



# TOWN OF ANDOVER

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July 24, 2017

MBTA Fiscal and Management Control Board  
Mass. Department of Transportation  
Ten Park Plaza Suite 3910  
Boston, MA 02116

RE: INMOTION WIFI PROJECT

Dear Board Members:

On June 26, 2017 you heard testimony regarding the concerns of the Town of Andover and its residents about the five proposed monopoles to be located in Andover.

An additional concern is the failure by inMotion to obtain local zoning relief from the Andover Zoning Board of Appeals pursuant to the Town's Zoning Bylaw Section 6.1.

Setting aside whether caselaw might or might not provide an exemption from zoning for this project, it appears that the Massachusetts Department of Transportation Utility Accommodation Policy (May 2013) imposes such local zoning relief upon inMotion.

Chapter 1 Section C states:

- “1. The purpose of this *Utility Accommodation Policy* is to prescribe policies and procedures to regulate and accommodate utility facilities along, across, over, under or on the right of way of all major highways and other transportation facilities and properties owned or under the jurisdiction of MassDOT. (emphasis supplied)
2. This *Policy* applies to all public and private utilities. It also applies to all existing utility facilities retained, relocated, replaced, or altered, and to new utility facilities installed on State rights of way, including those needed for highway purposes (such as for highway lighting or to serve a weigh station, rest area or recreation area).” (emphasis supplied)

Chapter 5 (Telecommunications and Renewable Energy) Section A(1) states in part:

- “1. MassDOT, through its Office of Real Estate and Asset Development (OREAD), provides development opportunities for infrastructure deployment of wireless and wireline telecommunications facilities and

renewable energy generation/transmission facilities on properties and rights-of-way (collectively, "Real Property") that are under the ownership, care, custody and/or control of MassDOT. This Utility Accommodation Policy will guide telecommunications and renewable energy service providers with the framework necessary for processing each stage of development from initial request for accommodation to final deployment of the facility." (emphasis supplied)

Section B(1) states in part:

"This chapter is applicable to (1) all projects involving the accommodation of wireless telecommunications facilities on MassDOT Real Property."

Section C(9) states:

"9. All operations of telecommunications and renewable energy facilities located thereon shall comply at all times with all applicable federal, State and local laws, rules, regulations, ordinances, statutes and decisions." (emphasis supplied)

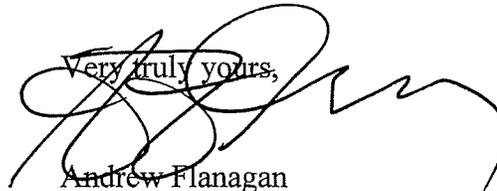
Section F(3) states:

"3. Siting of wireless telecommunications or renewable energy facilities shall comply with local zoning requirements; MassDOT shall not provide exemption to local zoning." (emphasis supplied)

As can be seen from the foregoing, the DOT's Policy appears to require inMotion to comply with Andover Zoning Bylaw Section 6.1 titled "6.1 Wireless Communication Facilities Or Other Similar Communications Use". No application has been made by inMotion to the Andover Zoning Board of Appeals for a special permit for the proposed wireless communication facility as required pursuant to the Andover Zoning Bylaw.

Therefore no further action should be taken with regard to the installation of the proposed monopoles in Andover unless and until a special permit is approved for such monopoles by the Andover Zoning Board of Appeals.

Very truly yours,



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Town Manager

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