

# brownrudnick

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July 23, 2021

## VIA EMAIL

Town of Heath  
Planning Board  
c/o Douglas Mason, Chair  
Town Hall  
1 East Main Street  
Heath, MA 01346

### **RE: Wireless Telecommunication Facility (the “Facility”) Application - 0 Rowe Road, Heath, MA4795 (the “Site”) – Responses to the Public Comments**

Dear Honorable Members of the Heath Planning Board:

As you know, we represent New Cingular Wireless PCS, LLC d/b/a AT&T (“AT&T”) with respect to the above-referenced application (the “Application”) pending before the Town of Heath (the “Town”) Planning Board (the “Board”). At the public hearings held by the Board on April 29, 2021 and May 24, 2021 (the “Hearings”), Board members and participants asked questions to which the Board requested responses. On Tuesday July 20, 2021, we addressed, via email, additional questions raised by the Planning Board since the Hearings and include those responses below. Additionally, the Board provided written comments submitted from members of the public. While reserving all rights, below are AT&T’s responses in **bold**.

#### **Responses to Email Dated July 16, 2021 from the Board**

We spoke with Bill Lattrell of the Conservation Commission and he has not received your response to his requests. Please forward them to him and the Planning Board as soon as possible.

**Response: The access road and tower location were due to be staked out this week. We need to have these areas staked for our wetlands’ expert, Audra Klumb, to address Bill Latrell’s questions and comments and the rain and weather has delayed the staking. Once staked out, Audra will inspect the Site and reach out to Bill to discuss her findings. We will also file her findings and report with the Planning Board. We hope to have that completed in time for the next public hearing.**

The planning board would like to see the actual denial of service data for Heath from ATT, including locations, times, number of dropped calls and signal strength, etc. In order to prove a “significant gap in coverage”, we would like to see this actual data.



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**Response: AT&T does not publicly share dropped call or denial of service data because that information is confidential and proprietary. However, as evidenced by the radio frequency reports and testimony to date, AT&T has little to no coverage in the area near the proposed site in Heath so dropped call data would be irrelevant in this instance. AT&T has provided the Planning Board with substantial evidence of the significant gaps in coverage which has been confirmed by the consultant retained by the Planning Board. However, in this instance and due to the lack of any coverage in the area of the proposed site, we can state that the AT&T antenna sectors directed towards Heath from the nearest AT&T sites in Drury (identified as MA5119 on the AT&T coverage maps previously submitted) and Hawley (MA2211 on the AT&T coverage maps previously submitted) indicate that THOUSANDS of calls are dropped in this area of Heath every day. Based on the evidence submitted by AT&T and confirmed by the Planning Board's wireless consultant, there is no realistic dispute about the existence and significance of AT&T's coverage gap in Heath.**

There were also some Affidavits to be forwarded, but have not received anything, are they getting posted directly to the web page with all of the documents? If so, please let me know what has been updated.

**Response: We have submitted a link to the NEPA report for this site; this link is also on the Town's webpage. The NEPA report is large at 236 pages. You will see that the report concludes that the site complies with NEPA. Additionally, contrary to statements made at the last public hearing, the local historic agencies were contacted about the installation, as well as the Massachusetts State Historic Preservation Office. No comments were provided within the required timeframe and therefore evidences no impact pursuant to NEPA.**

Can you give us any information about backup generators? How many will there be? What size and what fuel? How loud they will be, etc.?

**Response: We have submitted a link to information and specifications on the backup power diesel-fueled generator; this information has also been posted to the Town's webpage. AT&T proposes one generator for its own use. The generator will be no louder than an external air conditioning unit used to cool a typical home. Please also see AT&T's noise report at Item 14 of the application link for further information. As you know, this facility is being built to provide 24/7 cell phone coverage for both public safety and customer communications so backup power is critical. The backup power generator helps to keep the facility powered during an electrical outage. Once the energy has been depleted from the back up batteries (typically 24 hours) the generator will automatically turn on to keep AT&T's equipment functional for up to 72 hours before it needs to be refueled, or when power has been restored to the area. The 54 gallons of fuel will be self-contained in an (underwriters laboratories) UL-142, double walled tank in the base of the generator. The generator includes an advanced monitoring system which allows AT&T to remotely**



**diagnose, control and monitor all generator operations from their Network Operations Center 24/7 (see below). Lastly, the generator is located a significant distance from any property lines in a heavily treed area, as required by the Heath Zoning Bylaw. The generator will run only during power outages and exercised on a weekly basis which can be programmed to occur during the day. Lastly, the generator will comply with all applicable requirements. Noise is also subject to the inverse square law rule; for each doubling of distance from a point of noise source, the sound pressure level decreases by approximately 6 dB, assuming a free field without obstruction. Here, we also have significant tree cover.**

**WARNING ALARMS**

Low Diesel Fuel Level.....	Standard
Diesel Fuel Tank Rapture Basin.....	Standard
Low/High Supercapacitor Voltage.....	Standard
High Water Temperature.....	Standard
Low Oil Pressure.....	Standard

**WRITTEN COMMENTS RECEIVED FROM THE BOARD**

From Ed Whitaker, 43 Knott Road dated 6/28/21

As a Heath Resident for 5 years, and one of the residents that would be most impacted by the proposed AT&T Cell Tower, I am submitting this letter to the Heath Planning Board for your review and consideration.

Considering the Towns Bylaw for Personal Wireless Facility locating, section 6.3.3.2 A states that, "If feasible, personal wireless service facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate".

The applicant has not complied with the above section by failing to prove there are no feasible existing structures upon which to locate. The Town of Heath is bisected by two completely separate utility transmission systems, both of which have multiple elevations greater than that of the proposed site. Further to that fact, both of these transmission systems rely on already existing utility towers. The applicant has not provided evidence that all or any attempts to access said sites have been made or exhausted, nor has it provided any information that these potential sites are not feasible.

**Response: In the materials and evidence submitted as part of the Application, specifically, including without limitation the Statement of Site Acquisition Specialist, that there are no feasible existing structures on which to locate the Facility which will address the significant gaps in coverage. The existing utility towers will not provide the necessary**



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**coverage to address the significant gaps in coverage due to location and height.**

Further to this, 6.3.3.2 C states that “The use of municipal land which complies with the requirements of this bylaw and where visual impact can be minimized would be a preferred location for siting a personal wireless communication facility”.

The applicant has not complied with the above section by failing to prove there are no municipal lands upon which to locate. The applicant has not provided evidence that all attempts to access said sites have been exhausted, nor has it provided any information that any of these possible sites are not feasible.

**Response: In the materials and evidence submitted as part of the Application, specifically, including without limitation the Statement of Site Acquisition Specialist and associated testimony, there are no municipal lands which are available and feasible. The closest Town-owned parcel is subject to significant conservation restrictions. We are not aware of any requests for proposals issued by the Town to lease property for a wireless tower in the area which would address the significant gaps in coverage.**

**The remainder of the letter asserts opinions and comments for which no responses are required. AT&T stands by the substantial evidence submitted with the Application which demonstrates compliance with the Bylaw, the need for the site at the location at the height requested. As the Board knows, the Commonwealth of Massachusetts supports the Facility for emergency communication services.**

The Weigand Family – Not Dated

**Response: The letter asserts opinions and comments for which no responses are required. AT&T stands by the evidence submitted with the Application which demonstrates compliance with the Bylaw, the need for the site at the location and at the height requested. AT&T’s Facility will comply with all applicable laws, regulations and codes, including radio frequency emissions. As stated at the Hearings and prior submissions, the FCC is the exclusive regulator of radio frequency emissions from the Facility and this issue is beyond the jurisdiction of the Board pursuant to federal law. As evidenced by the report submitted and confirmed by the Board’s wireless consultant, this Facility will comply with the FCC standards regarding exposure to radio frequency emissions. In fact, the emissions will be a fraction of the maximum permissible limit, already conservatively set. As noted in the report, the Facility will only generate .02% of the maximum permissible exposure limits for the general population.**

Cory Mason, 20 Knott Road – Not Dated

**Response: The letter asserts opinions and comments for which no responses are required. AT&T stands by the evidence submitted with the Application which demonstrates compliance with the Bylaw, the need for the site at the location at the height**



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**requested. We note that AT&T submitted a report from a real estate expert that the Facility will have no negative impact on property values. Lastly, as noted above, the NEPA report is available on the Town's website and addresses the environmental concerns.**

Tara Mason, 43 Knott Road Dated 5/24/2021

**Response: The letter asserts opinions and comments for which no responses are required. AT&T stands by the evidence submitted with the Application which demonstrates compliance with the Bylaw, the need for the site at the location at the height requested. AT&T's Facility will comply with all applicable laws, regulations and codes, including radio frequency emissions. As stated at the Hearings and prior submissions, the FCC is the exclusive regulator of radio frequency emissions from the Facility and this issue is beyond the jurisdiction of the Board pursuant to federal law. As evidenced by the report submitted and confirmed by the Board's wireless consultant, this Facility will comply with the FCC standards regarding exposure to radio frequency emissions. In fact, the emissions will be a fraction of the maximum permissible limit, already conservatively set. As noted in the report, the Facility will only generate .02% of the maximum permissible exposure limits for the general population.**

Kate Peppard and Bobby Honeycutt, 20 Knott Road – Dated May 18, 2021

**Response: The letter asserts opinions and comments for which no responses are required. AT&T stands by the evidence submitted with the Application which demonstrates compliance with the Bylaw, the need for the site at the location and at the height requested. AT&T's Facility will comply with all applicable laws, regulations and codes, including radio frequency emissions. As stated at the Hearings and prior submissions, the FCC is the exclusive regulator of radio frequency emissions from the Facility and this issue is beyond the jurisdiction of the Board pursuant to federal law. As evidenced by the report submitted and confirmed by the Board's wireless consultant, this Facility will comply with the FCC standards regarding exposure to radio frequency emissions. In fact, the emissions will be a fraction of the maximum permissible limit, already conservatively set. As noted in the report, the Facility will only generate .02% of the maximum permissible exposure limits for the general population.**

Barry Adams and Kevin Maloney Dated June 22, 2021

**Response: The letter asserts opinions and comments for which no responses are required. AT&T stands by the evidence submitted with the Application which demonstrates compliance with the Bylaw, the need for the site at the location at the height requested. AT&T's Facility will comply with all applicable laws, regulations and codes. As noted above, we have submitted a link to the NEPA report for this Site; this link is also on the Town's webpage. The report concludes that the site complies with NEPA.**



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## **Conclusion**

As noted at the Hearings and based on the substantial evidence submitted, the visual impact of the Facility will be minimized to the greatest extent possible and will provide much needed coverage along Route 8A and the surrounding areas, including the Betty Maitland Memorial Forest. Additionally, the Commonwealth of Massachusetts supports this Facility in light of the need for public safety and communication services. We respectfully assert that the Site is well suited for the Facility and the Board should approve the requested height to maximize the coverage and collocation opportunities from a well-placed wireless facility. The collocation opportunities on the tower will minimize the number of towers in the Town of Heath.

We look forward to completing the Application process and respectfully request that the Board approve the Application.

Respectfully submitted,

**BROWN RUDNICK LLP**

By: /s/ Edward D. Pare, Jr.  
Edward D. Pare, Jr.

cc: David Maxson, Isotrope

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