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From: robertbergesq@aol.com
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To: Mayor; Manager's Department; Attorney's Office; Clerk's Department
Cc: valerie@scarsdalenews.com
Subject: October 12, 2021 Board of Trustees Working Session - Wireless Ordinance Update

CAUTION: External sender.

Greetings. Over the weekend, I've reviewed with considerable dismay the draft resolutions and ordinances prepared by the Village's retained "expert" telecommunications law firm, Best Best & Krieger LLP to "best" update our Village's wireless telecommunications facilities code. The work product provided to the Village is utterly generic, omits many significant protections available to the Village and its residents, and really is well below the quality that the firm is capable of producing. Best Best & Krieger is a nationwide law firm specializing in telecommunications law which represents many municipalities, but the firm has a reputation and the reality of working closely with the wireless telecommunications companies to facilitate deployment of new wireless facilities. Under some circumstances, having a friendly working relationship with the telecoms is perfectly acceptable, and a controlled roll-out of wireless facilities in certain industrial zones -- away from residential neighborhoods -- under guidelines set by the municipalities -- works well to provide important wireless service to the community. It's my professional opinion that Best Best & Krieger is failing to protect the Village's interests, and has produced a draft that affords little protection and fails to take full advantage of the Village's authority under the law to control the location and terms under which wireless facilities may be built and operated within our boundaries.

As you may know, I am an attorney who has been practicing law for 38 years. My daughter, Zoe, has worked for the past 3 years full-time as a founder of Americans for Responsible Technology, a national coalition of more than 150 grassroots organizations across 42 states that seeks to foster local control over the safe deployment of technology in our neighborhoods based upon independent, peer-reviewed science and that rejects massive densification of wireless facilities. Zoe has over 125,000 Facebook followers on the ART Facebook page that she publishes, and ART provides a wealth of informative materials about wireless technology on its website, www.americansforresponsibletechnology.org. Among these materials is a sample municipal code governing small cell wireless facilities. The sample municipal code available on the ART website provides far greater protections to the municipality and its residents than the draft code prepared by Best Best & Krieger for the Village of Scarsdale. ART's sample municipal code conforms with federal law, and I have personally vetted it.

For the past year, I have devoted much of my professional practice to representing individuals and organizations concerned about wireless communications facilities proposed for their neighborhoods and/or municipalities. I have represented or advised many individuals and organizations before municipal boards and councils challenging applications by telecommunications companies for new cell towers and wireless facilities. I have presented at many public hearings opposing such applications and advised municipal boards and councils to deny said applications on many grounds. Over the past few weeks, with my input, residents in the City of Sylvania, Ohio, the City of Brawley, California, and the Borough of Lavallette, New Jersey have convinced their elected officials to deny applications of telecommunications companies for cell towers or small cell facilities. I am presently co-lead counsel in a landmark federal litigation against Verizon and the Tahoe Regional Planning Agency involving a proposed cell tower, and I am representing clients in other cell tower matters nationwide. So I have considerable expertise and experience behind me when I say that what Best Best & Krieger has proposed for Scarsdale Village is grossly inadequate.

Scarsdale Village, as we all know, is *sui generis*. We are almost entirely a residential community -- and a densely populated one at that. We are a community that prides itself on neighborhood character and aesthetics -- the "Village in a Park." We are a Village consumed by the desire to protect and enhance our property values. And most important of all, we are a Village that seeks to protect the health and safety of our residents. We all know that our wireless coverage in our Village works better in some areas than others depending upon the cell carrier. And we know that cell carriers are always interested in installing additional cell towers and other wireless communications facilities throughout our Village. That's why we do have an important need to upgrade our Village Code so that we can really protect our interests to the full extent allowed under the law.

I suggest that we scrap the Best Best & Krieger work product. Many, many, many communities have much better wireless ordinances. As a starting block, we should use the ART 5G model code as a roadmap for small cell facilities. An excellent template for general wireless telecommunications facilities and towers is found in the Town Code of the Town of North Hempstead, New York, Chapter 75, "Wireless Communications Facilities." The Town of North Hempstead is an upscale suburban town in Nassau County, on Long Island, sharing many similarities with the Village of Scarsdale. The Town of North Hempstead's wireless ordinance provides robust protections to the town and its residents, yet complies with federal law. Another good example is the Town of Copake, New York's wireless ordinance, Chapter 230, entitled "Telecommunications Facilities and Towers." These are only two examples out of scores of excellent codes around the country. But even a cursory glance shows how superior they are to what we've been presented with.

There are many major problems too with the advice Best Best & Krieger is providing. While it may still be "best" to have the Planning Board be the initial reviewing authority, I have serious concerns with its ability to understand the unique issues presented by wireless facilities. The Planning Board just a few weeks ago renewed a special use permit for AT&T to place a dozen or so replacement wireless antennas on top of the roof at Village Hall, complementing another set of antennas of a competitor. Village Hall's roof is transmitting wireless radiation 24/7, and our cherished Village Staff, especially those who work on the third floor immediately under the roof, are being exposed to prodigious amounts of wireless radiation for their entire workdays. This has been going on for many years now. It greatly saddens me to know that the Village has been knowingly exposing its staff to hazardous radiation, and has just renewed a license to continue irradiating its staff for more years. Meanwhile, the Village hasn't even bothered to demand that the telecoms maintain insurance coverage for the telecoms and the Village specifically insuring against claims for personal injury arising from exposure to wireless radiation. So when members of our staff unfortunately develop cancer, neurological impairments, diabetes, reproductive disorders, liver disorders, or any of the many serious diseases and orders that several thousand independent, peer-reviewed scientific studies have shown are caused by wireless radiation, the Village won't even have insurance coverage to pay for their injuries, leaving taxpayers on the hook. When I opposed the renewal of the special use permit at the public hearing a few weeks ago, my arguments fell on deaf ears, and the Planning Board unanimously approved the permit.

Be that as it may, my experience before the Planning Board shows the need for NOT eliminating an appeals body for decisions of the Planning Board regarding wireless communications facilities applications. The need for an appeals body -- i.e., the Board of Trustees -- is vital. Residents or appellants should not have to immediately run to State Supreme Court to file an Article 78 Petition at considerable expense because Mr. Lederer wrongly claims that there's not sufficient time to involve a second Village body in the process because of the time constraints of the FCC "shot clock." In my experience, so long as the administrative process is handled expeditiously, if there's a time constraint, applicants rarely refuse to extend the shot clock in a tolling agreement, and if they refuse, a hearing can be expedited before time runs out.

Finally, the third point raised in Mr. Pozin's memo -- the Board should consider whether there are reasons to limit wireless facilities on certain infrastructure or to discourage or encourage wireless facilities in certain areas of the Village -- is rather shocking. Duh! Wasn't that the point of hiring Best Best & Krieger in the first place -- to advise the Village on precisely those matters? That's why we wound up with generic porridge instead of a useful draft code like the Town of North Hempstead's wireless code.

I'm profoundly disappointed with how this vitally important project is being handled.

All my best, Bob Berg.