

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 3:21CV30106-MGM

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NEW CINGULAR WIRELESS PCS, LLC )  
d/b/a/ AT&T MOBILITY, )  
Plaintiff, )  
v. )  
TOWN OF HEATH, TOWN OF HEATH )  
PLANNING BOARD, and DOUG MASON, )  
BILL GRAN, JO TRAVIS, ROBERT )  
VIARENGO, and PETER CHAROW, in their )  
capacities as members of the Town of Heath )  
Planning Board )  
Defendants. )

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**PARTIALLY ASSENTED TO MOTION TO INTERVENE OF EDWARD WHITAKER, TARA MASON, KATE PEPPARD, JESSE AND KRISTEN WEIGAND, CORY MASON, DAVID AND MARY KNOTT, KEVIN MALONEY, AND BARRY ADAMS**

Edward Whitaker, Tara Mason, Kate Peppard, Jesse and Kristen Weigand, Cory Mason, David and Mary Knott, Kevin Maloney, and Barry Adams (the “Intervenors”) respectfully request that this Honorable Court grant the Intervenors’ Motion to Intervene in this matter pursuant to Fed. R. Civ. P. 24. In support thereof, Intervenors state as follows:

1. The Intervenors own land in Heath, Massachusetts that abuts or is in close proximity to the land located at 0 Rowe Road in Heath, Massachusetts, which is the property at issue in this litigation. Plaintiff New Cingular Wireless PCS, LLC’s (“Plaintiff”) brought this action against the Town of Heath (the “Town”) and the Town’s Planning Board (the “Planning Board”) (collectively, “Defendants”) to reverse the Planning Board’s decision denying Plaintiff’s application for a special permit to construct a 180-foot cell tower on this property.

2. As the Planning Board properly found when it denied Plaintiff's application for a special permit, the proposed tower would have an adverse aesthetic impact on the area, it would be out of character with the rural nature of the neighborhood, and it could diminish the value of nearby properties. The Planning Board further found that Plaintiff failed to prove the existence of a significant gap in cellular coverage and failed to identify and evaluate potential alternative sites for the proposed tower or to investigate co-location alternatives.

3. On January 10, 2022, the Intervenor first learned that Plaintiff and Defendants were attempting to obtain judicial approval of a settlement that would result in the issuance of a special permit allowing Plaintiff to construct a cell tower at 0 Rowe Road. This settlement would not protect Intervenor's interests. Intervenor acted quickly to secure counsel to protect their interests.

4. Rule 24 permits intervention as of right where a movant claims an interest relating to the property that is the subject of the action and where disposing of the action would impair the movant's ability to protect its interest. See Fed. R. Civ. P. 24(a)(2). Rule 24 also permits intervention with the Court's permission where the movant has a claim or defense that shares a common question of law or fact with the main action. See Fed. R. Civ. P. 24(b)(1)(B). Intervenor seeks intervention both as of right and with the Court's permission.

5. The Intervenor possesses sufficient interest in the subject matter of this litigation. The proposed cell tower would have an adverse aesthetic impact on the scenic ridgeline, it would be inconsistent with the rural character of the area, and it could reduce nearby property values. Under Mass. Gen. Laws c. 40A, Intervenor would have standing as "aggrieved person[s]" to challenge the issuance of this special permit.

6. The existing parties to this litigation cannot adequately represent the Intervenor's interest in this matter. In fact, they have already reached a settlement agreement that would result in issuance of all permits and approvals necessary for Plaintiff to build a cell tower up to a height of 140 feet, which violates the Town's zoning bylaw 6.3.3.4 (providing that maximum height is 110 feet above ground level), notwithstanding Intervenor's concerns and objections.

7. As such, the Court should grant the Intervenor's intervention as of right pursuant to Fed. R. Civ. P. 24(a)(2).

8. In the alternative, the Court should allow intervention pursuant to Fed. R. Civ. P. 24(b)(1)(B). The Intervenor's interests share common questions of law and fact with this action because the construction of a cell tower will negatively impact the Intervenor and their property. The intervention will not unduly delay or prejudice the current litigation or the existing parties' rights.

9. Defendants assent to this Motion. Plaintiff opposes it.

10. This Motion to Intervene is supported by a Memorandum of Law and a Complaint in Intervention as required by Fed. R. Civ. P. 24(c).

WHEREFORE, Intervenor respectfully request that this Honorable Court:

- A. Allow intervention as of right under Fed. R. Civ. P. 24(a)(2);
- B. Alternatively, permit intervention pursuant to Fed. R. Civ. P. 24(b); and
- C. Grant such other relief as justice and equity require.

Dated: January 18, 2022

Respectfully submitted,

EDWARD WHITAKER, TARA  
MASON, KATE PEPPARD, JESSE and  
KRISTEN WEIGAND, CORY MASON,  
DAVID and MARY KNOTT, KEVIN  
MALONEY, and BARRY ADAMS

By their attorneys,

/s/ Alan D. Rose, Jr.  
Alan D. Rose, Jr. (BBO # 628871)  
Laura B. Kirshenbaum (BBO # 684886)  
Rose Law Partners LLP  
One Beacon Street, 23rd Floor  
Boston, Massachusetts 02108  
Telephone: (617) 536-0040  
Facsimile: (617) 536-4400  
adrjr@rose-law.net  
lbk@rose-law.net

### **LOCAL RULE 7.1 CERTIFICATE**

Pursuant to Local Rule 7.1(A)(2), I hereby certify that on January 18, 2022, my colleague Laura B. Kirshenbaum left a voicemail for Defendants' counsel Lauren F. Goldberg. I am aware that Defendants' counsel previously informed predecessor counsel Andrew J. Campanelli that Defendants assent to the Intervenor's Motion to Intervene. On January 18, 2022, Attorney Kirshenbaum spoke with Plaintiff's counsel Edward D. Pare, who indicated that Plaintiff opposes the Intervenor's Motion to Intervene.

/s/ Alan D. Rose, Jr.  
Alan D. Rose, Jr.

### **CERTIFICATE OF SERVICE**

I hereby certify that I caused this document to be filed through the ECF system and that it will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper and/or electronic copies will be sent to those indicated as non-registered participants.

/s/ Alan D. Rose, Jr.  
Alan D. Rose, Jr.

Date: January 18, 2022