCUTANE                          | 283 DIGITEK                            |
| 272 BEXTRA/CELEBREX                   | 284 NUVARING                           |
| 274 RISPERDAL/SEROQUEL/ZYPREXA        | 286 LEVAQUIN                           |
| 275 ORTHO EVRA                        | 287 YAZYASMIN/OCELLA                   |
| 277 MAHWAH TOXIC DUMP SITE            | 601 ASBESTOS                           |
| 278 ZOMETA/AREDDIA                    | 619 VIOXX                              |
| 279 GADOLINIUM                        |  |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

Verbal Threshold

Putative Class Action

Title 59