

COMMONWEALTH OF MASSACHUSETTS

COURTNEY GILARDI,	)	SUPERIOR COURT
CHARLIE HERZIG, JUDY HERZIG	)	
MARK MARKHAM, ANGELIKA MARKHAM	)	
AND ELAINE IRELAND	)	CIVIL ACTION NO. _____
	)	
Plaintiffs	)	
	)	
v.	)	
	)	
LINDA TYER, MAYOR OF PITTSFIELD	)	
STEPHEN N. PAGNOTTA, CITY SOLICITOR	)	
	)	
PITTSFIELD CELLULAR TELEPHONE	)	
COMPANY D/B/A VERIZON WIRELESS	)	
FARLEY WHITE SOUTH STREET, LLC	)	
	)	
ROBERTA ORSI, BRAD GORDON	)	
STEPHEN SMITH, KIMBERLY LORING	)	
DR. JEFFREY LEPPPO as they	)	
are members of and are collectively the	)	
PITTSFIELD BOARD OF HEALTH	)	
)	)	
	)	
Defendants	)	

**COMPLAINT**

**INTRODUCTION**

1. This is an appeal in the nature of certiorari and an request for related declaratory relief pursuant to Massachusetts General Laws ("G.L.") c. 249, § 4 from a decision of the Pittsfield Board of Health rescinding a prior order requiring Pittsfield Cellular Telephone Company d/b/a Verizon Wireless and Farley White South Street, LLC to abate a nuisance

at a property located at 877 South Street in Pittsfield causing hazardous and injurious conditions to others.

### **JURISDICTION**

2. This court has jurisdiction pursuant to G.L. c. 249, § 4, G.L. c. 214, § 1; G.L. c. 231A, § 1.

### **PARTIES**

3. Plaintiff Courtney Gilardi maintains her domicile at 17 Alma St., Pittsfield, MA 01201. She brings this matter on her own behalf and on behalf of her two minor children.

4. Plaintiffs Charlie Herzig and Judy Herzig maintain their domicile at 140 Plumb St., Pittsfield MA 01201.

5. Plaintiffs Mark Markham and Angelika Markham maintain their domicile at 128 Elmer Ave., Pittsfield MA 01201.

6. Plaintiff Elaine Ireland maintains her domicile at 15 Alma St., Pittsfield, MA 01201.

7. Defendant Linda Tyer is the Mayor of Pittsfield. Her office is at 70 Allen Street, Pittsfield, Massachusetts 01201.

8. Defendant Stephen N. Pagnotta is the contract Solicitor for the City of Pittsfield. His city office address is at 70 Allen Street, Pittsfield, Massachusetts 01201. He is also the managing partner of the law firm Donovan O'Connor & Dodig, LLP ("the firm"), which maintains an office at 55 Church Street, Pittsfield Massachusetts 01201.

9. Defendant Pittsfield Cellular Telephone Co. d/b/a Verizon Wireless is a Massachusetts general partnership with an office at 20 Alexander Drive, Wallingford,

Connecticut 06492, and with a principal place of business at 180 Washington Valley Road, Bedminster, New Jersey 07921.

10. Defendant Farley White South Street LLC is a Domestic Limited Liability Company. Its state-registered resident agent for service of process is Roger W. Altreuter, 155 Federal Street, Suite 1800, Boston MA 02110.

11. Defendants, Roberta Orsi, Brad Gordon, Stephen Smith, Kimberly Loring and Dr. Jeffrey Leppo are the members of and are collectively the Pittsfield Board of Health ("Board") which has an address of 70 Allen Street, Pittsfield, Massachusetts 01201. The Board members are sued herein solely in their official capacity.

## **FACTS**

### **877 South Street wireless facility injures Shacktown residents**

12. Farley White South Street, LLC owns a property at 877 South Street in Pittsfield.

13. Pittsfield Cellular Telephone Company d/b/a Verizon Wireless obtained a lease for a portion of the 877 South Street property allowing placement of a wireless tower, base station and associated antennas.

14. Verizon Wireless sought and ultimately obtained a local land use permit for the wireless facility from the Pittsfield Community Development Board.

15. Verizon Wireless constructed the tower and base station. The facility was activated on August 4, 2020 and began transmitting for all purposes on August 21, 2020.

16. Soon after the 877 South Street wireless facility began operations, the city started to receive reports of illness and negative health symptoms from residents living near the facility, and in particular, from residents living in the so-called "Shacktown" neighborhood.

At least 17 individuals documented adverse health effects and others also reported adverse consequences. The negative health symptoms included complaints of headaches, sleep problems, heart palpitations, tinnitus (ringing in the ears), dizziness, nausea, skin rashes, and memory and cognitive problems, among other medical complaints. All these neurological and dermatological symptoms are consistent with those described in the peer-reviewed scientific and medical literature as being associated with exposure to Radio Frequency ("RF") radiation, including RF from cell towers. These symptoms are sometimes referenced in the scientific and medical literature as Electromagnetic Sensitivity ("EMS"), also known as Electro-Hypersensitivity ("EHS"), Microwave Sickness, or Radiation Sickness. All these names describe a syndrome where the afflicted develop one or more recognized symptoms as a result of RF radiation ("RFR"). EHS is a spectrum condition. For some, the symptoms can become debilitating and severely affect their ability to function.

17. Plaintiff Courtney Gilardi and her two young daughters, Plaintiffs Charlie and Judy Herzig, Plaintiffs Mark and Angelika Markham and Plaintiff Elaine Ireland are among the at least 17 individuals that reported, and are still experiencing, serious adverse health effects as a result of the 877 South Street wireless facility's operation.

18. Plaintiff Courtney Gilardi suffers the following symptoms when she is in her home at 17 Alma Street: debilitating headaches, nausea, vomiting, dizziness, insomnia, nighttime waking, palpitations, daytime fatigue and tiredness. When she leaves the immediate vicinity of the 877 South Street wireless facility these symptoms subside, only to return when she once again goes near the facility. Plaintiff Courtney Gilardi's home

was rendered uninhabitable on account of the 877 South Street facility's operation; she has had to instead spend most of her time at 980 East St., Pittsfield-Lenox, MA 01240. She was constructively evicted. Plaintiff Courtney Gilardi desires to return to her home full-time at 17 Alma St., and still considers that property to be her domicile.

19. Plaintiff Courtney Gilardi's oldest daughter suffers the following symptoms when she is in her home at 17 Alma Street: headaches, dizziness, nausea, vomiting, insomnia, nighttime waking, daytime fatigue and tiredness. When she leaves the immediate vicinity of the 877 South Street wireless facility these symptoms subside, only to return when she once again goes near the facility. She has been forced to take up temporary residence in another home located at 980 East St., Pittsfield-Lenox, MA 01240.

20. Plaintiff Courtney Gilardi's youngest daughter suffers the following symptoms when she is in her home at 17 Alma Street: nausea, vomiting, stomach aches, loss of appetite, skin rashes, sensation that her skin is crawling, hyperactivity, insomnia, nighttime waking, daytime fatigue and tiredness, inability to focus and concentrate, night terrors/nightmares. When she leaves the immediate vicinity of the 877 South Street wireless facility these symptoms subside, only to return when he once again goes near the facility. She has been forced to take up temporary residence in another home located at 980 East St., Pittsfield-Lenox, MA 01240.

21. Plaintiff Charlie Herzig suffers the following symptoms when he is in his home at 140 Plumb Street: insomnia, increased tinnitus and daytime fatigue. When he leaves the immediate vicinity of the 877 South Street wireless facility these symptoms improve, only to return when he once again goes near the facility.

22. Plaintiff Judy Herzig suffers the following symptoms when she is in her home at 140 Plumb Street: tinnitus, headaches, memory loss, concentration issues, decrease in word recall, insomnia, sleep issues, daytime fatigue, and depression. She is housebound and unable to spend any time away from the immediate vicinity of the 877 South Street wireless facility.

23. Plaintiffs Charlie and Judy Herzig have so far not fled their home even though they are constantly sick there. They have nowhere else to go.

24. Plaintiff Mark Markham suffers the following symptoms when he is in his home at 128 Elmer Avenue: headaches, tinnitus, nausea, dizziness to the point it interferes with him feeling safe to operate a motor vehicle, difficulty with speech and word recall, insomnia. When he leaves the immediate vicinity of the 877 South Street wireless facility these symptoms subside, only to return when he once again goes near the facility.

25. Plaintiff Angelika Markham suffers the following symptoms when she is in her home at 128 Elmer Avenue: skin rashes, sensation that her skin is crawling, headaches, dizziness, nausea, tinnitus, heartburn and insomnia. When she leaves the immediate vicinity of the 877 South Street wireless facility these symptoms subside, only to return when she once again goes near the facility.

26. The home of Plaintiffs Mark and Angelika Markham was rendered uninhabitable on account of the 877 South Street wireless facility's operation. They were constructively evicted. The Markhams have been forced to use their retirement funds to support an itinerant lifestyle in order to avoid the toxic emissions from the 877 South Street wireless facility. They have stayed in hotel rooms, camp sites and their car, and have travelled

about to stay with family and friends. Plaintiffs Mark and Angelika Markham desire to return to their home full-time at 128 Elmer Ave., and still consider that property to be their domicile.

27. Plaintiff Elaine Ireland suffers the following symptoms when she is in her home at 15 Alma St.: tinnitus, migraines, insomnia. When she leaves the immediate vicinity of the 877 South Street wireless facility these symptoms subside, only to return again if she once again goes near the facility. Plaintiff Elaine Ireland's home was rendered uninhabitable on account of the 877 South Street facility's operation; she has had to abandon it and is now staying at 74 Broad St. in Pittsfield. She was constructively evicted. Plaintiff Elaine Ireland, however, desires to return to her home at 15 Alma St., and still considers that property to be her domicile.

#### **Board conducts proceeding and enters Emergency Order**

28. When it became evident there was a cluster of illnesses in Shacktown near the 877 South Street wireless facility, the Pittsfield City Council asked the Pittsfield Board of Health ("Health Board" or the "Board") to look into the issue and provide a report.

29. The Board exists pursuant to both state law and the Pittsfield City Code. City Code Ch. 2, Art. XVIII, Sec. 2-86 provides that "[a] Board of Health is hereby established to advise on and manage all matters relative to health and sanitation in the City, and to promulgate health regulations in conformity with law." G.L. c. 111, §§ 122-152 and the state Sanitary Code, including but not limited to Sanitary Code Chs. 11 and 410, also provide authority to and duties upon local health boards. G.L. c. 111 § 122 in particular authorizes health boards to "examine all nuisances which, in their opinion, may be

injurious to the public health.” (emphasis added) When the board finds there is a health injury the board “shall destroy, remove or prevent the same.” (emphasis added) Section 123 provides that upon a nuisance determination the board shall order the owner to remove the nuisance. In other words, state law commands that a local health board take affirmative administrative action once it finds a health injury. This is so even if the activity in issue has received local land use approval for that activity. The Board has a state-imposed duty to take administrative action once it finds a nuisance or health injury; they have no discretion.<sup>1</sup>

30. The Board, unlike other Pittsfield commissions and agencies, has independent powers and duties as a result of state law. Where its duties are defined by the legislature the Board is statutorily exempt from the Mayor’s direct supervision and direction notwithstanding the general rule in Pittsfield, MA Charter Art. 3, Section 3-2.

31. The Board spent more than 18 months gathering information and studying the most recent scientific and medical information on the topic, including more 1,000 peer-reviewed scientific and medical studies. The Board interviewed scientists and medical professionals. It took extensive evidence from all concerned.

32. The Board ultimately concluded that a group of individual Pittsfield residents in this cluster have been personally harmed by RF radiation transmitted from the Verizon Wireless 877 South Street wireless facility’s operations. It found that the involuntary

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<sup>1</sup> The Board does have discretion whether and if so when to seek judicial enforcement of its administrative action. Here, the Board clearly intended to issue the Emergency Order to provide an incentive for Verizon Wireless to meaningfully engage at the administrative level and collaborate with the affected parties to find a solution. The Board fully reserved the right to seek judicial enforcement but did not intend to immediately do so.

wireless radiation exposure directed upon Shacktown residents in their homes constructively evicted several residents and they had no choice but to leave because wireless radiation from the Verizon Wireless 877 South Street wireless facility rendered their homes uninhabitable – unfit for human habitation. The continued exposure causes them severe, debilitating pain. The wireless radiation endangers and materially impairs their health, safety and quality of life. Those who could escape did; the others were forced to continue suffering in their home.

33. On April 2, 2022, the Board issued an “Emergency Order Requiring That Pittsfield Cellular Telephone Company, d/b/a Verizon Wireless, And Farley White South Street, LLC, Show Cause Why The Pittsfield Board of Health Should Not Issue A Cease And Desist Order Abating A Nuisance At 877 South Street Arising From The Operation Of A Verizon Wireless Cell Tower Thereon And Constituting Immediate Order Of Discontinuance And Abatement If No Hearing Is Requested” (“Emergency Order”). A true and correct copy of the 24-page Emergency Order is attached hereto as Exhibit One.

34. The Emergency Order contained extensive findings of fact and exhaustively listed the medical and scientific information and other evidence the Board considered and relied upon for its conclusions. The Emergency Order listed each of the Plaintiffs herein by name as being among those in Shacktown for whom the relief was intended. The Board found that each of the Plaintiffs by name (along with others) were being made sick from emissions from the 877 South Street wireless facility and their homes were uninhabitable. In other words, the Emergency Order found direct injury and causation.

35. The Emergency Order: (i) declared that the operation of the wireless facility located at 877 South Street, Pittsfield, Massachusetts (the “Facility”) by Verizon Wireless is a public nuisance and violates various the Massachusetts state and local health sanitary codes and laws; (ii) required that Verizon Wireless show cause why the Board should not issue an order requiring that the Facility cease operations; (iii) required that Verizon Wireless request a hearing on the Order within seven days of its issuance (i.e., by April 18, 2022); and (iv) if Verizon Wireless failed to request a hearing, declared that the order would become a notice of discontinuance requiring that Verizon Wireless abate and eliminate the nuisance and violations of the state sanitary code within seven days of the expiration of the period to request a hearing (i.e., by April 25, 2022).

36. Verizon Wireless did not request a hearing within the required seven-day period, and therefore the Emergency Order became a notice of discontinuance “requiring that Verizon Wireless abate and eliminate the nuisance and violations of the state sanitary code.” On May 10, 2022, however, Verizon Wireless filed a judicial action challenging the Board’s authority to act. The Verizon Wireless complaint did not contest any of the factual findings or legal conclusions, other than those claiming state law authority to take the action. The action raised a single cause of action – that the Board’s state law authority was preempted and they had no power to act. The action was not an administrative appeal pursuant to state law.

#### **Mayor and Solicitor interference, coercion and frustration of Board**

37. Under the Pittsfield City Charter “[t]he mayor shall cause the charter, laws, ordinances and other orders of the city government to be enforced and shall cause a

record of all official acts of the executive branch of the city government to be kept. The mayor shall exercise general supervision and direction over all city agencies, unless otherwise provided by law or by this charter.” (emphasis added) Pittsfield, MA Charter Art. 3, Section 3-2.

38. This Charter provision expressly contemplates that once a city agency like the Health Board here issues an order the Mayor will assiduously act to enforce it. The provision further just as clearly envisions that the Mayor will not directly or through underlings use coercion, subterfuge, provision of incorrect and misleading information or other underhanded tactics designed to prevent the agency from performing its independent statutory duties under state law and then to negate an agency’s order after it is issued. The Mayor has taken action and has failed to act in numerous ways that violate this Charter provision.

39. The Mayor was elected on a pro-growth, business development platform. Once she took office she began to carry out that platform. The Mayor believes that downtown revitalization, bringing in new industry and making the city attractive to weekend visitors and removing “barriers” and “silos” to growth by cooperating with “businesses prospects”<sup>2</sup> is more important than the health and well-being of her residents. If a few of them fall ill or are constructively evicted because of toxins emanating from revitalization-related land use permitted activity then they are just collateral damage and part of the cost of doing business.

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<sup>2</sup> “Mayor Linda Tyer Embarks On First Term In Pittsfield,” Feb. 9, 2016, <https://businesswest.com/blog/mayor-linda-tyer-embarks-on-first-term-in-pittsfield/>;  
Press Release, “City of Pittsfield Announces New Economic Development Strategy,” May 4, 2017, available at [https://www.cityofpittsfield.org/press\\_detail\\_T32\\_R48.php](https://www.cityofpittsfield.org/press_detail_T32_R48.php);

40. Part of the Mayor's revitalization and business development involves increased deployment of wireless broadband to the entire city in general and the downtown area in particular. She has taken direct and indirect action to facilitate approval of wireless carriers' applications for land use permits. The Community Development Board (appointed by the Mayor) has adopted her ubiquitous deployment approach completely without regard to potentially injurious health consequences, as articulated by Community Development Board members Libby Harland<sup>3</sup> and Floriana Fitzgerald.<sup>4</sup>

41. The Mayor led an effort to deploy a downtown public Wi-Fi network. The city received a \$99,750 grant from the state Community Compact Information Technology grant program in late 2021 for the public Wi-Fi network, which will provide connectivity to the city center and surrounding neighborhoods. The grant builds on a 2019 \$95,000 grant for wireless infrastructure for internal and public use. The city must deploy the Wi-Fi network by February 15, 2023 or else the money reverts to the state.

42. An illness cluster within the city that is caused by wireless networks, like that caused by the 877 South Street wireless facility, is inconvenient to the Mayor's "revitalization" efforts insofar as they involve expanded wireless broadband. People will not want infrastructure that might make them sick or drive them from their homes. The Board's express recognition of the Plaintiffs' injuries and the direct finding of causation by

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<sup>3</sup> <https://watch.pittsfieldtv.net/CablecastPublicSite/show/37825?channel=9>, at 2:39:00 (December 1, 2020 Community Development Board meeting stating that having great cell phone coverage and wireless coverage is a really important component of increasing Pittsfield population and making the city more economically attractive).

<sup>4</sup> <https://watch.pittsfieldtv.net/CablecastPublicSite/show/37572?channel=9> at 2:28:52 (November 5, 2020 Community Development Board meeting stating need cell towers "because we are trying to promote working from home. We want people to come from other areas to live in Pittsfield and say, oh, we can work from home and without the cell towers a lot of people can't work from home.")

the 877 South Street wireless facility is an obstacle and potential embarrassment to the Mayor's revitalization and wireless broadband ubiquity efforts and the business and personal interests of powerful local and national interests. As a result, the Mayor has directed her subordinates to frustrate any effort to recognize and meaningfully redress the Plaintiffs' and the other injured residents' injuries and harms.

43. The Mayor's "revitalization" efforts in general have led to relationships and actions that come close to, if not transgress, her statutory ethical duties and responsibilities. For example, the Mayor has steered contracts to, and placed at least one of her subordinates on, the board of a non-profit (Pittsfield Economic Revitalization Corporation, or PERC) that has received significant funds from the city.<sup>5</sup> The Mayor's husband has been Treasurer for PERC since 2003 and also served as director until early 2021. As Treasurer he is responsible for custody and distribution of PERC funds, including those that come from the city of Pittsfield.

44. Another of the Mayor's underlings is Deanna Ruffer. Ruffer is under the Mayor's direct control, and this has been evident through Ruffer's actions with regard to the 877 South Street wireless facility and in many other ways.

45. Deanna Ruffer is also on the PERC board and has been since 2017 – soon after Mayor Tyer was elected to her first term. PERC and the Pittsfield Community Development Department share expenses, office space and even the same phone

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<sup>5</sup> Pittsfield Economic Revitalization Corporation also receives funds from the similarly-named Pittsfield Economic Revitalization Authority (PERA), a *quasi*-public entity established by state law in 1998 to oversee assets obtained in a pollution settlement with General Electric. The Mayor appoints the Authority's governing board members. PERA also shares office space, a phone number and staffing expenses with the Department of Economic Development.

number. The Pittsfield 2022 Budget contains a line item for a “Business Development Manager.” For the 2022 fiscal year this position is funded with \$32,778 for salary expense. The cost is “shared per an Agreement with Pittsfield Economic Development Authority and Pittsfield Economic Revitalization Corporation.” City and PERC finances are extensively intertwined and there is interlocking control, all of which ultimately leads back to the Mayor, her underlings and her husband.

46. Until recently (December, 2021) Deanna Ruffer was the head of the city’s Department of Community Development, which among other things performs zoning or land use functions for the city. The Community Development Department is the body that issued the land use permit for the 877 South Street wireless facility. There is litigation concerning the issuance of that permit, where certain “abutters”<sup>6</sup> are claiming lack of notice. As a result of this litigation city personnel have been instructed by city Solicitor Pagnotta to not have any contact with the Plaintiffs in this matter, even though there is only partial overlap (the Markhams) between the two groups.

47. Ruffer was head of the city’s Community Development Department for several years, overseeing city planning and zoning, conservation, parks and programs like the Community Development Block Grant, which directs grant money toward housing, infrastructure, revitalization, and economic development toward low- and moderate-income communities. The city’s 2022 budget, like its predecessors for years past, states that the Community Development Department is “responsible for the administration of the City’s annual Community Development Block Grant (CDBG) funding. The staff provides

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<sup>6</sup> Plaintiffs Mark and Angelika Markham are among the group of abutter plaintiffs in that matter.

support to ... Pittsfield Economic Revitalization Corporation ...” The 2022 budget goes on to state that “The City offers a diverse portfolio of assistance to existing and new businesses focused on the retention and creation of jobs and capital investments in buildings and equipment. These programs are funded through the CDBG program, the Pittsfield Economic Development Fund, and state grant programs. Much of the assistance to businesses is offered through the Pittsfield Economic Revitalization Corporation (‘PERC’), a community development corporation. PERC serves as the City’s economic development lender utilizing both state and federal grant funding.”

48. PERC’s other current members include three individuals associated with banking and other finance-related interests, real estate company and legal matters. The Treasurer and past board member is a partner in a major accounting/CPA firm. The business attorney on the PERC Board of Directors is a partner in a local law firm and leads their Real Estate Division of the firm’s Business and Banking Group. Each of their businesses directly benefit from the money flow. The funds go into or through a bank. The recipient needs an accountant and often must purchase or rent real property. They require other investment advice and assistance.

49. Ruffer is a long-time “advisor” to the Mayor, particularly with regard to the city’s American Rescue Plan Act (“ARPA”) grant applications and distribution of those funds. The Mayor recently (February 2022) named Ruffer as co-director of the city’s administration of funds for federal ARPA funds. The ARPA project team is part of the Mayor’s office. There was no public posting of the paid “part-time” position through the city’s hiring programs. In June, 2022 PERC was the recipient of \$350,000 in ARPA money

that flowed through the city. Ruffer was a prime decisionmaker on whether to make the award to PERC but is also a director of the organization (PERC) that received the grant. She was on both sides of the arrangement. This is not an outlier. Ruffer has repeatedly acted with both “hats” (oversight of city awards and a director of the recipient of those awards) throughout the Mayor’s tenure. Although the dual relationship is not kept in secret,<sup>7</sup> the extent of her involvement on both sides is often obscured, especially with regard to reports to the City Council.<sup>8</sup>

50. Mayor Tyer (directly or through her subordinate Ruffer) has directly and indirectly overseen and approved distribution of funds to an organization (PERC) for which her husband was a long-time director and is still the Treasurer and therefore responsible for custody and distribution of the funds provided by the city of Pittsfield. These relationships and the self-dealing they facilitate are expressly prohibited by law and they present a clear appearance of impropriety.

51. PERC gets a lot of money from the city and as a result of its relationship with the city. Ruffer, Clairmont (the Mayor’s husband and a PERC officer) and the Mayor have a big hand in its ultimate distribution. That kind of power gives rise to potential abuse and cronyism. The state nepotism law and the Standards of Conduct for government officials

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[https://cms2files.revize.com/pittsfieldma/city\\_hall/community\\_development/community\\_development\\_and\\_housing/docs/New%20node/Draft%20FY2022%20Annual%20Plan%20for%20Website.pdf](https://cms2files.revize.com/pittsfieldma/city_hall/community_development/community_development_and_housing/docs/New%20node/Draft%20FY2022%20Annual%20Plan%20for%20Website.pdf), Annual Action Plan for fiscal year 2022, p. 23.

<sup>8</sup> [https://cms2files.revize.com/pittsfieldma/government/city\\_council/docs/April%2026,%202022.pdf](https://cms2files.revize.com/pittsfieldma/government/city_council/docs/April%2026,%202022.pdf), April 26, 2022, Community Development Director’s “Rule 38” analysis, pdf. pp. 248-251 (SolaBlock economic development funds award for Tax Increment Financing, referring only to “PERC Board” or “PERC members”); [https://cms2files.revize.com/pittsfieldma/government/city\\_council/docs/5-12-20%20cc%20packet.pdf](https://cms2files.revize.com/pittsfieldma/government/city_council/docs/5-12-20%20cc%20packet.pdf), May 12, 2020 “Rule 38” analysis, pdf pp. 13-23, 248- 309 (Montra II award economic development funds award for Tax Increment Financing, referring only to “PERC Board” or “PERC members”).

exist to prevent such abuses but those safeguards failed here. The Mayor has engaged in nepotism, cronyism to benefit those who obtain significant funds from revitalization, and has personal financial conflicts.

52. The Mayor principally worked through her subordinates and agents with regard to the Board matter concerning the 877 South Street wireless facility. For example, she dispatched Deanna Ruffer to respond to inquiries from the Board chairperson in March of 2022. The Mayor refused or unreasonably delayed requests for meetings, including several from the Board chair, both before and after the Board issued its Emergency Order.<sup>9</sup> Instead, she deployed Deanna Ruffer and Solicitor Pagnotta<sup>10</sup> as agents whose job was to frustrate the Board's effective exercise of its local and state powers and its duty to remove nuisances and health threats that it identifies.<sup>11</sup>

53. The Mayor's efforts to prevent the Board from carrying out its statutory duties justify the perception of an appearance of impropriety. A reasonable person having knowledge of these relevant circumstances could reasonably conclude that Mayor Tyer is being improperly influenced by self-interest, wireless and other financial interests are enjoying her favor in the performance of her official duties, and she has acted and failed to act as a result of kinship, rank, position or undue influence of any party or person.

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<sup>9</sup> See April 8 Board meeting at <https://watch.pittsfieldtv.net/CablecastPublicSite/show/44409?channel=1>, at 1:59.

<sup>10</sup> <https://pittsfield.com/story/67615/Pittsfield-Board-of-Health-Continues-Push-to-Remove-Verizon-Cell-Tower.html>.

<sup>11</sup> See March 16, 2020 Board meeting, <https://watch.pittsfieldtv.net/CablecastPublicSite/show/44241?channel=9>, at 1:59.

### **City Solicitor**

54. City Code Art. III Sec. 2-9 provides that the City Solicitor is appointed by and serves at the pleasure of the Mayor. Under Sec. 2-9.1 the City Solicitor acts as the legal adviser and solicitor of the City and each of its departments, unless he suffers an ethical conflict or must abstain due to other legal requirements, such as, *inter alia*, a command resulting from the Standards of Conduct for government officials set out in G.L. c. 268A, § 23. Subsection (b)(3) prohibits government officials from acting “in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.”

55. Defendant Pagnotta had several conflicts of interest that required him to withdraw from representation or provision of legal advice in the Board’s consideration and actions regarding the 877 South Street wireless facility. Pagnotta also continued to provide “legal advice” to the Board, City Council and Mayor on this matter even after he admitted he was not competent to offer advice with regard to the telecommunications law related issues.

56. Defendant Pagnotta has legal multiple conflicts of interest that should have resulted in self-disqualification from any participation in the matter before the Board.

- a. Defendant Pagnotta was carrying out the commands of the Mayor (who selects and can fire him at any time) rather than providing competent, objective, independent and good-faith advice to the Board while it exercised

its state law related duties. Since the Mayor was opposed to any action by the Board, Pagnotta should have and was ethically required to withdraw from representation of the Board of Health once it became clear the Board knew there was a health problem and wanted to act despite the Mayor's objective of blanketing the city with radiation that has already sickened almost 20 residents and may well be adversely impacting others.

- b. Defendant Pagnotta and the firm are presently representing the city of Pittsfield in litigation. The firm is defending a challenge to the zoning permit for the wireless facility<sup>12</sup> on behalf of the Community Development Board and is aligned with Verizon Wireless. The firm has therefore worked closely with Verizon Wireless as part of that litigation. Pagnotta instructed city elected and appointed personnel, including the Mayor, to not have any contact with the Plaintiffs in this matter because of the ongoing but separate abutter litigation. The firm and Pagnotta are also coordinating with Verizon on the handling of the Board matter.
- c. One of the false narratives Defendant Pagnotta has urged to the Board – by way of illicit advocacy rather than legal advice – is that the Board's action essentially constitutes a collateral attack on or would otherwise invalidate the zoning permit.<sup>13</sup> That is incorrect. The Board's Emergency Order expressly assumes that the zoning permit is valid, and notes that a condition

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<sup>12</sup> *Markham v. Pittsfield Cellular Tel. Co.*, 101 Mass. App. Ct. 82, 188 N.E.3d 984 (2022), FAR pending, Docket 2021-P-0336.

<sup>13</sup> *See, e.g.*, <https://www.wamc.org/new-england-news/2021-03-25/pittsfield-city-council-grapples-with-ongoing-cell-tower-health-concerns>.

in the permit requires that Verizon Wireless comply with all applicable health and safety laws, including the Sanitary Code – laws the Board, not the land use authority – is charged with enforcing. Assuming *arguendo* (without admitting) that the Board’s duties conflict with the Community Development Department action then Pagnotta and the firm have a direct conflict of interest because that means the Board and the Community Development Department have adverse and conflicting interests. One city agency feels it must support the facility and is defending its action doing so, while the other believes the facility is causing significant harm that must be stopped.<sup>14</sup>

- d. Pagnotta’s advice to the two city departments and City Council either purposefully or negligently omitted any mention that Massachusetts health and safety law precedent provides that an activity or use with a zoning permit (as is the case here) may still be declared a nuisance and the health board can require that it be abated. Stated another way, the issuance of a state or local permit or license does not immunize the holder from liability for nuisance which results from the permitted or licensed activity. Pagnotta had a duty to so advise the Board, Community Development Department and Mayor and City Council, but he did not.
- e. Pagnotta is also charged with any conflicts of interest that arise because of his position as managing partner at the law firm of Donovan, O’Connor and

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<sup>14</sup> See April 8 Board meeting at <https://watch.pittsfieldtv.net/CablecastPublicSite/show/44409?channel=1>, at 2:01. Interestingly, this video appears to have been edited. There is a gap and visible jump at 1:58:54. The Board was discussing its problems getting independent legal representation.

Dodig. The firm represents several entities that would be either directly or indirectly harmed if the Board's decision is enforced. The precedent would threaten the business interests of any company that provides wireless service, supports wireless service or relies on mobile wireless broadband internet access.

- A. The firm served as litigating counsel for North Adams Tower Company, New England Wireless PCS LLC, Verizon Wireless (VAW) LLC and MBIA Property and Casualty Group in a recent case in Massachusetts Superior Court.<sup>15</sup>
- B. The firm represents several "app" companies that rely on a robust and ubiquitous wireless infrastructure to support their business plan. Attorney Stephen F. Narey of the firm is listed Trademark counsel for:
  - 1. Identify Technologies, LLC. This company holds several (at least 5) trademarks for different "mobile phone" "computer applications" used for "facilitating interactions between users with similar interests."<sup>16</sup>
  - 2. Three Tribes Marketing, LLC. This company holds a trademark for "Roadready," a mobile phone application that

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<sup>15</sup> *North Adams Tower Company Inc et al vs. Pittsfield Cellular Telephone Company Doing Business as Verizon Wireless et al*, Civil Action No. 16-0031, MA Superior Court, Berkshire. The case ultimately settled, with final dismissal on November 27, 2020. See [https://www.masscourts.org/eservices/search.page.3?x=6ZRDZPKGY1qYFJY\\*BGIkBGHQbp-oGGyufBxTNzShNmzOzJuCsaQIRIFmnMy0kVmXKNp\\*BjMogHHLjeHD53AhQ](https://www.masscourts.org/eservices/search.page.3?x=6ZRDZPKGY1qYFJY*BGIkBGHQbp-oGGyufBxTNzShNmzOzJuCsaQIRIFmnMy0kVmXKNp*BjMogHHLjeHD53AhQ).

<sup>16</sup> See <https://trademarks.justia.com/owners/identify-technologies-llc-3240504/>.

“tracks the time teens and parents spend behind the wheel together during the state required supervised driving time prior to the teen receiving their license.”<sup>17</sup>

57. After the Board issued the Emergency Order Defendant Pagnotta, in concert with the Mayor and Deanna Ruffer conspired to deprive the Board of defense counsel. He effectively frustrated the Board chairperson in her quest for outside counsel, by, among other things, failing to provide recommendations for potential outside counsel.<sup>18</sup> He continued to provide inaccurate and inappropriate advice to the City Council by mischaracterizing the nature of the suit Verizon Wireless had brought, the relief available under the cause of action it pleaded, the process that would apply, the type of judicial review that would apply and the likely costs the city would incur in any defense. He provided this “legal advice” to the City Council even though he had already admitted he was lacked legal competence in the matter, and even though he, the council and even the Board knew he had an actual ethical conflict. He was required to entirely withdraw, but instead became more active.

58. In particular, Pagnotta spread misinformation about the claims Verizon had brought in its suit, and the implications of that suit. Pagnotta fearmongered by telling the City Council and Board that the city would be liable for attorneys’ fees and potentially damages as a result of the Verizon suit. That is flatly incorrect. Verizon raised only one cause of action, a pure issue of law on whether the Health Board’s longstanding state law

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<sup>17</sup> <https://trademarks.justia.com/860/07/roadready-86007160.html>.

<sup>18</sup> See March 16, 2020 Board meeting, <https://watch.pittsfieldtv.net/CablecastPublicSite/show/44241?channel=9>, at 17:17:31.

authority was preempted under other law. The precedent is clear that this sole cause of action does not give rise to fee shifting or damages.

59. Pagnotta also threatened that the Verizon lawsuit would involve expensive discovery and require extrinsic evidence beyond the administrative record compiled by the Board. This too is flatly wrong: the precedent on the cause of action Verizon raised is also clear that the legal issues are resolved only on the basis of the administrative record, no new evidence is allowed or required and there is no discovery. Verizon's complaint did not request fee shifting, damages, discovery or anything beyond a legal ruling by the court that the Health Board lacked legal authority to issue the Emergency Order.

60. Pagnotta purposefully and negligently misrepresented the facts and issues and the interrelatedness *vel non* between the abutter case and the Board matter in order to advance the Mayor's policy and his other client (the Community Development Department). To do that he improperly used his role as general counsel for the city to undercut and frustrate the Board's independent authority and duty to mitigate and/or remove the adverse health consequences and injuries the Board had found were flowing from the 877 South Street wireless facility' operation. He convinced the City Council that it should not approve outside counsel or incur any cost for a legal defense of the Emergency Order based on the false notion it would involve vast sums toward the defense of a lost cause that would take years to resolve and end with the city having to pay Verizon Wireless' attorneys' fees and potentially immense damages. He convinced the city Counsel that litigation was not a viable option. He did so not because that was true or even possible; rather it was because the Board's efforts to eliminate the nuisance and

health injuries conflicted with the Mayor's personal quest for wireless ubiquity in the name of economic growth and because he wrongly contended that the Board action conflicted with the Community Development Department's decision to issue the land use permit when in fact the Board was merely enforcing an express condition in that permit, as part of its authority under the state's health and safety laws.

61. Pagnotta and the firm have both actual and potential conflicts of interest and Pagnotta's continued participation – despite these conflicts and even after he declared his own incompetence in the subject matter – has irrevocably tainted the process.

62. Given the foregoing facts Pagnotta's efforts to prevent the Board from carrying out its statutory duties justify the perception of an appearance of impropriety. A reasonable person having knowledge of these relevant circumstances could reasonably conclude that Pagnotta is being improperly influenced or wireless-related interests are enjoying his favor in the performance of his official duties, and he has acted and failed to act as a result of kinship, rank, position or undue influence of any party or person.

### **Board capitulates to improper and illegal Mayor and Solicitor pressure**

63. The Board anticipated that outside counsel with competence and experience in telecommunications matters would be necessary if Verizon Wireless filed a judicial challenge to the Emergency Order. They were aware that Pagnotta lacked competence, had conflicts and should not be involved.<sup>19</sup> The minutes from the April 2, 2022 meeting where the Board unanimously adopted Emergency Order state:

Discussion on Cease-and-Desist Order of Cell Tower Health Concerns – 877 South St.: Since an executive session was noted on the meeting agenda, a

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<sup>19</sup> For example, during a February 2, 2022 meeting Board meeting member Gordon recognized that Pagnotta was "not in a position to serve in" the role of the board's attorney.

unanimous motion was made by Chairperson Orsi to discuss this topic in the public session only and seconded by Brad Gordon. Chairperson Orsi noted that legal counsel has been sought out and that she has explored ways to finance the enforcement of the order. Mr. Gordon noted that without having the proper legal counsel and revenue to support this, the Board would be doing a tremendous disservice to these citizens. Chairperson Orsi stated that the Board is mandated to protect the people and that she believes the order should be issued with the hopes that Verizon will respond in some way. Board Member Loring noted that Verizon could respond with court action which could shut down this entire effort. Board Member Gordon reiterated that citizens could bring their own action, but it is cost prohibitive. Board Member Gordon moved to make a modification of the previous motion to issue the Cease & Desist, to issue the Order forthwith with the condition that it may be withdrawn, without prejudice, if legal counsel is not retained prior to any judicial or administrative hearing. The motion was seconded by Board Member Smith and voted on unanimously.<sup>20</sup>

64. Before the Board issued the Emergency Order Solicitor Pagnotta advised the Board he lacked the necessary telecommunications law competence and had an ethical conflict, so they would need outside counsel. What the Board did not anticipate was that Pagnotta would then take affirmative action to deprive the Board of the outside counsel he had told them they needed to hire.

65. The Board requested Pagnotta's assistance in the search for outside counsel. He provided none. He did explain the necessities for a contract with any outside counsel and that the City Council had to approve that contract.<sup>21</sup> The Board managed to find potential counsel on its own and secured a proposal from that firm. The Board provided

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<sup>20</sup> Available at [https://cms2files.revize.com/pittsfieldma/document\\_center/Boards\\_Commissions\\_Agendas\\_Minutes/Board\\_of\\_Health/2022/April%206.pdf](https://cms2files.revize.com/pittsfieldma/document_center/Boards_Commissions_Agendas_Minutes/Board_of_Health/2022/April%206.pdf).

<sup>21</sup> <https://pittsfield.com/story/67615/Pittsfield-Board-of-Health-Continues-Push-to-Remove-Verizon-Cell-Tower.html>.

a report to the City Council that was included in the April 26, 2022 Council agenda package.<sup>22</sup> The Board report stated, in part:

as a formal response to the original petition, the Board of Health reports that there is harm being done to the residents in the vicinity of the 877 South Street Cell Tower, that the Board has taken action to protect those residents, and that the Board anticipates it may require legal assistance to defend that action. Specifically, the Board of Health requests the petitioner (City Council) to allocate funds in the event that there is litigation by Verizon, and also place the City's liability insurer on notice of a possible claim. The Board of Health has done preliminary work in seeking expert legal representation. The Board of Health has identified two attorneys who have extensive experience in environmental law, and who are prepared to enter into a contract to represent the Board of Health with the approval of the City Council.

Enclosed please find proposals for representation by the two attorneys, a tentative budget for representation by the two attorneys (working together), a draft contract, and a copy of the cease-and-desist order issued by the Board on April 11, 2022.

66. The City Council did not take up the matter on April 26, 2022 because it involved potential litigation and hiring outside counsel and therefore required an Executive Session. The matter was tabled and then placed on the May 10, 2022 agenda. Verizon Wireless filed its lawsuit the late afternoon on May 10. During the Executive Session on the item Defendant Pagnotta (who should not have been there because of his declared

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<sup>22</sup> [https://cms2files.revize.com/pittsfieldma/government/city\\_council/docs/April%2026,%202022.pdf](https://cms2files.revize.com/pittsfieldma/government/city_council/docs/April%2026,%202022.pdf), pdf pp. 53-99.

incompetence and his multiple conflicts) informed the Council of the lawsuit. Pagnotta also (wrongly) advised the Council that the two prospective attorney firms could not appear before the Council as part of the Executive Session so the Council was deprived of any opportunity to interview them or receive their independent assessment of the Verizon Wireless lawsuit.

67. Pagnotta's scaremongering so alarmed the City Council that it never took action on the request for approval of outside counsel. Although no vote was ever taken it essentially told the Board to try and find a solution that did not involve or require litigation. The problem is that Verizon Wireless will not engage, collaborate or cooperate in any effort to find a solution. The Board's only option was to try and force Verizon Wireless to the negotiating table and the only way to do that was to overcome Verizon Wireless' legal contention the Board had no lawful or legitimate role. Only then would Verizon Wireless have any incentive to negotiate.

68. The Mayor and Solicitor had successfully carried off their scheme to frustrate the Board's exercise of its authority and duties by ensuring the Board would not be provided with legal counsel who could mount a defense in the Verizon Wireless lawsuit. This effectively made it impossible for the Board to defend or enforce the Emergency Order or even wheedle Verizon Wireless to the negotiating table. Pagnotta and the Mayor had successfully instilled fear, uncertainty and doubt in the City Council and public about the Board's authority and its prospects of success. The Board was helpless and defenseless.

69. The Board held its next meeting on June 1, 2022. It conducted an Executive Session. Pagnotta once again wrongly attended and likely once again provided legal

opinions and advise. The Board then voted to rescind the Emergency Order without prejudice.<sup>23, 24</sup> For all intents and purposes, it was involuntary and compelled by the Mayor's and Solicitor's FUD campaign and scheming that resulted in the Board not having litigation counsel, no means to force Verizon Wireless to collaborate in solutions and no meaningful path forward.

70. Although the Board rescinded the Emergency Order it and all the voting members did not repudiate or reverse any of the factual findings of fact or conclusions of law, including the findings of injury and causation. To the contrary, each member that participated in the vote reaffirmed his or her belief in the findings and conclusions. The Board was forced to rescind the order because it had been deprived any means to defend or enforce that order. The Board was also under significant misapprehension regarding the prospects of success in any litigation because Defendant Pagnotta gave them incorrect, one-sided and ultimately incompetent advice based on ignorance or because of the interests giving rise to his conflict, and because he was acting as an agent for the Mayor and Community Development Department and other conflicting interests in his firm rather than giving impartial and objective representation and advice to the Board.

71. The Board's decision to rescind the Emergency Order was coerced, involuntary and the result of improper outside interference by the Mayor, her subordinates and even the lawyer who had a legal duty to give them non-conflicted unbiased, good-faith

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<sup>23</sup> As of the date of this Complaint, there is no written order reflecting the rescission, nor has the Board approved its minutes for the June 1, 2022 meeting.

<sup>24</sup> Verizon Wireless almost immediately filed for voluntary dismissal of its suit challenging the Emergency Order.

professional advice and ensure they had a means to defend their actions but purposefully and intentionally did not.

72. The Board is named as a defendant herein because it is their coerced action rescinding the Emergency Order that has harmed the Plaintiffs by continuing the nuisance, adverse health consequences and the ongoing constructive eviction of some of the Plaintiffs. Plaintiffs emphasize, however, that in many respects the Board is as much a victim as the Plaintiffs. The Board and its members made every effort to perform their duties; they spent an extraordinary amount of time and effort collecting evidence and studying the extant science and medical information. They reached the right conclusions. The Board tried to get Verizon Wireless to engage in a collaborative effort to resolve the problem and entered the Emergency Order only because Verizon Wireless refused all entreaties to do so and stood its ground solely on the proposition that the Board of Health lacked the authority to protect Pittsfield residents even though Verizon Wireless' operation of the 877 South Street wireless facility was directly causing significant physical and financial harm. The Board's hands were effectively tied, not by the law but from external scheming and political efforts to prevent them from finding an effect solution to the harms it found.

73. The Court should vacate the rescission order and return the matter back to the Board so it can decide whether to reinstate the Emergency Order or take other administrative action consistent with state law to remove the nuisance and eliminate the health injuries visited on the Shacktown residents by 877 South Street wireless facility.

### **COUNT ONE – APPEAL OF DECISION**

74. Plaintiffs repeat the allegations of paragraphs 1 through 73.

75. The administrative record does not support the rescission of the Emergency Order.

76. The Board's rescission of the Emergency Order violated state law, which requires that health boards act to take administrative action to eliminate any nuisances or health risks found to exist in the community.

77. The Board's decision was rendered under duress and as a result of improper interference and meddling by the Mayor and City Solicitor and others, in violation of Pittsfield, MA Charter Art. 3, Section 3-2.

78. The decision to rescind the Emergency Order was made upon unlawful procedure and is infected with improper interference and conflicts of interest by the Mayor and City Solicitor.

79. WHEREFORE, Plaintiffs request that this court enter judgment as follows:

a. That the decision to rescind the Emergency Order was:

- A. in violation of constitutional provisions,
- B. in violation of or contrary to state law,
- C. in violation of or contrary to the Pittsfield Charter and Code,
- D. in excess or in the alternative in derogation of the Board's authority or jurisdiction,
- E. based upon error of law,
- F. made upon unlawful procedure,

G. tainted and rendered unlawful by the illicit actions of the Mayor, City Solicitor and/or others under the Mayor's influence and control,

H. is not supported by substantial evidence.

- b. Issue an Order vacating the rescission of the Emergency Order and remanding the matter to the Board for further consideration and action.
- c. Provide an award of costs and attorney's fees for bringing this action; and
- d. Provide such other relief as this court deems meet and just under the circumstances.

#### **COUNT TWO – MAYOR REFUSAL TO ENFORCE BOARD ORDER**

80. Plaintiffs repeat the allegations of paragraphs 1 through 79.

81. The Mayor violated her duty under Pittsfield, MA Charter Art. 3, Section 3-2 to "cause the ... orders of the city government to be enforced."

82. The Mayor's actions in relation to the 877 South Street wireless facility, either directly or indirectly through subordinates, have violated the Standards of Ethics applicable to municipal city elected officials and the state "nepotism law," G.L. c. 268A, §§ 19 and 23.

83. The Board's exercise of its legislatively assigned duties and required actions pursuant to G.L. c. 111, §§ 122-152 and the state Sanitary Code, including but not limited to Sanitary Code Chs. 11 and 410, are exempt from the Mayor's direction and control.

The Mayor illegally usurped the Board's independent powers, and impeded, interfered with and frustrated their exercise through direct intimidation and coercion and by wrongly using the Solicitor and Deanna Ruffer as her personal and political agents to carry out this campaign.

84. The decision to rescind the Emergency Order was made upon unlawful procedure.

85. WHEREFORE, Plaintiffs request that this court enter judgment as follows:

a. That the decision to rescind the Emergency Order was:

- A. in violation of constitutional provisions,
- B. in violation of or contrary to state law,
- C. in violation of or contrary to the Pittsfield Charter and Code,
- D. in excess, or in the alternative in derogation of the Board's authority or jurisdiction,
- E. based upon error of law,
- F. made upon unlawful procedure,
- G. tainted and rendered unlawful by the illicit actions of the Mayor, City Solicitor and/or others under the Mayor's influence and control,
- H. is not supported by substantial evidence.

b. Issue an Order vacating the rescission of the Emergency Order and remanding the matter to the Board for further consideration and action.

- c. Provide an award of costs and attorney's fees for bringing this action;  
  
and
- d. Provide such other relief as this court deems meet and just under the  
  
circumstances.

**COUNT THREE – CITY SOLICITOR CONFLICT, IMPROPER COERCION**

- 86. Plaintiffs repeat the allegations of paragraphs 1 through 85.
- 87. Defendant Pagnotta violated the rules of legal ethics and G.L. c. 268A § 23 by continuing to participate as counsel for the Board despite his self-declared incompetence and his actual and potential conflicts of interest.
- 88. Pagnotta has violated the Standards of Conduct for government officials set out in G.L. c. 268A, § 23(b)(3).
- 89. Pagnotta's improper actions carrying out the Mayor's illegal interference have contaminated the Board's proceedings, rendering the decision to rescind the Emergency Order illegal.
- 90. WHEREFORE, Plaintiffs request that this court enter judgment as follows:
  - a. That the decision to rescind the Emergency Order was:
    - A. in violation of constitutional provisions,
    - B. in violation of or contrary to state law,
    - C. in violation of or contrary to the Pittsfield Charter and Code,
    - D. in excess, or in the alternative in derogation, of the Board's authority or jurisdiction,

- E. based upon error of law,
  - F. made upon unlawful procedure,
  - G. tainted and rendered unlawful by the illicit actions of the Mayor, City Solicitor and/or others under the Mayor's influence and control,
  - H. is not supported by substantial evidence.
- b. Issue an Order vacating the rescission of the Emergency Order and remanding the matter to the Board for further consideration and action.
  - c. Provide an award of costs and attorney's fees for bringing this action; and
  - d. Provide such other relief as this court deems meet and just under the circumstances.

#### **COUNT FOUR – DECLARATORY JUDGMENT**

- 91. Plaintiffs repeat the allegations of paragraphs 1 through 90.
- 92. There exists an actual controversy as to whether the Board properly decided to rescind the Emergency Order.
- 93. Plaintiffs seek a declaration of the rights and obligations regarding the issues raised in Counts One, Two and Three.
- 94. WHEREFORE, Plaintiffs request that this court enter judgment declaring as follows:
  - a. That the Order was:

- A. in violation of constitutional provisions,
  - B. in violation of or contrary to state law,
  - C. in violation of or contrary to the Pittsfield Charter and Code,
  - D. in excess, or in the alternative in derogation, of the Board's authority or jurisdiction,
  - E. based upon error of law,
  - F. made upon unlawful procedure, and/or
  - G. is not supported by substantial evidence.
- b. That the Mayor had the duty to enforce the Board's Emergency Order.
  - c. That the Mayor committed prejudicial error of law by failing and refusing to cause "the charter, laws, ordinances and other orders of the city government to be enforced" as required by Pittsfield, MA Charter Art. 3, Section 3-2.
  - d. The Board's exercise of its legislatively assigned duties and required actions pursuant to G.L. c. 111, §§ 122-152 and the state Sanitary Code, including but not limited to Sanitary Code Chapters 11 and 410 are exempt from the Mayor's direction and control.
  - e. The Mayor illegally usurped the Board's independent state law deriving powers and duties, and impeded and interfered with and frustrated their exercise of those powers and duties through direct intimidation and coercion

and by wrongly using the Solicitor and others as her own political and personal agents to carry out this campaign.

- f. That the City Solicitor suffered actual conflicts of interest and was incompetent to provide legal advice and representation in the Board matter, and his improper involvement, incorrect advice, coercive actions and scheming to deprive the Board of legal representation wrongly forced the Board to rescind the Emergency Order.
- g. Pagnotta has violated the Standards of Conduct for government officials set out in G.L. c. 268A, § 23(b)(3).
- h. The City Solicitor's improper actions carrying out the Mayor's illegal interference have contaminated the Board's proceedings, rendering the decision to rescind the Emergency Order illegal.
- i. Provide an award of costs and attorney's fees for bringing this action;  
and
- j. Provide such other relief as this court deems meet and just under the circumstances.

#### **REQUEST FOR TRANSCRIPT OF HEARINGS**

Pursuant to Standing Order 1-96, paragraph 2, Plaintiffs hereby request that the Board provide a transcript of the record in this matter.

Plaintiffs further request that the city preserve a full record and transcript of all executive sessions during which the Verizon Wireless tower matter was discussed. Plaintiffs intend to seek access to those records during discovery.

Respectfully Submitted,

/s/ Paul Revere, III

Paul Revere, III

(BBO #636200)

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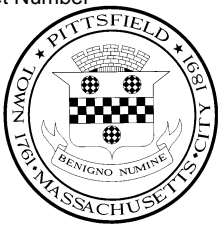
(pending *pro hac vice*)

Attorneys for Courtney Gilardi, Charlie Herzig, Judy Herzig, Mark Markham, Angelika Markham, and Elaine Ireland,

Date: July 28, 2022

**EXHIBIT ONE**

**April 2, 2022 Pittsfield Board of Health Emergency Order**



## PITTSFIELD BOARD OF HEALTH

*Roberta Orsi, MS, RN, CCP, Chairperson*

*Kimberly Loring, PMHNP-BC ~ Steve Smith, MA ~ Brad Gordon, JD ~ Jeffrey A. Leppo, MD*

April 11, 2022

Pittsfield Cellular Telephone Company  
d/b/a Verizon Wireless  
99 East River Drive  
East Hartford, CT 06108  
Att: Attorney Ellen W. Freyman

Pittsfield Cellular Telephone Company  
d/b/a Verizon Wireless  
Mark J. Esposito, Esq.  
Shatz, Schwartz & Fentin, P.C.  
1441 Main Street, Suite 1100  
Springfield, MA 01103

Farley White South Street, LLC  
Att: Roger W. Altreuter, Manager  
155 Federal Street, 18<sup>th</sup> Floor  
Boston, MA 02110

### EMERGENCY ORDER

**REQUIRING THAT PITTSFIELD CELLULAR TELEPHONE COMPANY, D/B/A VERIZON WIRELESS, AND FARLEY WHITE SOUTH STREET, LLC, SHOW CAUSE WHY THE PITTSFIELD BOARD OF HEALTH SHOULD NOT ISSUE A CEASE AND DESIST ORDER ABATING A NUISANCE AT 877 SOUTH STREET ARISING FROM THE OPERATION OF A VERIZON WIRELESS CELL TOWER THEREON AND CONSTITUTING IMMEDIATE ORDER OF DISCONTINUANCE AND ABATEMENT IF NO HEARING IS REQUESTED**

Pursuant to, *inter alia*, MGL 111 ss 122-125, 127-127I, 130, 143-144, 146-150, and State Sanitary Code 410.750, 410.831-832, 410.850-.960, the Board of Health deems the following actions necessary to protect the public health in the City of Pittsfield, State of Massachusetts.

**Whereas**, Verizon Wireless has constructed and operates a wireless telecommunications facility, a cell tower (the "facility"), located at 877 South Street, Pittsfield, Massachusetts, on property Verizon Wireless leases from owner Farley White South Street LLC. The Verizon Wireless facility was activated in August, 2020, and has been operating continuously since that date.

**Whereas**, soon after the facility was activated and began transmitting, the City started to receive reports of illness and negative health symptoms from residents living nearby the facility, and in particular, from residents living in the so-called "Shacktown" neighborhood. The negative health symptoms the affected residents have reported include complaints of headaches, sleep problems, heart palpitations, tinnitus (ringing in the ears), dizziness, nausea, skin rashes, and memory and cognitive problems, among other medical complaints.

**Whereas**, as further documented below, the neurological and dermatological symptoms experienced by the residents are consistent with those described in the peer-reviewed scientific and medical literature as being associated with exposure to pulsed and modulated Radio Frequency ("RF") radiation, including RF from cell towers.

**Whereas**, those symptoms are sometimes referenced in the scientific and medical literature as electromagnetic sensitivity, also known as Electro-Hypersensitivity ("EHS"), Microwave Sickness, or Radiation Sickness. All these names describe a syndrome where the afflicted develop one or more

recognized symptoms as a result of pulsed and modulated RF radiation (“RFR”). EHS is a spectrum condition. For some, the symptoms can become debilitating, and severely affect their ability to function.

**Whereas**, the federal government has officially recognized this syndrome in various ways. For example, in 2002, the “Access Board,” an independent federal agency responsible for publishing Accessibility Guidelines used by the U.S. Department of Justice to enforce the Americans with Disabilities Act (“ADA”), recognized that “electromagnetic sensitivities may be considered disabilities under the ADA.”<sup>1</sup> The Access Board contracted for the publication of the National Institute of Building Sciences 2005 report, which concludes that radiofrequency/electromagnetic frequency (RF/EMF) radiation is an “access barrier,” and can render buildings “inaccessible” to those with electromagnetic sensitivity. The report recommends accessibility guidelines.<sup>2</sup> For ADA Title I purposes, the U.S. Department of Labor’s Office of Disability Employment Policy has issued guidelines for accommodations; these guidelines emphasize exposure avoidance and list as a resource, the EMF Medical Conference 2021 which trains medical doctors on the issue of electromagnetic radiation and health.<sup>3 4</sup>

**Whereas**, The Centers for Disease Control’s 2022 Classification of Diseases Codes Clinical Modification and Procedural Classification System implements the International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM). The “diagnosis code” for Radiation Sickness” is “T66.”<sup>5</sup> The “injury” code for “Exposure to Other Nonionizing Radiation” is “W90.”<sup>6</sup> These codes cover electro-sensitivity along with other RF exposure-related injuries and maladies.

**Whereas**, the Health Board does not administer disability laws, but the foregoing authority strongly confirms that RF/EMF – even if emitted at levels within the FCC emissions guidelines – can be injurious to health or cause common injury to that significant portion of the public who are electromagnetic sensitive. Stated differently, pulsed and modulated RF can constitute a “public nuisance” or a “cause of sickness,” and can constitute a trade which may result in a nuisance or be dangerous to the public health for purposes of G.L. ch. 111 ss 122-125, 127B, 127C, 143-150, and 152.

**Whereas**, the federal government’s recognition that pulsed RF can directly cause harm to at least certain individuals or create an access barrier means that for the purposes of Massachusetts law, RF/EMF may effectively render certain dwellings Unfit for Human Habitation or constitute a Condition Which May Endanger or Materially Impair the Health or Safety and Well-Being of an Occupant as defined in State Sanitary Code 410.020 and 410.750(P).

**Whereas**, Verizon Wireless 877 South Street wireless facility is not itself a dwelling unit, but the Sanitary Code and other Massachusetts law allow the Health Board to act as necessary to ensure that

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<sup>1</sup> U.S. Access Board. (n.d.). *Indoor Environmental Quality*. U.S. Access Board - Introduction. Retrieved March 31, 2022, from <https://www.access-board.gov/research/building/indoor-environmental-quality/>.

<sup>2</sup> *IEQ Indoor Environmental Quality Project (IEQ)*. (n.d.). National Institute of Building Sciences (NIBS), The Architectural and Transportation Barriers Compliance Board (Access Board). <https://www.access-board.gov/files/research/IEQ-Report.pdf>.

<sup>3</sup> U.S. Department of Labor Office of Disability Employment Policy [Accommodations Webpage](#); Job Accommodation Network: [Accommodation and Compliance: Electrical Sensitivity](#) and [Accommodation and Compliance Series: Employees with Electrical Sensitivity Publication Downloads](#).

<sup>4</sup> [EMF – Medical Conference 2021](#) Continuing Medical Education for physicians and health professionals. Several experts who presented to the Board and provided information also presented at the EMF Medical conference including Sharon Goldberg MD, Magda Havas PhD, Paul Héroux, PhD, Cindy Russell MD, Sheena Symington, B.Sc., M.A., Cecelia Doucette, and Theodora Scarato, MSW.

<sup>5</sup> [2022 ICD-10-CM Diagnosis Code T66: Radiation sickness, unspecified](#). (n.d.). Retrieved March 31, 2022, from <https://www.icd10data.com/ICD10CM/Codes/S00-T88/T66-T78/T66-/T66>.

<sup>6</sup> [W90—ICD-10 Code for Exposure to other nonionizing radiation—Non-billable](#). (n.d.). ICD-10 Data and Code Lookup. Retrieved March 31, 2022, from <https://icd10coded.com/cm/W90/>.

activity or operations in a non-dwelling building, structure, or facility do not contribute to conditions that impact occupants of a dwelling to the point they render a dwelling unfit for habitation for purposes of Sanitary Code 410.831.

**Whereas**, the Health Board has been presented with credible, independent, and peer-reviewed scientific and medical studies and reports that provide convincing evidence that pulsed and modulated RFR is bio-active and affects all living things over the long term. RFR can and does also cause more immediate harm and injury to human beings. The Health Board has also received strong evidence that the Verizon Wireless 877 South Street wireless facility is presently causing such harm and injury to numerous residents in the adjacent neighborhood.

**Whereas**, City of Pittsfield residents have submitted to the Health Board over 11,000 pages of evidence of studies, reports, and scientific and medical experts' opinion about the dangers to human health and the environment caused by exposure to wireless radiation.<sup>7</sup> The Health Board also has heard testimony from medical professionals who directly treat patients injured by RF/EMF as well as testimony from scientific experts. The Board has been presented with personal testimony from many of the City of Pittsfield residents who have been personally harmed by pulsed and modulated RF radiation transmitted from the Verizon Wireless 877 South Street wireless facility's operations. *Specifically, but without limitation, the Health Board bases its conclusions, findings, and actions on all the scientific, medical, and personal evidence that has been submitted, but provides this general summary:*

1. The evidence presented to the Board includes well over one thousand peer-reviewed scientific and medical studies which consistently find that pulsed and modulated RFR has bio-effects and can lead to short- and long-term adverse health effects in humans, either directly or by aggravating other existing medical conditions. Credible, independent peer-reviewed scientific and medical studies show profoundly deleterious effects on human health, including but not limited to: neurological and dermatological effects; increased risk of cancer and brain tumors; DNA damage; oxidative stress; immune dysfunction; cognitive processing effects; altered brain development, sleep and memory disturbances, ADHD, abnormal behavior, sperm dysfunction, and damage to the blood-brain barrier.<sup>8</sup>
2. Peer-reviewed studies have demonstrated that pulsed and modulated RFR can cause the symptoms suffered by and personally attested to by City of Pittsfield's residents, including studies showing that these symptoms can develop as a result of exposure to cell towers specifically.
3. The symptoms described by City of Pittsfield's residents are often referred to in the scientific and medical literature as "electrosensitivity." The record evidence shows that exposure to pulsed and modulated RFR within the emission limits authorized by the FCC can cause the

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<sup>7</sup> [Environmental Health Trust et al. v. FCC Key Documents](https://ehtrust.org/environmental-health-trust-et-al-v-fcc-key-documents/) [Volume 1](#), [Volume 3](#), [Volume](#), [Volume 5](#), [Volume 6](#), [Volume 7](#), [Volume 8](#), [Volume 9](#), [Volume 10](#), [Volume 11](#), [Volume 12](#), [Volume 13](#), [Volume 14](#), [Volume 15](#), [Volume 16](#), [Volume 17](#), [Volume 18](#), [Volume 19](#), [Volume 20](#), [Volume 21](#), [Volume 22](#), [Volume 23](#), [Volume 24](#); [Volume 25](#), [Volume 26](#), [Volume 27](#) <https://ehtrust.org/environmental-health-trust-et-al-v-fcc-key-documents/>.

<sup>8</sup> [The California Medical Association Wireless Resolution](https://ehtrust.org/the-california-medical-association-wireless-resolution/). (2015, March 9). *Environmental Health Trust*. <https://ehtrust.org/the-california-medical-association-wireless-resolution/>; bioadmin. (n.d.). [Conclusions—BIOINITIATIVE 2012—CONCLUSIONS Table 1-1](https://bioinitiative.org/conclusions/), *The BioInitiative Report*. Retrieved March 19, 2022, from <https://bioinitiative.org/conclusions/>; bioadmin. (n.d.). [Table of Contents](https://bioinitiative.org/table-of-contents/), *The BioInitiative Report*. Retrieved March 19, 2022, from <https://bioinitiative.org/table-of-contents/>; [EMFscientist.org—International EMF Scientist Appeal](https://www.emfscientist.org/). (n.d.). Retrieved March 19, 2022, from <https://www.emfscientist.org/index.php/emf-scientist-appeal>.

symptoms, injuries, and mechanisms of harm associated with electrosensitivity and exhibited by the residents near the facility.<sup>9</sup>

4. Electrosensitivity describes a constellation of mainly neurological symptoms that occur as a result of exposure to pulsed and modulated RFR. The symptoms described in the scientific and medical literature include headaches, sleep problems, heart palpitations, ringing in the ears, dizziness, nausea, skin rashes, memory, and cognitive problems, among others. According to the evidence, exposure avoidance is the only effective management.

5. There are diagnosis guidelines. The European Academy of Environmental Medicine (EUROPAEM) published the “*EUROPAEM EMF Guideline 2016 for the prevention, diagnosis and treatment of EMF-related health problems and illnesses*.”<sup>10</sup> These peer-reviewed guidelines cite 235 scientific references for symptoms, physiological damage, and mechanisms of harm. These guidelines have been used by doctors in the U.S. and throughout the world. Dr. Sharon Goldberg, MD, who diagnosed three City of Pittsfield residents with electro-sensitivity following their continuous exposure to the Verizon Wireless 877 South Street wireless facility, uses these guidelines. Dr. Goldberg has provided this Board with documentation and supporting information on the injuries suffered by these three Shacktown residents which Dr. Goldberg has opined to a reasonable degree of medical certainty have been caused by their exposure to the wireless radiation being emitted by this facility.

6. The recent U.S. government reports regarding the “mystery illness” of U.S. diplomats in Cuba, China, Austria, and elsewhere provide further support that pulsed RF can cause injury similar to that suffered by Shacktown residents. In December 2020, the National Academy of Sciences, Engineering, and Medicine (NAS) concluded<sup>11</sup> that the diplomats’ “mystery illness” is likely caused by pulsed RF. Prof. Beatrice Golomb, MD, PhD, 2018, wrote the first paper analyzing the science and showed that pulsed RFR is the likely cause of the symptoms suffered by some US diplomats in Cuba and China.<sup>12</sup> Her analysis relies on government studies as well as studies on commercial wireless devices and technology, and demonstrates how the diplomats’ symptoms can result from pulsed RFR exposure. Dr. Golomb concluded that the diplomats likely suffer from electrosensitivity (which she refers to as “Microwave Illness”). Most recently, on February 1, 2022, the federal government published a report adopting the conclusion of the NAS, finding that pulsed RFR is likely the cause of the diplomats’ sickness.<sup>13</sup>

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<sup>9</sup> Belyaev, I., Dean, A., Eger, H., Hubmann, G., Jandrisovits, R., Kern, M., Kundi, M., Moshhammer, H., Lercher, P., Müller, K., Oberfeld, G., Ohnsorge, P., Pelzmann, P., Scheingraber, C., & Thill, R. (2016). [EUROPAEM EMF Guideline 2016 for the prevention, diagnosis and treatment of EMF-related health problems and illnesses](#). *Reviews on Environmental Health*, 31(3), 363–397. <https://doi.org/10.1515/reveh-2016-0011> ; Bray, R. (n.d.). [Electromagnetic Hypersensitivity](#). 81. <https://maisonsaine.ca/uploads/2016/09/ehs-bray-13-08-2016.pdf>.

<sup>10</sup> Belyaev, I., Dean, A., Eger, H., Hubmann, G., Jandrisovits, R., Kern, M., Kundi, M., Moshhammer, H., Lercher, P., Müller, K., Oberfeld, G., Ohnsorge, P., Pelzmann, P., Scheingraber, C., & Thill, R. (2016). [EUROPAEM EMF Guideline 2016 for the prevention, diagnosis and treatment of EMF-related health problems and illnesses](#). *Reviews on Environmental Health*, 31(3), 363–397. <https://doi.org/10.1515/reveh-2016-0011>.

<sup>11</sup> National Academies of Sciences, E., and Medicine. (2020). [An Assessment of Illness in U.S. Government Employees and Their Families at Overseas Embassies](#). The National Academies Press. <https://doi.org/10.17226/25889>.

<sup>12</sup> Golomb, B. A. (2018). [Diplomats’ Mystery Illness and Pulsed Radiofrequency/Microwave Radiation](#). *Neural Computation*, 30(11), 2882–2985. [https://doi.org/10.1162/neco\\_a\\_01133](https://doi.org/10.1162/neco_a_01133).

<sup>13</sup> [Executive Summary DECLASSIFIED by DNI Haines on 1 February 2022](#). (2022). [https://www.dni.gov/files/ODNI/documents/assessments/2022\\_02\\_01\\_AHI\\_Executive\\_Summary\\_FINAL\\_Redacted.pdf](https://www.dni.gov/files/ODNI/documents/assessments/2022_02_01_AHI_Executive_Summary_FINAL_Redacted.pdf).

7. As the record shows, there is evidence of clusters of sickness around cell towers. Evidence filed in the *Environmental Health Trust, et al. v. FCC case*<sup>14</sup> and provided to the Board of Health shows that California firefighters developed electrosensitivity symptoms after a cell tower was installed on their stationhouse, including headaches, memory problems, sleeping problems, depression, and other neurological problems. SPECT brain scans found brain abnormalities. Additionally, TOVA testing found delayed reaction time, lack of impulse control, and difficulty in maintaining mental focus. Following these incidents, the International Association of Fire Fighters Division of Occupational Health Safety and Medicine investigated evidence of pulsed and modulated RF harm, and published a resolution opposing the use of fire stations as base stations for towers and/or antennas for the conduction of cell phone transmissions.<sup>15</sup>

8. In November 2020, New Hampshire's Commission to Study the Environmental and Health Effects of Evolving 5G Technology (the Commission was established by the State Legislature to learn about the health effects of 5G wireless radiation), published a report which concludes that RF emissions at levels below the FCC emissions guidelines can be harmful. The Committee's final report followed a thorough study of the evidence. The Committee's final report recommends adoption of cell tower antenna setbacks and acknowledges electrosensitivity and its association with RFR exposure.<sup>16</sup> Dr. Kent Chamberlin, former Chair, Department of Computer and Electrical Engineering, University of New Hampshire, and Dr. Paul Heroux, PhD, Professor of Toxicology and Health Effects of Electromagnetism, McGill University Faculty of Medicine, two of the expert members of the New Hampshire Committee, have provided testimony to the Pittsfield City Council about the health effects of RFR exposure, and this testimony has been included in the record considered by this Board.

9. Other highly-credentialed, independent academic research experts have also offered testimony, at no cost, in support of residents' contentions that the Verizon Wireless 877 South Street wireless facility is the cause of their electrosensitivity symptoms. Experts include Dr. Martha Herbert, MD PhD, pediatric neurologist and former Assistant Professor at Harvard Medical School, and Dr. Magda Havas PhD., Professor Emeritus, Trent School of the Environment, Trent University.

10. Professor David Carpenter, MD, former Dean, School of Public Health at University of Albany, New York, wrote a letter to the City of Pittsfield in which he discussed studies showing that cell towers increase cancer risk, and cause changes in hormones as well as electrosensitivity symptoms, including headaches, fatigue, "brain fog," and ringing in the ears. Dr. Carpenter has published numerous studies on the negative health effects of electromagnetic radiation which have been submitted to this Board and are part of the record herein.<sup>17</sup> Dr. Carpenter is the co-

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<sup>14</sup> *Env'tl. Health Tr., et al. v. FCC*, 9 F.4th 893 (D.C. Cir. 2021).

<sup>15</sup> [Cell Tower Radiation Health Effects](https://www.iaff.org/cell-tower-radiation/). (2004). *IAFF*. Retrieved March 19, 2022, from <https://www.iaff.org/cell-tower-radiation/>; Susan Foster Ambrose, M.S.W., Medical Writer. (2004). *INTERNATIONAL ASSOCIATION OF FIREFIGHTERS (IAFF) VOTES TO STUDY HEALTH EFFECTS OF CELL TOWERS ON FIRE STATIONS Call for Moratorium on New Cell Towers on Fire Stations Until Health Effects Can Be Studied*. Advancing Sound Public Policy on the Use of Electromagnetic Radiation (EMR). [https://ehtrust.org/wp-content/uploads/pr\\_iaff\\_vote-1.pdf](https://ehtrust.org/wp-content/uploads/pr_iaff_vote-1.pdf).

<sup>16</sup> [Final Report of the Commission to Study The Environmental and Health Effects of Evolving 5G Technology](http://www.gencourt.state.nh.us/statstudcomm/committees/1474/reports/5G%20final%20report.pdf) (HB 522, Chapter 260, Laws of 2019, RSA 12-K:12–14). (2020). State of New Hampshire. <http://www.gencourt.state.nh.us/statstudcomm/committees/1474/reports/5G%20final%20report.pdf>.

<sup>17</sup> Bandara, P., & Carpenter, D. O. (2018). [Planetary electromagnetic pollution: It is time to assess its impact](https://doi.org/10.1016/S2542-5196(18)30221-3). *The Lancet. Planetary Health*, 2(12), e512–e514. [https://doi.org/10.1016/S2542-5196\(18\)30221-3](https://doi.org/10.1016/S2542-5196(18)30221-3).

editor of the BioInitiative Report,<sup>18</sup> a scientific review of the science on RF/EMF by independent expert scientists. The report reviewed approximately 2,000 published studies on RFR health effects. After it was first released, the content of the Bioinitiative Report underwent peer review and was published in condensed form as a special two-volume issue of the Journal Pathophysiology. Additional chapters have been published in various journals.<sup>19</sup> The Report concludes that bio-effects from wireless technology and infrastructure, including from cell towers, occur at radiation levels significantly below the FCC's emissions guidelines as documented in published research. The Report finds that the overwhelming majority of published neurological studies show bio-effects.<sup>20</sup> Over 90 percent of the studies that examine the oxidative stress mechanism (a mechanism of harm associated also with electro-sensitivity) show bio-effects.<sup>21</sup> The Report contains cell tower exposure studies that show harmful effects of radiation emitted by cell towers, and demonstrate that exposure to pulsed RF causes hormonal and cell stress effects at radiation levels far, far lower than the FCC emissions guidelines.<sup>22</sup> According to the 2012 Report's conclusion, public safety standards are 10,000 or more times higher than levels now commonly reported in mobile phone base station studies that reveal bio-effects. Because of the actual evidence of harm to humans from exposure to wireless radiation transmissions from cell towers, the Report uses mobile phone base station-RFR levels studies and other studies with very, very low RF exposures to determine the "lowest observed effect level" for RFR exposure as the basis for its recommendations for biologically-based exposure guidelines.<sup>23</sup>

11. Dr. Cindy Russell, a medical doctor and the executive director of "*Physicians for Safe Technology*,"<sup>24</sup> provided a synopsis of 28 studies showing cell tower harm in her letter to this Board, dated July 6, 2021, which explains how it is "well established" that wireless radiation at non-thermal levels causes oxidative stress, and "oxidative stress plays a major part in the development of chronic, degenerative, and inflammatory illnesses such as cancer, autoimmune

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<sup>18</sup> bioadmin. (n.d.). Table of Contents. *The BioInitiative Report*. Retrieved March 19, 2022, from <https://bioinitiative.org/table-of-contents/>.

<sup>19</sup> Martin Blank (Ed.). (2009). [Electromagnetic Fields \(EMF\) Special Issue](https://doi.org/10.1016/S0928-4680(09)00066-2). *Pathophysiology*, 16(2–3), CO2. [https://doi.org/10.1016/S0928-4680\(09\)00066-2](https://doi.org/10.1016/S0928-4680(09)00066-2); Hardell, L., & Sage, C. (2008). [Biological effects from electromagnetic field exposure and public exposure standards](https://doi.org/10.1016/j.biopha.2007.12.004). *Biomedicine & Pharmacotherapy*, 62(2), 104–109. <https://doi.org/10.1016/j.biopha.2007.12.004>; Herbert, M. R., & Sage, C. (2013). Autism and EMF? Plausibility of a pathophysiological link – Part I. *Pathophysiology*, 20(3), 191–209. <https://doi.org/10.1016/j.pathophys.2013.08.001>; Herbert, M. R., & Sage, C. (2013). Autism and EMF? Plausibility of a pathophysiological link part II. *Pathophysiology*, 20(3), 211–234. <https://doi.org/10.1016/j.pathophys.2013.08.002>.

<sup>20</sup> Neurological Effects Studies Percent Comparison, BioInitiative. (2022). <https://bioinitiative.org/wp-content/uploads/2020/10/13-Neurological-Effects-Studies-Percent-Comparison-2020.pdf>.

<sup>21</sup> Henry Lai. (n.d.). Research Summaries. *The BioInitiative Report*. Retrieved March 19, 2022, from <https://bioinitiative.org/research-summaries/>; Neurological Effects Studies Percent Comparison, BioInitiative. (2022). <https://bioinitiative.org/wp-content/uploads/2020/10/13-Neurological-Effects-Studies-Percent-Comparison-2020.pdf>.

<sup>22</sup> BUCHNER K, EGER H (2011) [A Long-term Study Under Real-life Conditions / Umwelt-Medizin-Gesellschaft](https://www.avaate.org/IMG/pdf/Rimbach-Study-20112.pdf) 24(1): 44-57. <https://www.avaate.org/IMG/pdf/Rimbach-Study-20112.pdf>.

<sup>23</sup> Henry Lai. (n.d.). Research Summaries. *The BioInitiative Report*. Retrieved March 19, 2022, from <https://bioinitiative.org/research-summaries/>; Neurological Effects Studies Percent Comparison, BioInitiative. (2022). <https://bioinitiative.org/wp-content/uploads/2020/10/13-Neurological-Effects-Studies-Percent-Comparison-2020.pdf>.

<sup>24</sup> Physicians for Safe Technology | Cell Tower Radiation Health Effects. (2017, September 11). *Physicians for Safe Technology*. <https://mdsafetech.org/cell-tower-health-effects/>.

disorders, aging, cataracts, rheumatoid arthritis, cardiovascular and neurodegenerative diseases, as well as some acute pathologies (trauma, stroke). Effects of oxidative stress are cumulative.”<sup>25</sup>

12. Devra Davis PhD, MPH, the founder of the Environmental Health Trust, sent a scientific letter and briefing materials to this Board, documenting the published science indicating how FCC limits do not ensure safety to human health, and how legal levels of wireless radiation can damage the health of children, pregnant women, and the medically vulnerable. Studies of wireless radiation exposure from cell towers document neuropsychiatric problems, elevated diabetes, headaches, sleep problems, and genetic damage.<sup>26</sup> Attached to the letter were several published articles, including an article published in the journal *Lancet Planetary Health*, which presented an evaluation by the Oceania Radiofrequency Scientific Advisory Association of 2266 studies (including in-vitro and in-vivo studies in human, animal, and plant experimental systems and population studies). The evaluation found that most studies have demonstrated significant biological or health effects associated with exposure to anthropogenic electromagnetic fields.<sup>27</sup> Furthermore, a scientifically referenced Environmental Health Trust White Paper addressed common misconceptions around the health effects of wireless radiation.<sup>28</sup>

13. These and other studies and reports in the record before this Board show that wireless radiation transmitted from cell towers can have adverse effects even when the pulsed and modulated RF emissions are significantly lower than the FCC’s emission guidelines. Compliance with FCC emission limits does not ensure safety nor protection from all harm. Published studies provided to the Board show negative health effects on human beings at legally allowed levels including: neurological effects and adverse effects on well-being, clear, measurable, physiological effects, hormonal changes, oxidative stress damage, negative effects on sperm, increased cancer risk, and DNA damage.<sup>29</sup>

14. Epidemiological studies demonstrate that exposure to wireless radiation emissions from cell towers causes symptoms similar to those suffered by Shaktown residents as a result of the operation of the Verizon Wireless 877 South Street wireless facility. The record includes a 2010 review of wireless radiation exposure from cell towers and numerous other studies which are relevant to chronic long-term exposure similar to that from cell towers. Effects documented in these studies include various neurological symptoms such as fatigue, sleep problems, headaches and other effects on “wellbeing” proportionate to the distance from the cell tower.<sup>30 31 32</sup> A

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<sup>25</sup> Russell, C., (2021, July 6). [Cindy Russell MD to Pittsfield Board of Health. RE: Pittsfield testing of RFR emissions](#). [Letter].

<sup>26</sup> Scarato, T., (2021, May 27). [Theodora Scarato to Gina Armstrong, City of Pittsfield Board of Health](#); Davis, D., et al., (2021, April 21). [Dr. Devra Davis, et al., to the Honorable Joseph R. Biden, President/Science/Briefing](#). [Letters].

<sup>27</sup> Priyanka Bandara, David O Carpenter, [Planetary electromagnetic pollution: it is time to assess its impact](#), *The Lancet Planetary Health*, Volume 2, Issue 12, 2018, Pages e512-e514, ISSN 2542-5196, [https://doi.org/10.1016/S2542-5196\(18\)30221-3](https://doi.org/10.1016/S2542-5196(18)30221-3).

<sup>28</sup> [Myth Fact Scientific Response EHT 2022](#).

<sup>29</sup> See Appendices I and II.

<sup>30</sup> Abdel-Rassoul, G., El-Fateh, O. A., Salem, M. A., Michael, A., Farahat, F., El-Batanouny, M., & Salem, E. (2007).

[Neurobehavioral effects among inhabitants around mobile phone base stations](#). *Neurotoxicology*, 28(2), 434–440. <https://doi.org/10.1016/j.neuro.2006.07.012>; Khurana, V., Hardell, L., Everaert, J., Bortkiewicz, A., Carlberg, M., & Ahonen, M. (2010). [Epidemiological Evidence for a Health Risk from Mobile Phone Base Stations](#). *International Journal of Occupational and Environmental Health*, 16, 263–267. <https://doi.org/10.1179/107735210799160192>.

<sup>31</sup> Levitt, B. B., & Lai, H. (2010). [Biological effects from exposure to electromagnetic radiation emitted by cell tower base stations and other antenna arrays](#). *Environmental Reviews*, 18(NA), 369–395. <https://doi.org/10.1139/A10-018>.

<sup>32</sup> [78 Studies Showing Health Effects from Cell Tower Radio Frequency](#); Oberfeld, G., & Gustavs, K. (2007). *Environmental Medicine Evaluation* (30). 48.

telecom company study found exposure to cell towers causes a variety of neurological symptoms and a dose response. The study also found a causal relationship with sleep disturbance. When, unknown to the subjects, the company secretly turned off the antennas for three days, the sleep quality improved in all subject groups that were studied.<sup>33</sup>

15. Evidence of electrosensitivity and its association to pulsed and modulated RF exposure, as well as evidence of harm to human health and the environment from exposure to wireless radiation from cell towers was filed in the case of *Environmental Health Trust, et al., v. Federal Communications Commission (FCC)* in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners challenged the FCC's decision in 2019 not to review and update its 1996 guidelines for wireless radiation emissions, following a multi-year proceeding to examine the developing science on the health and environmental effects of exposure to wireless radiation. The FCC determined in 2019 that its 1996 guidelines did not need to be updated.<sup>34</sup> On appeal, the DC Circuit court reversed the FCC, ruling in August 2021 that the FCC's determination that there is no evidence of non-cancerous and environmental harm from RF emissions below the FCC 1996 emissions guidelines was arbitrary, capricious, and not evidence-based. The DC Circuit court ruled that the FCC failed to explain why, despite the substantial evidence of harm filed in the FCC record, the agency decided to not further review its 1996 guidelines for possible updating. The DC Circuit remanded the case back to the FCC, and ordered the FCC to "*address the impacts of RF radiation on children, the health implications of long-term exposure to RF radiation*" as well as *environmental effects, new technological developments and adequacy of RF test procedures*. However, as of today's date, the FCC has not provided any response to the court order. Thus, while the 1996 FCC wireless emissions guidelines remain in effect, they have not been updated in 26 years, and they have not been substantiated by an up-to-date scientific review by any federal regulatory agency. Evidence provided to this Board confirms that when it comes to cell tower network RF emissions, there is no federal regulatory agency with health expertise monitoring the published science, nor providing surveillance for health effects, nor measuring RF levels in the environment.<sup>35</sup> As is also documented in a letter from the Environmental Protection Agency (the "EPA") to Theodora Scarato of Environmental Health Trust, the EPA has not reviewed the research on biological effects of exposure to wireless radiation since 1984.<sup>36</sup> The FDA has not reviewed the safety of environmental RF levels. The FDA stated in a letter<sup>37</sup> to a family requesting information on the safety of base station antennas that: "The Food and Drug Administration (FDA) does not regulate cell towers or cell tower radiation. Therefore, the FDA has no studies or information on cell towers to provide in response to your questions." The lack of oversight for the health effects of cell tower network radiofrequency exposure is a serious gap in

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<sup>33</sup> Cherry, N.J. (2002). [Evidence of neurological effects of electromagnetic radiation: implications for degenerative disease and brain tumour from residential, occupational, cell site and cell phone exposures \(9\)](#).

<sup>34</sup> *Environmental Health Trust, et al v. FCC*, 9 F.4th 893 (D.C. Cir. 2021).  
[https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/\\$file/20-1025-1910111.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/$file/20-1025-1910111.pdf).

<sup>35</sup> [Myth Fact Scientific Response by Environmental Health Trust 2022](#), sent to Pittsfield Board of Health by Courtney Gilardi.

<sup>36</sup> Scarato, T., (2021, May 27). [Theodora Scarato to Gina Armstrong, City of Pittsfield Board of Health](#); Davis, D., et al., (2021, April 21). EPA letter is page 24 of [Dr. Devra Davis, et al., to the Honorable Joseph R. Biden, President/Science/Briefing](#). [Letters].

<sup>37</sup> Theodora Scarato presentation of the FDA letter in a video presentation submitted to Pittsfield Board of Health, [Pittsfield MA Expert Forum on Cell Tower Cease-and-Desist Order](#), at minute 54:24, and also in [Myth Fact Scientific Response EHT 2022](#), under section "Myth: The Food And Drug Administration (FDA) has reviewed the science on 5G and cell towers and determined the radiation is safe and FCC limits protect public health."

federal accountability, especially when research documenting harmful effects continues to be published in respected journals.

16. In November 2021, scientific and policy experts, including Dr. Linda Birnbaum, former Head of the National Institute of Environmental Health Sciences and National Toxicology Program, Dr. Ronald Melnick, National Institute of Health scientist (now retired), Dr. Anthony Miller, Dr. Jerome A. Paulson, Devra Davis, PhD, and several others, sent new requests to the FCC calling for a full examination of the latest scientific evidence in order for the U.S. to develop regulatory safety limits that protect the public and environment from wireless radiation exposure. Included in their filing are over 1,000 pages of reports and studies on demonstrating harm to humans from exposure to RF radiation, including electrohypersensitivity, and harm to humans from exposure to RF radiation from cell towers specifically. The Environmental Health Trust filing to the FCC docket also includes letters from the BioInitiative Report, Environmental Working Group, Consumers for Safe Cell Phones, Phonegate Alert, and Dr. Kent Chamberlin.<sup>38</sup>

17. The questions raised by the DC Circuit Court and the compelling scientific evidence submitted to this Board allows only one conclusion: pulsed and modulated RFR can and does cause harm, and at least a certain segment of the population can be severely harmed when exposed to this wireless radiation, especially for continuous periods of time. Exposure to wireless radiation can lead to significant temporary and possibly permanent injury, and according to the evidence, it seems that the most effective method to reduce the symptoms and mitigate the harm is through exposure avoidance.

18. This Board also finds that the information and testimony provided by Verizon Wireless do not convince this Board otherwise. In particular, this Board invited Verizon Wireless to meet by Zoom in September 2021 with Board Member Brad Gordon, then-Director of Public Health Gina Armstrong, and then-Senior Sanitarian (now current Director of Public Health) Andy Cambi to discuss the concerns of the City of Pittsfield Health Department, this Board, and residents of the City of Pittsfield about the wireless radiation emissions from the Verizon Wireless 877 South Street wireless facility ever since that facility was activated in August 2020. These concerns arose from the complaints reported by numerous residents of the adjacent residential neighborhood of negative health symptoms these residents and their relatives had been and were continuing to suffer from what they believed to be exposure to the continuous wireless radiation being transmitted from that Verizon Wireless facility. On September 9, 2021, Verizon Wireless appeared at the Board of Health Zoom session, represented by Verizon General Counsel New England Market, attorney Joshua E. Swift, Verizon Wireless Network Engineer, Jay Latorre, Verizon Wireless State and Government Affairs Director, Ellen Cummings, and Dr. Eric S. Swanson, Professor, Department of Physics and Astronomy, University of Pittsburgh. Professor Swanson was the primary spokesperson for Verizon Wireless at this meeting.

19. Professor Swanson presented prepared remarks, accompanied by a Powerpoint slide presentation. The Board did not place any time limits on Professor Swanson's presentation, and Ms. Armstrong and Mr. Gordon asked Professor Swanson many questions following his remarks. Professor Swanson's main points included: (a) electromagnetic radiation is the best understood phenomenon in the universe; it is not nuclear radiation; (b) electromagnetic waves form the

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<sup>38</sup> <https://ecfsapi.fcc.gov/file/11302824721650/Remand%20Filing%20-%20Nov%2030th.pdf>; Linda S. Birnbaum, PhD, et al. (2021, November 24). *FCC Record Refresh Letter from Scientists to The Honorable Jessica Rosenworcel, Commissioner, Acting Chairwoman, Federal Communications Commission*. <https://ehtrust.org/wp-content/uploads/FCC-Record-Refresh-Letter-from-ScientistsWireless-Radiation.pdf>; [Scientific and Policy Developments in Radiofrequency Radiation](https://ehtrust.org/wp-content/uploads/New-Scientific-Developments-in-RFR-FCC-EHT-Remand-with-Studies-2.pdf) (2019 - 2021), <https://ehtrust.org/wp-content/uploads/New-Scientific-Developments-in-RFR-FCC-EHT-Remand-with-Studies-2.pdf>; Environmental Working Group, *The Bioinitiative Report*, *Consumers for Safe Cell Phones*, *New Hampshire State Commission on 5G*.

spectrum; (c) some radiation is ionizing which can sometimes cause cancer; (d) electromagnetic waves below the ionization threshold cannot cause cancer; (e) only wavelengths above visible light on the spectrum are ionizing; (f) wavelengths in the visible light portion of the spectrum are non-ionizing, and cannot cause cancer; (g) wavelengths below visible light on the spectrum, including thermal, microwave, 5G, 4G, and radio, are non-ionizing, and cannot cause cancer; (h) the only verified biological effect on tissue of non-ionizing radiation is heating; (i) the FCC regulates RFR to limit thermal effects, and FCC limits are very strict, set at 1/50 of the level of what is detectable in animal experiments; (j) the FCC limits are based on the evaluation of thousands of studies and the recommendations of expert organizations and agencies; (k) various international regulatory agencies and health organizations have concluded that there is no established evidence for health effects from radio waves used in mobile communications; (l) the FCC regularly updates its rules; (m) the consensus view of all scientists is that wireless radiation does not and cannot cause cancer; all studies to the contrary are from fringe scientists and those studies all show confirmation bias.

20. Following Professor Swanson's remarks, Ms. Armstrong acknowledged, without accepting, his contention that exposure to wireless radiation cannot cause cancer. But she pointed out that the immediate medical symptom residents of the Shacktown neighborhood adjacent to the Verizon Wireless 877 South Street wireless facility were complaining about were not cancer or thermal effects, but rather, headaches, tinnitus, and other conditions typical of electrohypersensitivity. Ms. Armstrong asked Professor Swanson to explain how to deal with those symptoms. Professor Swanson responded by insisting that the only verifiable biological effect of non-ionizing wireless radiation is heat, and the FCC so strictly regulates those emissions levels that heat cannot pose a problem from that Verizon Wireless cell tower. Professor Swanson acknowledged that certain people truly believe that they are hypersensitive to wireless radiation. But Professor Swanson suggested that those persons have psychological issues, and they should be dealt with sympathetically. Professor Swanson maintains that transmission of wireless radiation from Verizon's cell tower cannot actually cause those persons any injury because the immutable laws of physics make that impossible.

21. This Board has reviewed Professor Swanson's presentation and discussion and finds Professor Swanson's conclusions, several of which are strident and absolute, to lack credibility. A major problem with Professor Swanson is that he speaks as a purported expert about matters of human health and disease and medical and scientific studies about the health effects of exposure to wireless radiation, but he lacks any academic or professional qualifications in those fields. Professor Swanson is a professor of theoretical physics.<sup>39</sup> Professor Swanson's research interests focus on esoteric topics in nuclear physics, cosmology, and hadronic physics, especially in learning how "quarks" and "gluons" build the universe. All 124 of Professor Swanson's published scientific studies are limited to these subject areas.<sup>40</sup> Professor Swanson is not a medical doctor. Professor Swanson has no professional training or qualifications in medicine, medical research, biology, environmental studies, public health, epidemiology, or toxicology, and his professional credentials show no such expertise. *See* fn. 39. Yet Professor Swanson rejects the more than 2,000 peer-reviewed scientific studies showing that wireless radiation may or does negatively impact human health as outliers by "fringe" scientists who may be "conspiracy theorists" with an axe to grind, and asserts that their studies all show "confirmation bias." Professor Swanson asserts unequivocally that "the scientific consensus" is that wireless radiation cannot cause human harm. This Board finds that Professor Swanson lacks the qualifications and

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<sup>39</sup> <https://www.physicsandastronomy.pitt.edu/people/eric-s-swanson>.

<sup>40</sup> <https://inspirehep.net/literature?sort=mostrecent&size=100&page=2&q=fin%20a%20swanson%2C%20e%20s>.

the expertise to make such sweeping statements, and his credibility as a witness is severely undermined thereby.

22. Further undermining Professor Swanson's credibility is his appearance before this Board as a paid expert on behalf of Verizon Wireless, retained through his consulting business, Swanson Scientific Consulting.<sup>41</sup> On Professor Swanson's private consulting business website, he lists on the "Past Clients" tab, "Pittsfield, MA," one of his 20 listed "Scientific Presentations and Depositions to Cities." Professor Swanson also lists presentations to 5 State Senate Committees, the New York State Senators, the New Jersey Urban Mayors Association, and the Center for Growth and Opportunity. He names Verizon and Crown Castle Development (a major cell tower operator) as clients, as well as CTIA, the U.S. wireless industry's trade and lobbying association. *See fn. 41.* This Board, in assessing Professor Swanson's credibility, takes notice that he works as a paid industry consultant when making presentations such as the one he made to this Board regarding matters outside of his academic research and professional qualifications. In contrast, the experts who presented to this Board and spoke about the hazards to human health posed by wireless radiation from cell towers all had particular professional qualifications in the subject matter; none of these experts has received any compensation for their appearances before this Board, and all are independent academic researchers, with no affiliation to Verizon Wireless and the telecommunications industry. These facts enhance the credibility of these experts, especially vis-a-vis Professor Swanson.

23. Verizon Wireless also submitted to this Board documents which consist primarily of self-promotional brochures or industry-funded advocacy pieces rather than peer-reviewed scientific studies. These materials generally deny *any* prospect of harm, but do not meaningfully address the scientific evidence in the record or counteract the fact that the majority of independent (not industry-funded) studies, especially studies that use pulsed and/or modulated signals, do show harm.<sup>42</sup> Verizon Wireless did not present government regulatory agency reports or systematic scientific or medical reviews of cell tower wireless radiation exposure studies (or studies of comparable levels of chronic environmental exposures) which conclude that safety to human health is assured. Furthermore, Verizon Wireless cannot and does not adequately rebut the personal testimonies provided by the residents of the neighborhood ("Shacktown") in the City of Pittsfield adjacent to the Verizon Wireless 877 South Street wireless facility at the several public hearings before the Health Board of the actual harms they have suffered and are suffering from the operation of this wireless facility. Simply stated, the position of Verizon Wireless is that what is plainly happening in Pittsfield cannot occur. That position has been stated most clearly by Professor Swanson during his September 9, 2021 presentation to this Board. But this Board finds that, in fact, Shacktown residents have suffered, and are continuing to suffer, negative health effects from the continuous operation of the Verizon Wireless 877 South Street wireless facility since it was activated in August 2020.

24. The evidence shows that involuntary wireless radiation exposure directed upon Shacktown residents in their homes has effectively evicted several residents injured by pulsed and modulated RFR; they have no choice but to leave. Pulsed and modulated RFR from the Verizon Wireless 877 South Street wireless facility has rendered their homes uninhabitable – unfit for human habitation – because the continued exposure causes them severe pain, unable to function, and endangers and materially impairs their health and safety.

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<sup>41</sup> <https://swansonscientific.com/>.

<sup>42</sup> Panagopoulos, D. J., Johansson, O., & Carlo, G. L. (2015). [Real versus Simulated Mobile Phone Exposures in Experimental Studies](https://doi.org/10.1155/2015/607053). *BioMed Research International*, 2015, 607053. <https://doi.org/10.1155/2015/607053>.

**Whereas**, this Board has received direct testimony and written submissions from specific individuals that reside, or previously resided, within the reach of the wireless facility in issue. These residents state that they and/or other family members (including their children) have developed symptoms shortly after the facility was activated.<sup>43</sup> Many of the residents have testified on multiple occasions, which indicates the symptoms are persisting. It appears, based on the evidence, that there is a cluster of illness around the Verizon Wireless 877 South Street wireless facility that is caused by the facility's operation. Since no comprehensive survey has been conducted of all neighborhood residents, there may be additional affected residents.

**Whereas**, the symptoms reported by affected neighborhood residents are mainly neurological; they include headaches, ringing in the ears, dizziness, heart palpitations, nausea, and skin rashes. As the evidence that was provided to this Board shows, these symptoms are consistent with the scientific literature regarding adverse health effects from exposure to pulsed and modulated RF, including evidence specific to cellular antennas.

**Whereas**, this Board has received evidence from at least seventeen residents who have suffered on-going medical symptoms that arose for the first time after the Verizon Wireless 877 South Street wireless facility was activated in August 2020 and who believe their symptoms are caused by their continuous exposure to the wireless radiation being transmitted from that wireless facility. This Board finds their letters and oral testimonies to be authentic, compelling, and credible. As a result of their now-impaired health, some of these residents have decided to leave their homes, while others split their time between their homes in Shacktown and other temporary locations. This indicates that some affected Shacktown residents have been constructively evicted from their homes because of the operation of the wireless facility, and have been effectively rendered homeless. According to the evidence in the record, these symptoms are consistent with a diagnosis of electromagnetic sensitivity.

**Whereas**, this Board has received and reviewed, *inter alia*, the following evidence from specific Shacktown residents who have been and are being injured by the continued operation of the Verizon Wireless 877 South Street wireless facility:

1. Courtney Gilardi, a pre-school teacher, has testified that she and both of her daughters developed various symptoms immediately after the facility went into operation. Ms. Gilardi has provided a physician's medical diagnosis by Dr. Sharon Goldberg, MD, an internal and environmental medicine physician. This diagnosis has linked Ms. Gilardi's symptoms directly to the RF/EMF emitted by the facility by way of causation. Ms. Gilardi's diagnosis letter indicates her symptoms improve when she is away from home, but resume when she returns and is again exposed again to the facility's radiation.
2. Amelia Gilardi, Courtney Gilardi's minor daughter, testified that after the facility went into operation, she and her sister both started getting headaches. They feel dizzy and develop sleeping problems. Her sister also suffered itchiness and developed skin rashes, frequent nausea, and often has to sleep with a bucket next to her bed in case she needs to throw up. Both girls have missed school because of sickness caused by wireless radiation exposure from the cell tower. Amelia explained that when she is away from home (and out of range of the facility) she feels better.
3. Jessica and Frank Scago reported that following the facility's activation they began to suffer nausea, headaches, and dizziness. They are especially concerned for their five year old son who has Sensory Processing Disorder, a neurological disease. Since he has limited verbal skills, they do not know whether he too suffers from exposure to the wireless radiation transmitted from the cell tower. They are concerned that the exposure to the cell tower's emissions will aggravate

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<sup>43</sup> See Appendix V: Public Comment Testimony to Board of Health.

his condition. The literature indicates that it is not unusual for individuals to have or develop sensitivity to multiple toxins, and this can become an escalating feedback loop.

4. Paul and Diana Dalton and their two children all developed headaches and insomnia after the facility became operational. They left their home because it is essentially uninhabitable and inaccessible to them.

5. Charlie Herzig, an elderly resident, testified that both he and his wife have been unable to sleep since the tower was activated and that his wife has been especially affected.

6. Angie and Mark Markham reported that they have been severely affected. He is nauseous and has headaches in the morning and again as soon as he returns from work.

7. Elaine Ireland testified that she and her husband developed tinnitus and other serious health issues following the facility's activation. They are suffering from headaches and sleeplessness. They are deciding whether they must abandon their home because it is inaccessible and uninhabitable.

8. William Coe testified that he developed ringing in the ears and that his wife Luci has developed horrible headaches and migraines. He stated that he sent his wife and their three year old daughter Luci away from the house because they believe it is unsafe and therefore uninhabitable. They are concerned for their daughter as she also has limited verbal skills and therefore they don't know if she suffers.

**Whereas**, this evidence clearly demonstrates to this Board that specific Shacketown residents in the vicinity of the facility have suffered and are suffering injuries and illnesses directly caused by the pulsed and modulated RFR emitted by the facility in issue, and for so long as the facility is in operation it will continue to be injurious to the public health and continue to drive residents from their homes.

**Whereas**, the FCC's emissions guidelines provide limits for general population purposes. These guidelines were designed to measure and address primarily only "thermal" or heating related effects. The guidelines for whole body exposure (such as for exposure from cell towers) are for 30 minutes exposure, and protect only from thermal injury. They were not developed to protect sensitive populations against all harms. They ignore the effects of pulsation and modulation and non-thermal effects from long-term chronic exposure, cumulative effects, and effects of exposure to numerous sources of RF exposure.

**Whereas**, the FCC emissions guidelines do not address the demonstrated scientific, medical, and even legally-established fact that these general population limits do not adequately recognize that pulsed and modulated RF radiation emissions are "bioactive" – living things biologically respond to pulsed and modulated RF radiation, and this response can lead to harmful effects. More importantly, these guidelines entirely fail to address or provide for the situation where, at least, certain individuals develop adverse reactions such as those who experience electromagnetic sensitivity.

**Whereas**, this Board concludes that the FCC emissions guidelines do not prevent this Board, operating under State authority, from taking action to protect the health and safety of those specific individuals who have demonstrated that a continuously operating cell tower built adjacent to a densely populated residential neighborhood is injuring their health on a continuing basis, as well as the health of other neighborhood residents. The FCC has ruled that state and local zoning authorities can condition a land use permit on compliance with generally applicable state or local health and safety codes.<sup>44</sup> Verizon

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<sup>44</sup> *Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting; 2012 Biennial Review of Telecommunications Regulations*, 29 FCC Rcd 12865, 122951, ¶202 (Oct. 17, 2014): ("We therefore conclude that States and localities may require a covered request to comply with generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety, and that they may condition approval on such compliance.").

Wireless' permit for this facility does precisely that. Verizon Wireless' permit expressly requires compliance with the Massachusetts Sanitary Code and Pittsfield's health-related rules, regulations and requirements. By this Order, this Board finds the Verizon Wireless 877 South Street wireless facility to be in violation, and this Board requires Verizon Wireless and the property owner to bring their facility and the premises into compliance with Massachusetts' and Pittsfield's generally applicable health and safety codes, just as FCC precedent and the permit expressly allow.

**Now, therefore, the Pittsfield Board of Health hereby FINDS AND ORDERS as follows:**

1. The Verizon Wireless 877 South Street wireless facility operated by Verizon Wireless is a public nuisance, a cause of sickness, and a trade which may result in a nuisance or be dangerous to the public health for purposes of G.L. ch. 111 ss 122-125, 127B, 127C, 143-150 and 152.
2. The premises owner, Farley White South Street LLC, is also responsible for all activities on its premises and within its direction and control.
3. The Verizon Wireless 877 South Street wireless facility operated on the premises creates an access barrier that directly causes harm to certain individuals, and renders dwellings Unfit for Human Habitation or constitutes a Condition Which May Endanger or Materially Impair the Health or Safety and Well-Being of an Occupant as defined in State Sanitary Code 410.020 and 410.750(P).
4. The Verizon Wireless 877 South Street wireless facility operated on the premises creates conditions that impact occupants of a dwelling to the point that it renders a dwelling unfit for habitation for purposes of Sanitary Code 410.831.
5. Verizon Wireless and Farley White South Street LLC are jointly and severally responsible for these unsafe conditions.
6. This Order shall be served on Verizon Wireless, through its authorized agents, and on Farley White South Street LLC, through its authorized agents, the persons responsible for the violations as provided by *inter alia*, G.L. ch. 111 ss 124, 127B, 127D, 144, and State Sanitary Code for 410.833, 410.850, and 410.851.
7. Verizon Wireless and Farley White South Street LLC are hereby ORDERED to show cause why the Board of Health should not issue an order requiring cessation of operations at the facility pursuant to the Board of Health's statutory and historical police power to protect its citizens from injury and harm.
8. Verizon Wireless and Farley White South Street LLC shall have SEVEN (7) DAYS from the date of this order to request a hearing on this Order to Show Cause. The Board of Health will promptly schedule such hearing in accordance with the provisions of G.L. ch. 111 and the State Sanitary Code, and provide public notice thereof.
9. In the event Verizon Wireless and Farley White South Street LLC do not timely request a hearing, this Order shall become and constitute a notice of discontinuance requiring that Verizon Wireless and Farley White South Street LLC abate and eliminate all activities and operations leading to the present and ongoing nuisance and violations of the State Sanitary Code at their own expense within SEVEN (7) DAYS of the expiration of the deadline to request a hearing.
10. Verizon Wireless and Farley White South Street LLC shall have the right to inspect and obtain copies of all relevant inspection or investigation reports, orders, notices, and other documentary information in the possession of the Board of Health; the right to be represented at the hearing.
11. Any affected party has a right to appear at said hearing and present evidence and argument in favor of or against discontinuance.

12. This is an important legal document. It may affect your rights.

The Health Board reserves the right to take such other and further action as it deems necessary to ensure that all injurious activities and conditions end, including directly acting to remove the offending facilities at the expense of Verizon Wireless and Farley White South Street LLC and or appointment of a receiver responsible for accomplishing the same.

This Order shall take effect upon issuance.

## **Appendix I: Letters and Testimony from Experts**

*All links provided by reference*

Russell, C., (2021, April 6). [Cindy Russell MD to Council Members in the City of Pittsfield. Re: 3/21/21 Agenda Item #15 to encourage the Pittsfield, Massachusetts Health Department to investigate the health effects reported in the vicinity of the Verizon 877 South Street Cell tower.](#) [Letter].

Russell, C., (2021, July 6). [Cindy Russell MD to Pittsfield Board of Health. RE: Pittsfield testing of RFR emissions.](#) [Letter].

Carpenter, D.O., (2020, October 8). [Dr. David Carpenter to Mayor of the City of Pittsfield MA and Board of Health on Cell Tower Radiation](#) [Letter].

Kulberg, A.G., (2021, August 31). [Dr. Kulberg Chair of Pittsfield Board of Health to the Joint Committee on Consumer Protection RE: Senate Bill S.186 and in Support of MA Commission on Wireless Radiation.](#) [Letter].

Havas, M., (2021, July 6). [Dr. Magda Havas to Gina Armstrong, Director of Public Health, Pittsfield Health Department, City of Pittsfield MA on Cell Tower Radiation Measurements and the Lack of Protections by the FCC.](#) [Letter]. [Slide Presentation for BOH Forum.](#)

Heroux, Paul., (2021, July 7) [Paul Héroux, PhD, McGill University Medicine Comments on RF EMISSION STUDY of South St cell tower \(SSct\) on June 10th by VComm Telecommunications Engineering.](#) [Letter].

White, P., (2021, October 4). [Peter White, Councilor City of Pittsfield to Massachusetts State Legislature in Favor of Wireless Right to Know Legislation.](#) [Letter].

Scarato, T., (2021, May 27). [Theodora Scarato to Gina Armstrong, City of Pittsfield Board of Health](#); Davis, D., et al., (2021, April 21). [Dr. Devra Davis, et al., to the Honorable Joseph R. Biden, President/Science/Briefing on Wireless.](#)[Letters]. [Myth Fact Scientific Response EHT 2022 sent to BOH by Courtney Gilardi.](#)

Boston Petitioners, (1997). [Boston Physicians' and Scientists' Petition To Avert Public Exposures to Microwaves.](#) [Petition Signatures].

Symington, S., (2021) [Letter to Pittsfield Board of Health July 7 2021](#) [Letter].

Chamberlain, K., (2022, February 20). [Kent Chamberlin PhD to Editor of the Berkshire Eagle Re: Response to Feb 19th Opinion on Verizon Cell Tower.](#) [Letter].

Goldberg, S. (2022, February 28). *Wireless Health Effects* [Slides from presentation]. [https://ehtrust.org/wp-content/uploads/Sharon-Goldberg-MD-Pittsfield-MA-2.28.22.pdf.](https://ehtrust.org/wp-content/uploads/Sharon-Goldberg-MD-Pittsfield-MA-2.28.22.pdf)

## **Appendix II Testimony and Research on Cell Towers and Radiofrequency**

*Note: This is not an exhaustive list, but rather a short list of studies included in evidence sent to the Board.*

### **Compilation Documents**

[Compilation of Testimony from Courtney Gilardi and her family.](#) Courtney Gilardi and family members testified repeatedly to the Board, communicated by email and submitted extensive scientific research, video lectures, documentation of health effects and reports.

Michael Maudin, (Numerous letters 2021 and 2022) The Alliance for Microwave Radiation Accountability, Inc. Sent the Board numerous resources, scientific papers, and documents demonstrating evidence of adverse effects, research dating back decades on electromagnetic radiation and more including links [Primary Source Documents - Microwave Radiation Syndrome in April 2021](#), [Michael Maudin's testimony of injury from base station antennas](#) and primary source documents. [Microwave-Radiation-Syndrome-Primary-Source-Documents-BoH-April-2021.pdf](#). Maudin also sent 35 peer-reviewed studies and charts on microwave sickness caused by the radiation from cell towers to the Pittsfield Board of Health on January 5, 2021 and these are included in the reference list.

[Compilation of Research Studies on Cell Tower Radiation and Health.](#) (n.d.). *Environmental Health Trust*. Retrieved March 20, 2022, from <https://ehtrust.org/cell-towers-and-cell-antennae/compilation-of-research-studies-on-cell-tower-radiation-and-health/>

Maryland Children's Environmental Health and Protection Advisory Council (2016) [78 Studies Showing Health Effects from Cell Tower Radio Frequency](#).

### **Research Studies**

Gandhi, G., Kaur, G., & Nisar, U. (2015). A cross-sectional case control study on genetic damage in individuals residing in the vicinity of a mobile phone base station. *Electromagnetic Biology and Medicine*, 34(4), 344–354. <https://doi.org/10.3109/15368378.2014.933349>.

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### **Appendix III: Videos Resources Sent to Board of Health**

[Pittsfield MA Expert Forum on Cell Tower Cease-and-Desist Order](#): With Senator Denise Ricciardi, NH; Dr. Paul Héroux; Dr. Magda Havas; Dr. Kent Chamberlin; Dr. Sharon Goldberg, Environmental Health Trust Director Theodora Scarato; Attorney Robert Berg; Attorney Scott McCollough.

[Pittsfield MA Cell Tower Discussion 5 July 2021](#): Dr. Kent Chamberlin, EHTrust Policy Director Theodora Scarato & MA for Safe Technology Director Cecelia Doucette.

[Town of Lenox Board of Health Remote Meeting, August 19, 2021, with presentation by Kent Chamberlin, Ph.D., on Cell Tower Research.](#)

[Sacramento City Council Meeting: Includes testimony of two young girls who became sick after Verizon cell installation was powered up.](#)

[Wireless Radiation- What Environmental Health Leaders Need to Know](#): Featuring Linda Birnbaum, former Director of the National Institute for Environmental Health Sciences and the National Toxicology Program • Michael Lerner, Co-Founder and President of Commonweal and Co-Founder of Collaborative on Health and the Environment • Joel M. Moskowitz, PhD, Director Center for Family and Community Health, School of Public Health, University of California- Berkeley and Founder of Electromagnetic Radiation Safety • Uloma Uche, PhD, Environmental Working Group, author of new study on hazards of wireless radiation on children. • Sharon Buccino, Legal Expert, NRDC • Cindy Russell, MD Founder of Physicians for Safe Technology • Larry Ortega, Founder of Community Union • Theodora Scarato, Executive Director of the Environmental Health Trust.

### **Appendix V: Public Testimony to the Board of Health**

*All links provided by reference.*

*In addition to public testimony referenced below, Pittsfield residents submitted numerous emails, documents and letters to the Board.*

#### **Board of Health Meetings**

##### **April 12, 2021**

Agenda: [https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BOH\\_04\\_12.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BOH_04_12.pdf)

Meeting link: <https://watch.pittsfieldtv.net/CablecastPublicSite/show/38962?channel=9>

6:50 Theodora Scarato and David Tyner not allowed to speak; 8:45 Gareth Coco; 10:40 Jeanne Bresnehan; 13:32 Amelia; 16:00 Jonathon Marshall; 19:29 Yvette Stryker; 22:38 Courtney Gilardi; Discussion on Petition 00:56:23.

##### **May 5, 2021**

Agenda: [https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BOH\\_05\\_05.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BOH_05_05.pdf)

Meeting link: <https://watch.pittsfieldtv.net/CablecastPublicSite/show/40347?channel=9>

04:00 Dr. Paul Heroux; 07:00 Michael Muadin; 10:44; 14:07 Amelia Gilardi; 16:30 Cecelia Doucette; 21:00 Courtney Gilardi; 26:15 Charlie Herzig; 28:00 Mr. Schnackenberg ; 29:00 Discussion Pittsfield Health Director Gina Armstrong.

##### **June 2, 2021**

#### **Pittsfield Board of Health Wireless Harm Expert Forum:**

Agenda;[https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BOHAgenda\\_06\\_02.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BOHAgenda_06_02.pdf).

Meeting Link; <https://watch.pittsfieldtv.net/CablecastPublicSite/show/40684?channel=9>.

17:00 Courtney Gilardi; 21:00 Amelia Gilardi; 30:00 Michael Muadin; 32:00 Theodora Scarato; 33:00 Virginia Farver; 40:00 Nancy Vandover; Kristen Betty; Presentations by; 1:13 Dr. Paul Heroux, [PDF of Slides](#); 1:29 Dr. David Carpenter; 1:44 Sheena Symington; 2:17 Dr. Magda Havas [Slide Presentation PDF Havas Slides BOH Forum](#).

### **July 7, 2021**

#### **VComm presents readings from the cell tower (first in person meeting)**

Agenda;[https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BOH\\_07\\_07.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BOH_07_07.pdf).

Meeting link; <https://watch.pittsfieldtv.net/CablecastPublicSite/show/40992?channel=9>.

Comments by; 3:15 Amelia Gilardi 6:40 Elaine Ireland; 9:55 William Coe; 16:50 Courtney Gilardi; 20:45 Charlie Herzig; 22:30 Gareth Coco; 1:11 VComm presentation.

### **September 1, 2021**

Agenda;[https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BoardofHealth\\_09\\_01.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BoardofHealth_09_01.pdf).

Meeting link; <https://watch.pittsfieldtv.net/CablecastPublicSite/show/41536?channel=9>

2:21 Courtney Gilardi ; 5:40 Amelia Gilardi.

### **October 6, 2021**

Agenda;[https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BoardofHealth\\_10\\_06.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BoardofHealth_10_06.pdf).

Meeting link; <https://watch.pittsfieldtv.net/CablecastPublicSite/show/41802?channel=9>.

Comments; 12:55 Amelia Gilardi; 14:50 Courtney Gilardi

### **November 3, 2021**

Agenda;[https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BoardofHealth\\_11\\_03.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BoardofHealth_11_03.pdf).

Meeting link; <https://watch.pittsfieldtv.net/CablecastPublicSite/show/43053?channel=9>.

Comments 7:17 Amelia Gilardi; 10:04 Courtney Gilardi.

### **December 1, 2021**

Agenda;[https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BoardofHealth\\_12\\_01.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BoardofHealth_12_01.pdf).

Meeting link; <https://watch.pittsfieldtv.net/CablecastPublicSite/show/43228?channel=9>.

Comments; 9:20 Amelia Gilardi; 12:43 Courtney Gilardi.

### **February 2, 2022- Cease and desist unanimously voted on**

Agenda;[https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BoardofHealth\\_02\\_02.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BoardofHealth_02_02.pdf).

Meeting link; <https://watch.pittsfieldtv.net/CablecastPublicSite/show/43842?channel=9>.

Comments; 1:30 Amelia Gilardi; 4:30 Courtney Gilardi; 9:00 Gareth Coco; 11:10 Scott Barrow  
13:00 Ann Carey; 14:40 William Coe; 16:50 Judy Scago; 18:00 Peter Sibner.

### **February 23, 2022-Executive session for cease and desist order- order upheld**

Agenda;[https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BoardofHealth\\_02\\_02.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BoardofHealth_02_02.pdf).

Meeting link; <https://watch.pittsfieldtv.net/CablecastPublicSite/show/44040?channel=9>.

Comments; 1:30 Amelia Gilardi; 4:35 Courtney Gilardi; 8:35 Gareth Coco; 11:21 Ann Carey reading Elaine Ireland testimony ; 15:10 Diane Sheldon; 18:40 Charlie Herzig ; 22:40 William Coe; 25:40 Susan May; 47:00 Executive Session ends and order is upheld.

**March 16, 2022-Second executive session for the cease and desist order**

Agenda:[https://cms2files.revize.com/pittsfieldma/calendar\\_app/docs/Boards\\_Commissions\\_Calendar/Board of Health/BOH\\_03\\_16.pdf](https://cms2files.revize.com/pittsfieldma/calendar_app/docs/Boards_Commissions_Calendar/Board_of_Health/BOH_03_16.pdf)

Meeting link; <https://watch.pittsfieldtv.net/CablecastPublicSite/show/44241?channel=9> 01:45 Courtney Gilardi; Cell tower discussion (at end) 1:16-1:22 Deanna Ruffer & City Solicitor Pagnotta propose a cell tower monitoring app to measure daily emissions. Brad Gordon says that is not useful as we know this is biological harm and not thermal harm.

**Additional Testimony at City Board Meetings**

*Pittsfield residents and scientific experts testified at numerous City Council meetings as well as other City Board Meetings providing testimony on harm.*

**November 5, 2020 Community Development Board Meeting**

[Pittsfield Community Development Board - November 5, 2020](#)

Topic: Cell towers setbacks: Open callers- Courtney Gilardi; Charlie Herzig 16:23; Paul Dalton 35:00; Cecelia Doucette; Dr. Magda Havas; Courtney Gilardi;

**Community Development Board December 1, 2020**

<https://watch.pittsfieldtv.net/CablecastPublicSite/show/37825?channel=9>

Theodora Scarato; Dr. Martha Herbert; Attorney Andrew Campanelli; State Representative Tricia Farley Bouvier 45:00; Amelia Gilardi 51:04, Paul Dalton

Certified and Regular Mail: [7021-0350-0000-4282-0554](mailto:7021-0350-0000-4282-0554) (Pittsfield Cellular Telephone Company, Atty. Ellen W. Freyman)

Certified and Regular Mail: [7021-0350-0000-4282-0547](mailto:7021-0350-0000-4282-0547) (Pittsfield Cellular Telephone Company, Mark J. Esposito, Esq.)

Certified and Regular Mail: [7021-0350-0000-4282-0530](mailto:7021-0350-0000-4282-0530) (Farley White South Street, LLC, Roger W. Altreuter, Manager)

ORDERED by unanimous vote of the Pittsfield Board of Health on April 7, 2022

Roberta Orsi, MS, RN, CCP, Chairperson

Kimberly Loring, PMHNP-BC

Steve Smith, MA

Brad Gordon, JD

Jeffery A. Leppo, MD – Not Present-Did Not Participate