



TOWN OF BOXFORD, MASSACHUSETTS

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NOTICE #969

ZONING BOARD OF APPEALS

September 27, 2016

Notice is hereby given that the Zoning Board of Appeals will hold a public hearing at the Town Hall, Meeting Room #1, 7A Spofford Road, Boxford, MA 01921 on Thursday, **October 13, 2016** at 7:30 p.m. or such other time when reached on the agenda as posted to all parties interested in the **Application for a Building Permit and Appeal of the Building Inspector** on the application of **Cellco Partnership d/b/a Verizon Wireless**, to collocate wireless communication equipment on and adjacent to the existing 120+/- unipole tower at the Property at 100 Topsfield Road. Pursuant to ZBL 196-39 of the zoning bylaw for the premises located at **100 Topsfield Road, Assessors Map 33, Block 4, Lot 1.1**. Plans are available for review at the Zoning Board of Appeals office at Town Hall Mon-Thurs from 8 am until 4 pm.

By Order of the Zoning Board of Appeals,

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Paula Lia Fitzsimmons, Chair

# MCLANE MIDDLETON

ELIZABETH F. MASON  
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September 15, 2016

***VIA EMAIL and HAND DELIVERY***

Paula Lia Fitzsimmons, Chair  
Zoning Board of Appeals  
Town of Boxford  
7A Spofford Road  
Boxford, MA 01921

**Re:** **Appeal of Denial of Building Permit Application, in connection with Eligible Facilities Request Allowed by Right Under Federal Law (All relief if and to the extent necessary, all rights reserved under the Telecommunications Act of 1996, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, and otherwise)**

**Applicant:** **Cellco Partnership d/b/a Verizon Wireless (“Verizon”)**

**Property Owner:** **Massachusetts Department of Transportation (“MassDOT”), Office of Real Estate & Asset Development, 10 Park Plaza, Suite 5720, Boston, MA 02116**

**Address:** **100 Topsfield Road, Boxford, MA (Assessors Map 33, Lot 33/4/1.1)**

Dear Chair Fitzsimmons and Members of the Zoning Board of Appeals:

On behalf of Verizon, I am submitting this appeal from the August 16, 2016 decision of the Boxford Inspector of Buildings to deny Verizon’s August 8, 2016 building permit application (the “Application”) to collocate wireless communications equipment on and adjacent to the existing 120’± unipole tower located at 100 Topsfield Road in Boxford (Assessors Map 33, Lot 33/4/1.1) (the “Property”).

The Property already hosts wireless communications equipment operated by T-Mobile USA, Inc. or its affiliate(s) (“T-Mobile”) on and adjacent to the existing tower. As discussed in more detail in the Application, the tower on the Property is thus an existing “wireless tower,” and T-Mobile’s equipment is an existing “base station,” under federal law. As a result, under federal law, **Verizon’s application constitutes an “eligible facilities request” that does not result in a substantial change to an existing wireless tower or base station, and must be approved within 60 days from the date of filing—that is, by October 7, 2016—or be deemed granted.**

McLane Middleton, Professional Association  
Manchester, Concord, Portsmouth, NH | Woburn, Boston, MA

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Paula Lia Fitzsimmons, Chair  
Zoning Board of Appeals  
September 15, 2016  
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Congress authorized such requests—and required that they be approved, and not denied, within 60 days of filing—when it enacted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, also known as the Spectrum Act, on February 22, 2012.

Verizon is filing this appeal as a prophylactic measure. We recognize that prior to Congress's enactment of Section 6409(a), Section 196-22 of the Town of Boxford Zoning Bylaw would have required the issuance of a special permit or special permit amendment from the Zoning Board of Appeals for Verizon's proposed collocation of wireless communications equipment on the existing tower at the Property. However, Section 6409(a) preempts this local requirement for eligible facilities requests that do not result in a substantial change to an existing tower or base station. **As laid out in detail in the Application, Verizon's proposal falls squarely within the ambit of Section 6409(a). Verizon therefore requests the issuance of the building permit, in accordance with federal law.**

In support of this appeal, please find enclosed two checks payable to the Town of Boxford, each in the amount of \$100.00. In addition, please find twelve (12) copies of the following documents:

1. Completed and signed Public Hearing Application form;
2. Completed and signed Publication Authorization form;
3. Completed and signed Postage Fee form and postage fees (to be submitted under separate cover);
4. MassDOT Highway Access Permit No. 4-2016-0213 issued May 16, 2016; and
5. All documents and papers constituting the record of the case in which the appeal is taken, in accordance with M.G.L. c. 40A, §§ 8 and 15, that is, the Application and the Inspector of Buildings' written denial.

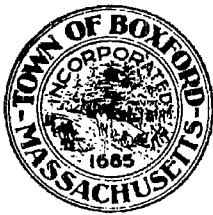
Thank you for your consideration in this matter.

Very truly yours,



Elizabeth F. Mason  
Enclosures

cc. C. Webberly, SCG  
E. Evsuk, SCG  
T. Hildreth, MM



# Town Of Boxford

## Office of the Inspector of Buildings

Robert M. Aldenberg, C.B.O.

7A Spofford Road

Boxford, Massachusetts 01921

978-887-6000 Fax 978-887-1236

[raldenberg@town.boxford.ma.us](mailto:raldenberg@town.boxford.ma.us)

August 16, 2016

Ms. Elizabeth F. Mason  
McLane Middleton Pro. Assoc.  
900 Elm Street  
P.O. Box 326  
Manchester, N.H. 03105-0326

Dear Ms. Mason:

I am in receipt of your application for a building permit to allow new wireless communications equipment to be placed on and adjacent to an existing uni-pole tower located at 100 Topsfield Road in the town of Boxford.

After review of your application for a permit it is denied for the following reason. In accordance with the Boxford Zoning Bylaw, specifically Article V, Section 196-22 (C), (3) which reads, **(Any proposed extension in the height, addition of cells, antennas or panels or construction of a new facility shall be subject to a new application for an amendment to the special permit).**

Therefore, in accordance with the zoning bylaw, it is my determination that in order to receive a building permit you must first apply to the Zoning Board of Appeals for a special permit in accordance with the section of the bylaw as indicated. I have enclosed your check #2355, with this letter.

Sincerely,

Robert M. Aldenberg, CBO  
Inspector of Buildings &  
Zoning Enforcement Officer

cc: Town Administrator  
Zoning Board of Appeals  
enclosures

# MCLANE MIDDLETON

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August 8, 2016

## ***VIA OVERNIGHT DELIVERY***

Mr. Robert Aldenberg  
Inspector of Buildings  
Town of Boxford  
7A Spofford Road  
Boxford, MA 01921

**Re:** Application for Building Permit – Eligible Facilities Request Allowed by Right Under Federal Law

**Applicant:** Cellco Partnership d/b/a Verizon Wireless (“Verizon”)

**Address:** 100 Topsfield Road, Boxford, MA (Assessors Map 33, Lot 33/4/1.1)

**Proposed Use:** Collocation of Wireless Communications Equipment on Existing Unipole Tower

Dear Mr. Aldenberg:

Enclosed with this letter is Verizon’s application for a building permit to collocate new wireless communications equipment on and adjacent to the existing 120’± unipole tower located at 100 Topsfield Road in Boxford (Assessors Map 33, Lot 33/4/1.1) (the “Property”). The Property currently hosts wireless communications equipment operated by T-Mobile USA, Inc. or its affiliate(s) (“T-Mobile”). As a result, Verizon’s application is an “Eligible Facilities Request” that does not result in a substantial change to an existing wireless tower or base station, and must be approved within 60 days from the date of filing or be deemed granted. Congress authorized such requests when it enacted Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, also known as the Spectrum Act, on February 22, 2012.

### **APPLICANT INFORMATION**

Verizon is one of the nation’s leading providers of wireless communications services, providing coverage in all of the top 100 markets in the United States. It has developed one of the largest and most reliable national wireless networks to provide wireless voice and data services to an ever-growing customer base, last counted at over 135 million.

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Verizon continuously works to enhance and improve its network through continued deployment of its voice, data, Long Term Evolution ("LTE" or "4G") and Advanced Wireless Services ("AWS") communications services. One of the key design objectives of Verizon's system is to provide seamless coverage without significant gaps or dead spots, and with sufficient capacity to handle the demand of Verizon's customers.

#### **PROJECT DESCRIPTION**

As shown on the plans submitted herewith, Verizon proposes to install three (3) internally mounted panel antennas (one per sector) on the existing unipole tower at an antenna centerline height of 96'+ above ground level. The antennas will be concealed behind a replacement fiberglass shroud to be mounted to the existing tower. Supporting equipment will be housed in an existing 12' x 20' equipment shelter located within the existing equipment compound, and Verizon will install a propane-powered generator (on a 4' x 8' concrete pad) and storage tank (on a 4' x 10' concrete pad), also within the existing compound, for emergency back-up power.

#### **MATERIALS ENCLOSED**

Enclosed is a check payable to the Town of Boxford in the amount of \$910.00 for the building permit application fee. Also enclosed are the following materials:

1. Completed and signed Building Permit Application;
2. Two (2) sets of plans prepared by Hudson Design Group LLC dated June 14, 2016, on 11' x 17' sheets;
3. Revised Structural Analysis Report prepared by Hudson Design Group, LLC dated February 13, 2014;
4. MassDOT Highway Access Permit No. 4-2016-0213 issued May 16, 2016;
5. A copy of the Construction Supervisor's License for Charles F. Webberly (License No. CS-078543), Structure Consulting Group, 49 Brattle Street, Arlington, MA 02474 ("SCG");
6. A copy of SCG's state Workers Compensation Insurance Affidavit;
7. A copy of SCG's Certificate of Liability Insurance;
8. Evidence of Verizon's FCC Licensure;
9. Section 6409, as codified at 47 U.S.C § 1455(a);

10. 47 C.F.R. § 1.40001, the federal regulations implementing Section 6409 and the Federal Communications Commission's Section 6409-related Report and Order No. 14-153 dated October 17, 2014 (the "FCC Regulations");
11. Municipal Client Memorandum entitled "New FCC Rule Impacting Proposed Modifications to Wireless Facilities," prepared by the law firm of KP Law, P.C. (which was formerly known as Kopelman and Paige, P.C., and which is Town Counsel for Boxford) for the 2015 Massachusetts Municipal Association Annual Meeting; and
12. June 12, 2013 opinion of the Office of the Attorney General of the Commonwealth of Massachusetts advising the Town of Mount Washington, MA of the impact of Section 6409 on municipal treatment of eligible facilities requests, and advising that town that any discretionary review is prohibited by federal law.

#### SECTION 6409 REQUIRES APPROVAL OF VERIZON'S APPLICATION

We recognize that Section 196-22 of the Town of Boxford Zoning Bylaws requires the issuance of a special permit from the Zoning Board of Appeals for wireless communication facilities. However, as my colleague Bradford Melson discussed with Boxford Planning Agent Ross Povenmire in November 2015, Section 6409 preempts this requirement for "eligible facilities requests" that do not result in a substantial change to an existing tower or base station.

Section 6409 mandates that a local authority "**may not deny and shall approve**, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station" (emphasis supplied). More specifically:

- The FCC Regulations define "eligible facilities request" as any request for modification to an existing tower or base station that involves the "[c]ollocation of new **transmission equipment**" or the removal or replacement of transmission equipment. See 47 C.F.R. § 1.40001(b)(3). They further provide that (1) "collocation" means the "mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes," see 47 C.F.R. § 1.40001(b)(2); and (2) "transmission equipment" means any equipment that facilitates "Commission-licensed or authorized wireless communication service, including, but not limited to, radio receivers, antennas, coaxial or fiber-optic cable, and regular and back-up power supply." See 47 C.F.R. § 1.40001(b)(8). Here, Verizon's application concerns the "collocation" of new "transmission equipment" on and next to the existing unipole tower at the Property.
- The FCC Regulations further define "eligible facilities request" as any request for modification to an existing tower or base station that does not "substantially change the physical dimensions" of an existing tower or base station. The regulations set forth objective standards for determining whether a "substantial[] change" to "physical dimensions" is proposed. See 47 C.F.R. § 1.40001(b)(7); see also Municipal Client

Memorandum entitled "*New FCC Rule Impacting Proposed Modifications to Wireless Facilities*" prepared by KP Law, P.C. for the 2015 Massachusetts Municipal Association Annual Meeting.

A modification substantially changes the physical dimensions of a tower or base station if it meets any of the following six criteria:

1. *For towers outside of public rights-of-way, it increases the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the existing antenna not to exceed twenty feet;*

Verizon's application does not propose to increase the height of the existing unipole tower.

2. *For towers outside of public rights-of-way, it protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater;*

The proposed additional antennae do not protrude from the existing unipole tower.

3. *It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;*

As shown on the enclosed plans, the Facility will add only two equipment cabinets. Therefore, under this criterion, the Facility does not represent a substantial change to the physical dimensions to the site.

4. *It entails any excavation or deployment outside the current site of the tower or base station;*

Verizon's application does not propose a substantial change under this criterion.

5. *It would defeat the existing concealment elements of the tower or base station; or*

Verizon has designed the Facility to be completely consistent with the incumbent installation, as shown on the enclosed plans, without defeating any existing concealment features.

6. *It does not comply with conditions associated with prior approval of construction or modification of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation does not exceed the corresponding "substantial change" thresholds set forth above.*



As set forth above and on the plans, each of the foregoing criteria is inapplicable, and the proposed Facility is consistent with conditions associated with prior zoning approvals for the tower and other wireless carriers' equipment. Therefore, under this criterion Verizon's Application does not propose a substantial change.

**TIMING AND PROCESS**

If an application covered by Section 6409 has not been approved by a local government within 60 days from the date of filing, the reviewing authority will have violated Section 6409's mandate to approve and not deny the request, and the request will be deemed granted. See 47 C.F.R. § 1.40001(c)(2), (4). This 60-day review period is subject to tolling if the reviewing municipality informs the applicant in a timely manner that the application is incomplete; however, an initial determination of incompleteness tolls the running of the 60-day review period *only if* the local government provides notice to the applicant in writing within 30 days of the application's submission, and that notice clearly and specifically delineates the missing information in writing. See 47 C.F.R. § 1.40001(c)(3)(i). Further, the municipality may only specify as missing information any supporting documents that are reasonably related to determining whether the request meets the requirements of Section 6409.

If you have any questions regarding this application, please feel free to contact me. Thank you for your assistance and attention to this matter.

Sincerely,



Elizabeth F. Mason

Enclosures

ec: E. Evsuk, SCG (w/o enc.)  
C. Webberly, SCG (w/o enc.)  
T. Hildreth, MM (w/o enc.)