



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 10, 2021

ORDERED:

That there being no objection thereto set **MONDAY JUNE 7, 2021** as the **DATE FOR PUBLIC HEARING**, on the Petition of Verizon Wireless for the installation of a small cell wireless facility to be located on Pole #19 within the layout of Boston Post Road West (Route 20), be and is herewith referred to the **PUBLIC SERVICES COMMITTEE**.

Yea: 11 – Nay: 0

Yea: Wagner, Doucette, Dumais, Tunnera, Irish, Navin, Landers, Oram, Ossing, Perlman, & Robey.

ADOPTED

ORDER NO. 21-1008294

Draft
Polling Agreement
Extension of Time
For Action

Small Cell Wireless Facility

Verizon Wireless

Pole #19

Boston Post Road West

Site Name: Marlborough SC31

City Council

From: Dan Klasnick <dklasnick@dkt-legal.com>
Sent: Wednesday, June 30, 2021 12:45 PM
To: City Council; Jason Piques
Cc: Karen Boule
Subject: RE: : Proposed Verizon Wireless Small Cell Utility Pole Installation - Adjacent to 237 Boston Post Road West
Attachments: Tolling Agreement - Boston Post Road West (SC 31).pdf

Hi Jay and Karen,

Good afternoon. Please find the updated Tolling Agreement with the requested August 24, 2021 date.

Please let me know if you have any questions. Have a great day!

Thanks, Dan

Daniel D. Klasnick, Esq.
Duval & Klasnick LLC
Counselors at Law
dklasnick@dkt-legal.com
Direct Dial: (781) 873-0021
Mobile: (774) 249-2814

 Please consider the environment before printing this e-mail.

This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If it is not clear that you are the intended recipient, any review, dissemination, distribution, or copying of this transmittal is strictly prohibited. If you suspect you have received this communication in error, please notify us immediately and immediately delete this message and all attachments.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter that contained herein.

Our Expertise. Your Future. Succeeding Together.®

From: City Council <citycouncil@marlborough-ma.gov>
Sent: Tuesday, June 29, 2021 5:19 PM
To: Jason Piques <jpiques@marlborough-ma.gov>
Cc: Karen Boule <kboule@marlborough-ma.gov>; Dan Klasnick <dklasnick@dkt-legal.com>
Subject: : Proposed Verizon Wireless Small Cell Utility Pole Installation - Adjacent to 237 Boston Post Road West

TOLLING AGREEMENT

This Tolling Agreement is made and entered into this _____ day of _____ 2021 ("Effective Date") by and between Cellco Partnership d/b/a Verizon Wireless and the City of Marlborough, Massachusetts.

RECITALS

WHEREAS, Cellco Partnership d/b/a Verizon Wireless has filed an application on May 3, 2021 under G.L. c. 166, §22 and Chapter 473, Article III of the City of Marlborough General Code for the location of a small cell wireless antenna and the necessary sustaining and protecting fixtures on an existing utility pole located adjacent to 219-237 Boston Post Road, Marlborough, Massachusetts;

WHEREAS, the City has undertaken to schedule the application for review with the Public Services Committee;

WHEREAS, the City and Verizon Wireless working cooperatively are agreeable to allowing additional time to complete the review of the application in an orderly manner;

NOW, THEREFORE, the Parties agree as follows:

1. The time period within which the City must issue a written order approving or rejecting the application shall be extended through August 24, 2021 (the "Extension Date").
2. If the City fails to act on the application by the Extension Date, this Agreement shall not be construed to waive or otherwise impair the rights of the parties with respect to: (a) any claim that such failure to act is an "unreasonable delay" under 47 U.S.C. 332(c)(7)(B) or otherwise, and (b) the City to rebut such claims.

IN WITNESS WHEREOF, the Parties hereto have set their hands and caused this Agreement to be effective as of the Effective Date.

Cellco Partnership d/b/a Verizon Wireless

City of Marlborough, Massachusetts

Signature: _____

Signature: _____

Print Name: Daniel D. Klasnick

Print Name: _____

Title: Counsel for Verizon Wireless

Title: _____

Date: _____

Date: _____

City Council

From: Dan Klasnick <dklasnick@dkt-legal.com>
Sent: Monday, June 21, 2021 11:20 AM
To: Karen Boule
Cc: Jason Grossfield; Jason Piques
Subject: RE: Proposed Verizon Wireless Small Cell Utility Pole Installation - Adjacent to 237 Boston Post Road West
Attachments: City Council Order - U.P. #19 Boston Post Road West (VZW Site Name SC31).docx

Hi Karen,

Good morning. I hope you had a great weekend. As requested, please find attached a draft Order for the proposed Verizon Wireless small cell installation on Route 20. I look forward to working with the Committee to complete the review. I would appreciate confirmation of the scheduling for the review with the Committee.

Please let me know if you have any questions. Have a great day!

Thanks, Dan

Daniel D. Klasnick, Esq.
Duval & Klasnick LLC
Counselors at Law
dklasnick@dkt-legal.com
Direct Dial: (781) 873-0021
Mobile: (774) 249-2814

 Please consider the environment before printing this e-mail.

This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If it is not clear that you are the intended recipient, any review, dissemination, distribution, or copying of this transmittal is strictly prohibited. If you suspect you have received this communication in error, please notify us immediately and immediately delete this message and all attachments.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter that contained herein.

Our Expertise. Your Future. Succeeding Together.®

From: Dan Klasnick <dklasnick@dkt-legal.com>
Sent: Friday, June 18, 2021 3:08 PM
To: 'Jason Piques' <jpiques@marlborough-ma.gov>

Cc: 'Karen Boule' <kboule@marlborough-ma.gov>; 'Jason Grossfield' <jgrossfield@marlborough-ma.gov>
Subject: RE: Proposed Verizon Wireless Small Cell Utility Pole Installation - Adjacent to 237 Boston Post Road West

Hi Jay,

Thank you for your confirmatory email. I will prepare a draft decision based upon provided example and submit to Karen. I will review timing and tolling agreement with my client.

Have a great weekend!

Best regards, Dan

Daniel D. Klasnick, Esq.
Duval & Klasnick LLC
Counselors at Law
dklasnick@dkt-legal.com
Direct Dial: (781) 873-0021
Mobile: (774) 249-2814

 Please consider the environment before printing this e-mail.

This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If it is not clear that you are the intended recipient, any review, dissemination, distribution, or copying of this transmittal is strictly prohibited. If you suspect you have received this communication in error, please notify us immediately and immediately delete this message and all attachments.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter that contained herein.

Our Expertise. Your Future. Succeeding Together.®

From: Jason Piques <jpiques@marlborough-ma.gov>
Sent: Friday, June 18, 2021 2:37 PM
To: Dan Klasnick <dklasnick@dkt-legal.com>
Cc: Karen Boule <kboule@marlborough-ma.gov>; Jason Grossfield <jgrossfield@marlborough-ma.gov>
Subject: RE: Proposed Verizon Wireless Small Cell Utility Pole Installation - Adjacent to 237 Boston Post Road West

Hello Dan,

I understand in talking to Karen that the City Council will schedule a hearing before the subcommittee when they receive the draft decision from you. I have been asked that any draft order follow the sample that was provided. You may also wish to include a draft shot clock extension agreement at that time.

If I don't talk to you before, have a great weekend.

Jay

Jason Piques
Assistant City Solicitor
City of Marlborough
City Hall, 4th Floor
140 Main Street
Marlborough, MA 01752
T: (508) 460-3771
F: (508) 460-3698
jpiques@marlborough-ma.gov

This e-mail message is generated from the City of Marlborough Legal Department. It may contain information that is privileged as an attorney-client communication or as attorney work-product, or that is otherwise confidential. The information is intended to be disclosed solely to, and received solely by, the intended recipient, and delivery of this message to any person other than the intended recipient shall not compromise or waive such privilege or confidentiality. If you are not the intended recipient, please be advised that any distribution, disclosure, printing, copying, storage, modification or use of the contents of this e-mail, or the taking of any action in reliance thereon, is prohibited. If you have received this e-mail in error, please notify the sender by return e-mail and delete it from your computer system. Thank you for your cooperation.

From: Dan Klasnick <dklasnick@dkt-legal.com>
Sent: Thursday, June 17, 2021 4:06 PM
To: Jason Piques <jpiques@marlborough-ma.gov>
Subject: Proposed Verizon Wireless Small Cell Utility Pole Installation - Adjacent to 237 Boston Post Road West

Hi Jay,

Good afternoon. As discussed, I have attached the example Order that Karen provided and the proposed Order that I had included with the petition.

I appreciate your confirmation of the format. Once I have your confirmation, I can submit a draft to Karen for the committee review.

Thanks, Dan

Daniel D. Klasnick, Esq.
Duval & Klasnick LLC
Counselors at Law
dklasnick@dkt-legal.com
Direct Dial: (781) 873-0021
Mobile: (774) 249-2814

 Please consider the environment before printing this e-mail.

This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If it is not clear that you are the intended recipient, any review, dissemination, distribution, or copying of this transmittal is strictly prohibited. If you suspect you have received this communication in error, please notify us immediately and immediately delete this message and all attachments.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter that contained herein.

Our Expertise. Your Future. Succeeding Together.®

Draft Decision

Small Cell Wireless Facility

Verizon Wireless

Pole #19

Boston Post Road West

Site Name: Marlborough SC31

IN CITY COUNCIL

ORDERED:

Marlborough, Mass. _____

PAGE 1

That the City Council for the City of Marlborough, pursuant to M.G.L. c.166, §22 and Chapter 473, Article III of the City of Marlborough General Code entitled "Small Cell Wireless Facilities Within the Public Rights-of-Way," does hereby approve the petition of Celco Partnership d/b/a Verizon Wireless ("Verizon Wireless") dated _____, filed with the City Clerk on [_____], to grant a location on an existing utility pole located in the layout of State Highway Route 20 (Boston Post Road West) adjacent to 219-237 Boston Post Road West in Marlborough, which pole is designated as National Grid pole #19, in order for Verizon Wireless to deploy a small cell facility thereon by constructing and maintaining telecommunications wires and appurtenances, including a pole top canister antenna, remote radio heads and associated wires, cables, fiber demarc box, electric meter and associated equipment (the "Small Cell Facility"), all as depicted on plans submitted with Verizon Wireless' petition and in photo simulations submitted to the City Council and Public Services Committee, which plans are attached hereto and incorporated herein; subject, however, to the following conditions, which conditions shall be binding upon Verizon Wireless, its successors and/or assigns:

1. The Small Cell Facility shall be of such material and construction, and all work shall be done in such manner, as to be satisfactory to the City Council and the Engineering Division of the City's Department of Public Works (the "City Engineering Division").
2. Verizon Wireless shall indemnify and hold harmless the City against all damages, injuries, costs, expenses, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and equity, allegedly caused by the acts or neglect of Verizon Wireless, its employees, agents and servants in any manner arising out of the rights and privileges granted herein to Verizon Wireless for its Small Cell Facility.
3. Verizon Wireless shall comply with the requirements of existing City ordinances, including but not limited to Chapter 473, Article III, entitled "Small Cell Wireless Facilities Within the Public Rights-of-Way," as may be applicable, and such requirements as may hereafter be adopted governing the construction and maintenance of the Small Cell Facility.
4. Verizon Wireless shall not install its Small Cell Facility on double poles. If National Grid pole #19 becomes a double pole in the future, Verizon Wireless shall remove its Small Cell Facility to a single pole as expeditiously as possible within the guidelines then prescribed by National Grid, but in any event no later than December 31st of the year in which National Grid pole #19 becomes a double pole; provided, however, that if Verizon Wireless is unable to comply with the December 31st deadline for reasons fairly attributable to National Grid, Verizon Wireless shall submit to the City Council a letter, to be received by the City Council prior to such deadline, requesting that the Council extend the deadline to a specified date in the subsequent year and providing good cause in support of such request.

IN CITY COUNCIL

ORDERED:

Marlborough, Mass._____

PAGE 2

5. All cutting of and/or digging into City streets and/or sidewalks by or on behalf of Verizon Wireless in conjunction with its Small Cell Facility is prohibited, as is all underground installation associated with the Small Cell Facility; provided, however, that the grounding rod proposed to be installed as part of the Small Cell Facility is permitted as long as 1) Verizon Wireless installs the rod immediately adjacent to National Grid pole #19 so as to cause minimal disturbance to the surface of the street or sidewalk, and 2) Verizon Wireless restores the street or sidewalk surface to its pre-disturbance condition to the satisfaction of the City Engineering Division.
6. The Small Cell Facility shall be color-coordinated so as to best minimize the visual impact of the Facility.
7. The Small Cell Facility's remote radio heads and associated wires, cables, fiber demarc box, electric meter and associated equipment shall be mounted on the side of National Grid pole #19 facing away from the roadway.
8. Any future modification of the Small Cell Facility by Verizon Wireless shall require further City Council Approval.
9. Any future road reconstruction or repair project by the City and/or the Commonwealth requiring the relocation of National Grid pole #19 shall result in Verizon Wireless moving their Small Cell Facility to another pole in a timely fashion after having been notified by the City Engineering Division about the road project; provided, however, that any such relocation shall require further City Council approval.
10. Prior to the commencement of construction and/or installation of the Small Cell Facility, Verizon Wireless shall provide the City Engineering Division with a written construction and/or installation schedule satisfactory to the Division.
11. Prior to the commencement of construction and/or installation of the Small Cell Facility, Verizon Wireless shall provide the City's Chief Procurement Officer (the "City CPO") with a bond from a surety authorized to do business in Massachusetts and satisfactory to the City CPO in an amount equal to the cost of removal of the Small Cell Facility from National Grid pole #19 and for the repair and/or restoration of the public way, in the vicinity of National Grid pole #19, to the condition the public way was in as of the date of this order, said amount to be determined by the City Engineering Division. The amount of the bond shall be the total of the estimate by the Division plus an annual increase of 3% for the operating life of the Small Cell Facility. Verizon Wireless shall notify the City CPO and the Division of any cancellation of, or change in the terms or conditions in, the bond.

IN CITY COUNCIL

ORDERED:

Marlborough, Mass. _____

PAGE 3

12. Each year on July 1st, Verizon Wireless shall submit an affidavit that the Small Cell Facility remains in use and that the Small Cell Facility remains covered by liability insurance naming the City as an additional insured.
13. Each year on July 1st, Verizon Wireless shall pay to the City of Marlborough an annual recertification fee of \$250.00 for each year that the Small Cell Facility remains in use.
14. If the Small Cell Facility is no longer in use, it shall be removed by Verizon Wireless, at its expense, within 60 days. If the Small Cell Facility is not removed by Verizon Wireless within 60 days of it no longer being in use, Verizon Wireless shall pay a fine of \$100.00 per day until such installation is removed by Verizon Wireless.
15. Failure by Verizon Wireless to comply with any of the above conditions to the satisfaction of the City Council or, as applicable, the City Engineering Division or the City CPO shall result in the City Council's review of Verizon Wireless' petition granted herein.

Be and is herewith APPROVED.

ADOPTED

In City Council

Order No. _____

Exhibit 6
Site Selection Memorandum

Small Cell Siting Memo – Utility Pole # 19

Verizon Wireless Site Name: Marlboro SC31 MA

Address: 237 Boston Post Road West Marlborough, MA.

The location required for the Verizon Wireless 4G Small Cell NODE was limited to the use of a utility pole in a very specific area along Route 20. The wood utility poles located along Boston Post Road have transformers and other heavy equipment on them. National Grid prohibits the carriers from locating on poles with excessive equipment and transformers, therefore they are unsuitable for collocation.

The pole selected and licensed by Verizon Wireless was tagged as MECO 19. The antenna will be mounted to the pole top which is 42 feet 6 inches. All the poles along the roadway in this area are approximately similar in height at 43 Feet.

A review of alternatives offer no options and there also is no adverse impact. This is a busy commercial area and the location of the antenna on this pole will serve businesses, commuters and local shoppers in the area.

Exhibit 7
Photo Simulations



Site Name: Marlborough MA
SC31 391559
Wireless Communication Facility
42.338489, -71.591241
Marlborough, MA 01752

Photograph Information:
Boston Post Rd W
View from the East
Showing the Existing Site





Site Name: Marlborough MA
SC31 391559
Wireless Communication Facility
42.338489, -71.591241
Marlborough, MA 01752

Photograph Information:
Boston Post Rd W
View from the East
Showing the Proposed Site

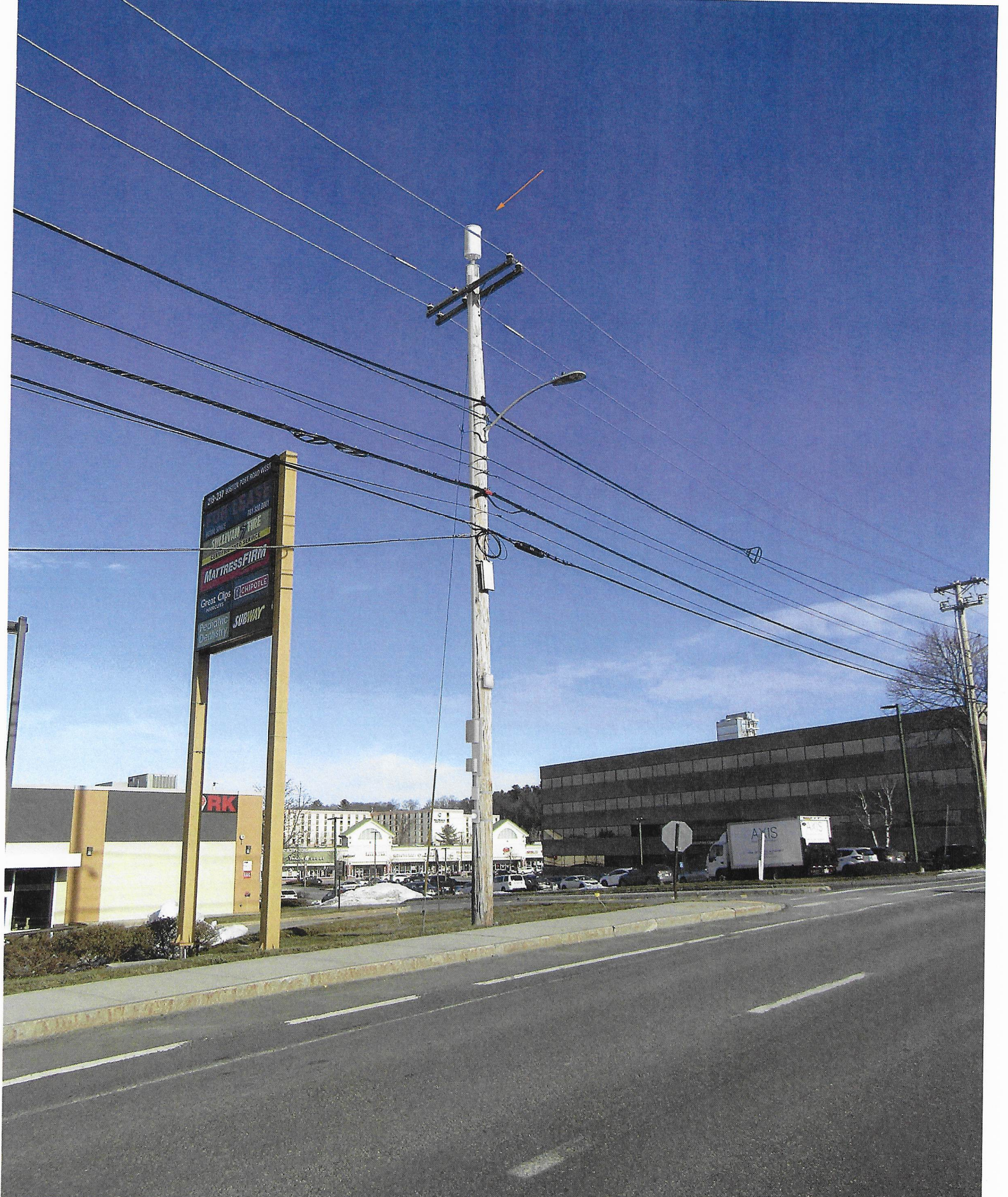
NBICTM
TOTALLY COMMITTED.



Site Name: Marlborough MA
SC31 391559
Wireless Communication Facility
42.338489, -71.591241
Marlborough, MA 01752

Photograph Information:
Boston Post Rd W
View from the South
Showing the Existing Site





Site Name: Marlborough MA
SC31 391559
Wireless Communication Facility
42.338489, -71.591241
Marlborough, MA 01752

Photograph Information:
Boston Post Rd W
View from the South
Showing the Proposed Site

NBICTM
TOTALLY COMMITTED.