

**SALEM MUNICIPAL SERVICES**Roy E. Sorenson - *Director***ENGINEERING ♦ PUBLIC WORKS ♦ UTILITIES**[www.townofsalemnh.org](http://www.townofsalemnh.org)21 Cross Street  
Salem, NH 03079

TEL: 603-890-2150 FAX: 603-890-3882

February 19, 2020  
 Jill Fitzpatrick  
 Business and Community Development Manager  
 Liberty Utilities  
 9 Lowell Road  
 Salem, NH 00379

Dear Ms. Fitzpatrick,

I am in receipt of your letter dated February 12, 2020 regarding your utility as it relates to the Depot Intersection Reconstruction Project and offer the following.

While I appreciate the time and effort provided by your staff and you to date, the design presented simply fails to meet the intent of the Town's request moreover appears in principle to unilaterally benefit Liberty Utilities. You have stated in your letter that PUC guidelines, specifically 306.01 (a), direct your design by standard practice in construction, operations, and maintenance. The latest relocation iteration, minus the proposed undergrounding, albeit mirrors the deficiencies of the compromised aerial network you currently have in place. Given that I am perplexed why the preliminary concepts we originally worked on together prompted by your initiative appear at this time to be unfeasible moreover completely absent from consideration.

As you know a comprehensive plan was adopted by the Salem Planning Board in 2011 that established a community vision and economic revitalization plan for the Depot Area. Moreover this roadway project was the impetus for that endorsement as the Town procured an engineer for design and began the formal contracted procedures to secure state and federal funding. An enhancement radius was established around the Depot to compliment the roadway improvements which included among other things additional turn lanes and road widening. A large part of the design plan was focused on traffic safety improvements including enhancing pedestrian opportunities in the spirit of facilitating people getting out of their cars and walking to destinations. Design standards for streets, buildings, connectivity, and mode shift could only be achieved through adequate frontage and amenity zones. Redevelopment will begin this year.

Utilities are extended a privilege to exist in the right of way in the best interest of the public which is subject to change particularly if the relocation becomes necessary for public health, safety, or convenience. This project encompasses all those aspects. I would surmise that Liberty would embrace the opportunity to upgrade its infrastructure through this corridor all things considered and given the ability to work with the Town as improvements are being made. The Town has made considerable monetary commitments over the past two years replacing and relocating its utilities (water and sewer) in this area as it prepares to reconstruct one of the most troublesome



intersections in New Hampshire. The finished project will benefit all users by offering safer travel and connectivity in all directions regardless of the method of movement.

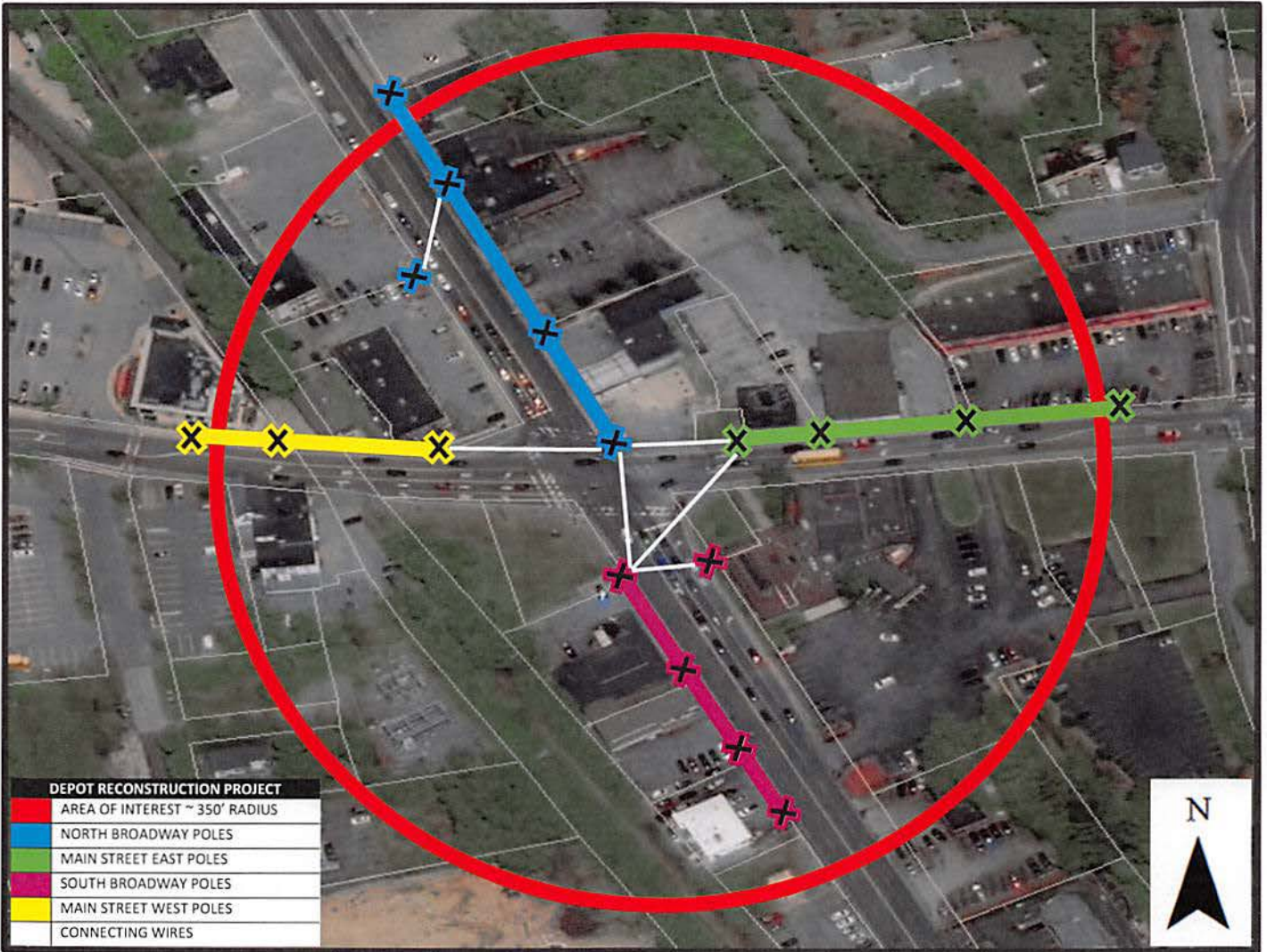
I have attached a diagram of the area of interest, an approximate 350' radius of the depot intersection project, related to our request for utility relocation. Included with this are designated detail pages in each direction respectively illustrating current field concerns and conditions. Of the 17 poles presently in the radius that need to be removed, only 2 perhaps, might meet the design standards on utility accommodation per NHDOT. The manual states that overhead lines affect road systems and rights-of-way primarily because exposed locations may represent a safety hazard to highway users or may interfere with highway maintenance operations – this is clearly evident in the attached. Your current submission as drawn shows 9 relocated poles, Pole 112 at the bank corner remaining, various conflicting anchors, and no wiring paths.

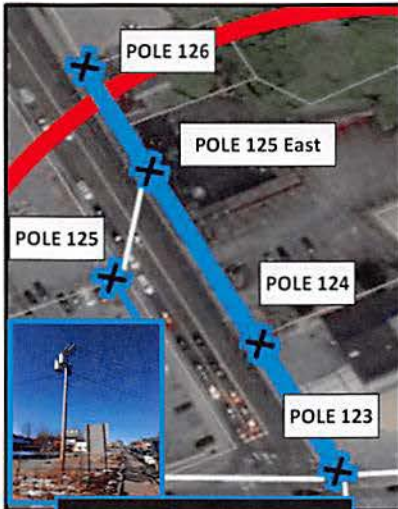
This proposal of relocated poles fails both PUC and NHDOT design standards much like your current configuration. The geometric challenges and confinement for this project do not support overhead lines and accompanying poles. As such per RSA 231:177 acting as an agent for the Town of Salem, I am demanding that Liberty Utilities relocate all aerial facilities in the 350' radius to meet state law - NHDOT design standards for utility accommodation. If you shall choose and/or request waivers for new pole relocations which are unable to meet this demand you may file a request to be placed on the Board of Selectmen agenda in March. I would ask that Liberty provide a formal response to this demand within 10 days.

Sincerely,

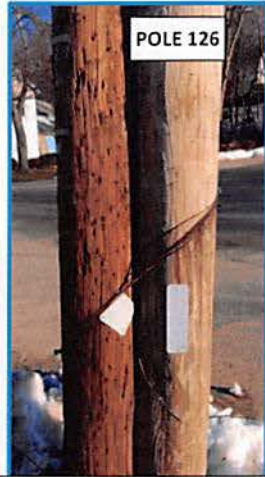
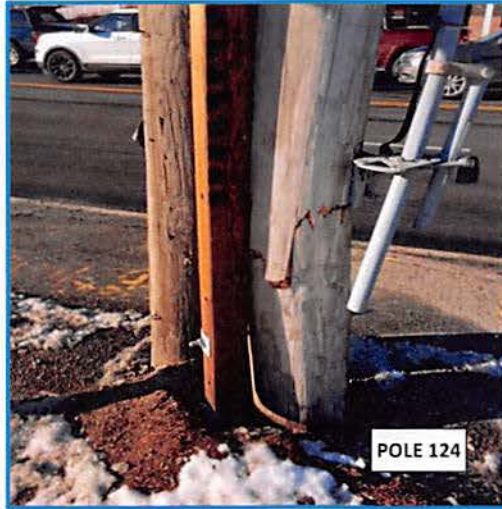


Roy E. Sorenson

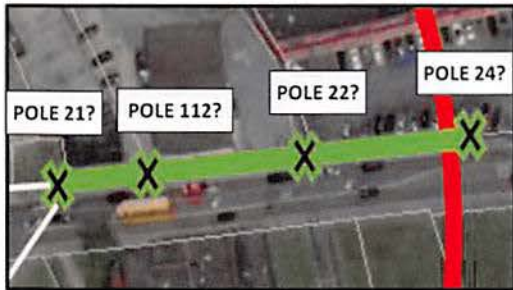




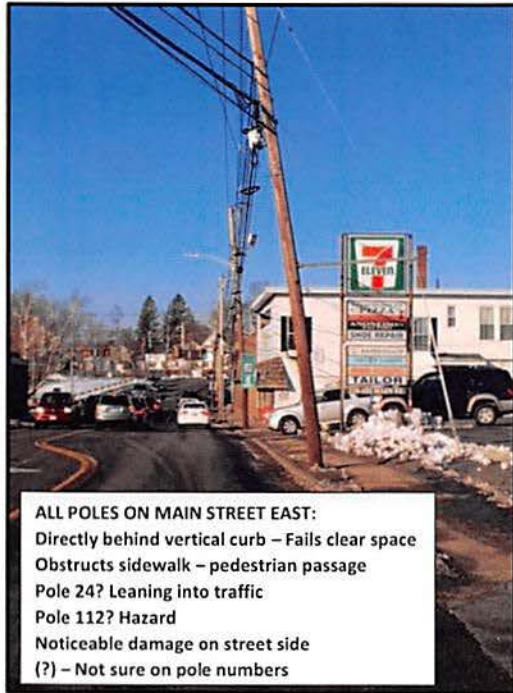
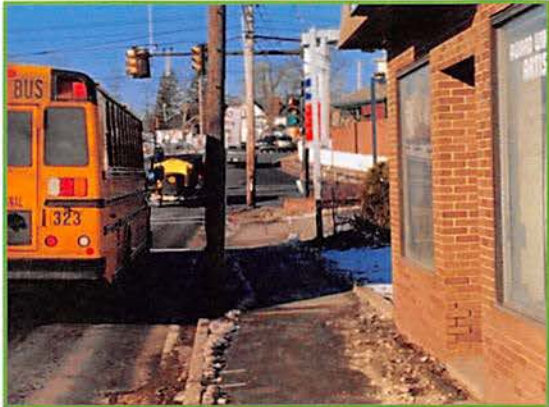
**NORTH BROADWAY**



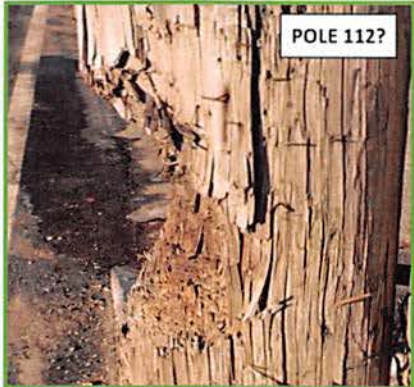
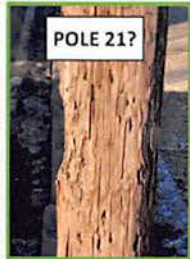
POLES 126, 125 East, 124 – behind backside sidewalk    126 – Double pole    125 East – Frontage issue redevelopment    124 – Double pole, new pole snapped  
 POLE 123 – no clear space, visibility issue, traffic and safety hazard    POLE 125 ON WEST SIDE: Service pole for Sal's and Depot Building

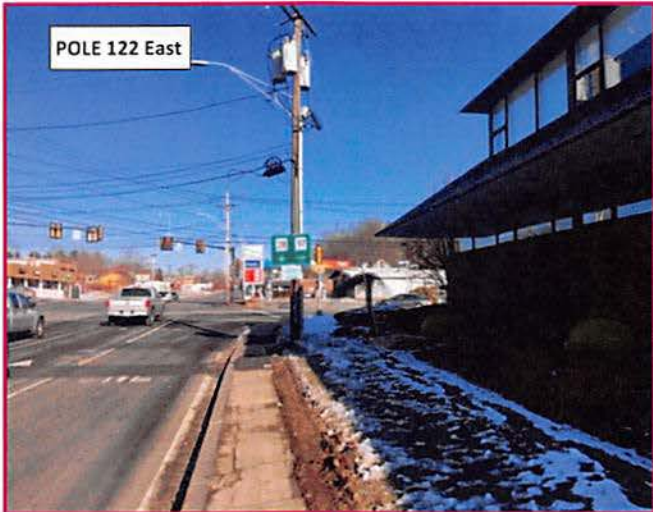
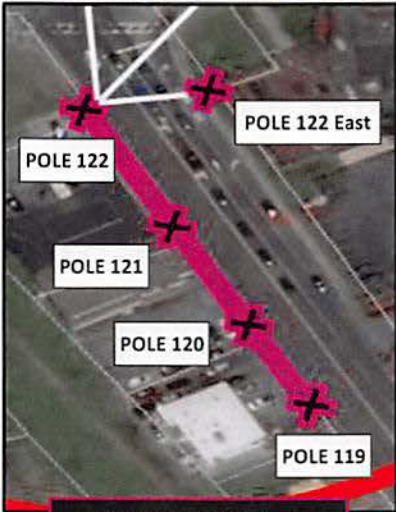


**MAIN STREET EAST**



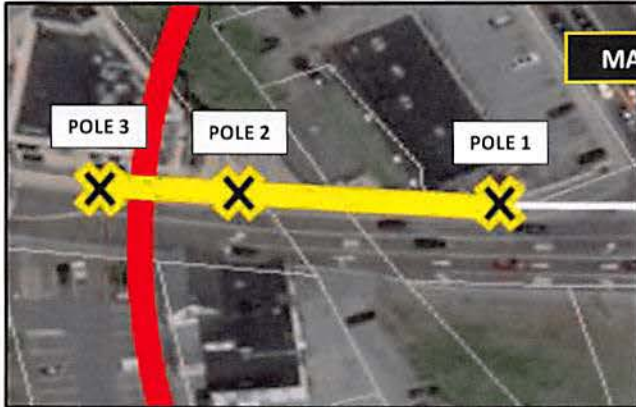
**ALL POLES ON MAIN STREET EAST:**  
 Directly behind vertical curb – Fails clear space  
 Obstructs sidewalk – pedestrian passage  
 Pole 24? Leaning into traffic  
 Pole 112? Hazard  
 Noticeable damage on street side  
 (?) – Not sure on pole numbers



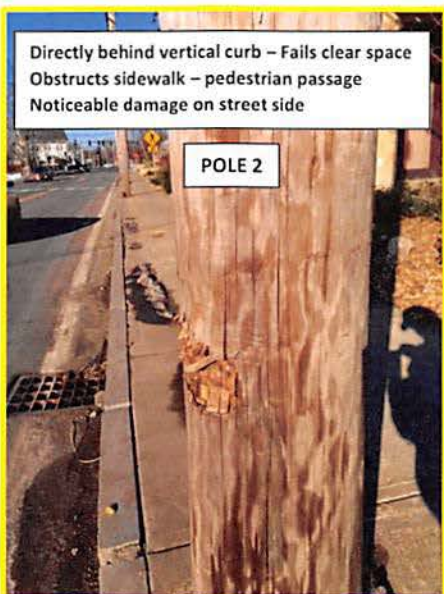
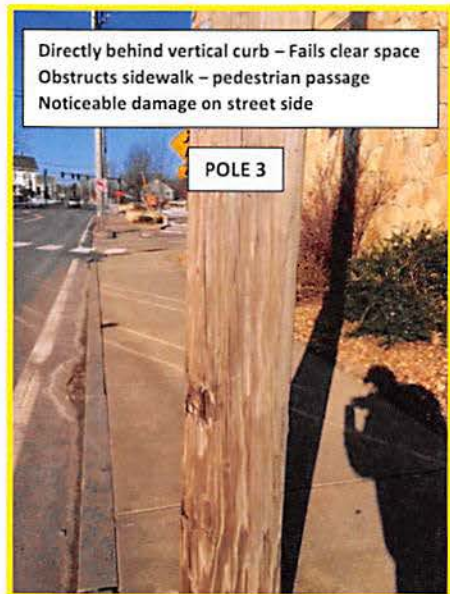


**SOUTH BROADWAY**

ALL POLES ON SOUTH BROADWAY WEST SIDE: ~ 3' behind fog line, no vertical curb, zero protection – Noticeable damage on street side  
 POLE 122 East ON BANK PROPERTY CORNER: Fails clear space, sight visibility issue, obstructs sidewalk – pedestrian passage



**MAIN STREET WEST**



**SALEM MUNICIPAL SERVICES**  
Roy E. Sorenson - *Director*  
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October 4, 2021

Jill Fitzpatrick  
Business and Community Development Manager  
Liberty Utilities  
9 Lowell Road  
Salem, NH 03079

Dear Ms. Fitzpatrick,

This letter follows the meeting we had in September regarding concerns with additional utility poles within the Area Improvements Plan around the Depot Project.

As you know a comprehensive plan was adopted by the Salem Planning Board in 2011 that established a community vision and economic revitalization plan for the Depot Area. Moreover the Depot Roadway Project is the centerpiece for major area improvements and is currently under construction expected to be completed by late spring of 2022. In 2021 we demanded Liberty relocate its aerial infrastructure underground within a 350' radius of the Depot Intersection at which time that work is complete. That project was a success albeit complex given the infrastructure already in place and the undivided cooperation of all parties involved including the Town. The utility relocation undoubtedly enhances the safety of the roadway improvements which included among other things additional turn lanes and road widening.

Attached with this letter is the Town's request for further infrastructure work within the area improvements that will be constructed once the Depot Project is complete. You will find the pole locations on the detail pages respectively illustrating current conditions of which concerns are the same as those offered previously in the Demand Letter sent February 19, 2020. Simply put, the poles in the right-of-way primarily represent a safety hazard to highway users or may interfere with highway maintenance operations – this is clearly evident in the attached and something that could be exacerbated with the proposed new signalized intersections (Nodes 4, 8, 20, and 22). In addition there is large housing development slated for construction denoted with the star on page four and which includes its frontage in close proximity to right of way (See Page 5).

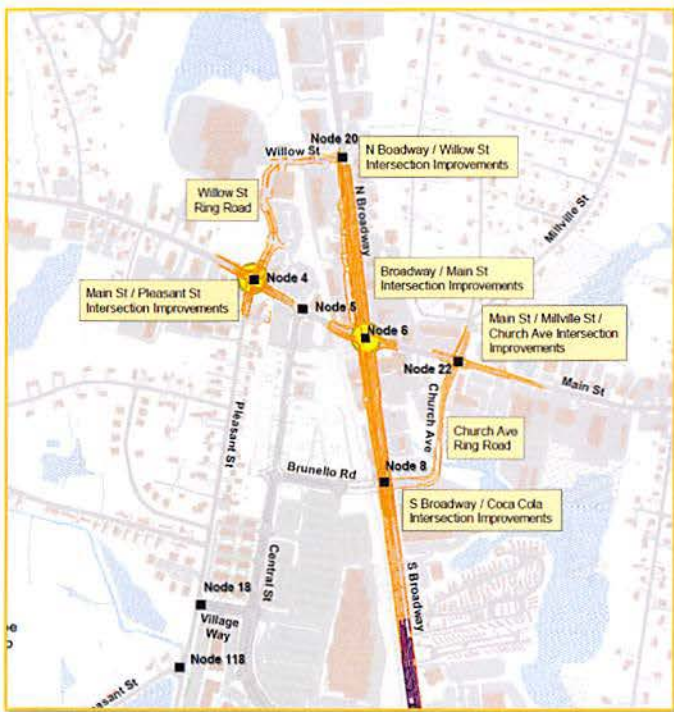
As stated previously, the geometric challenges and confinement for these improvements do not support overhead lines and accompanying poles. As such per RSA 231:177 acting as an agent for the Town of Salem, I am demanding that Liberty Utilities begin the official process of relocation options moreover provide a formal response to this demand within 10 days.

Sincerely,

Roy E. Sorenson

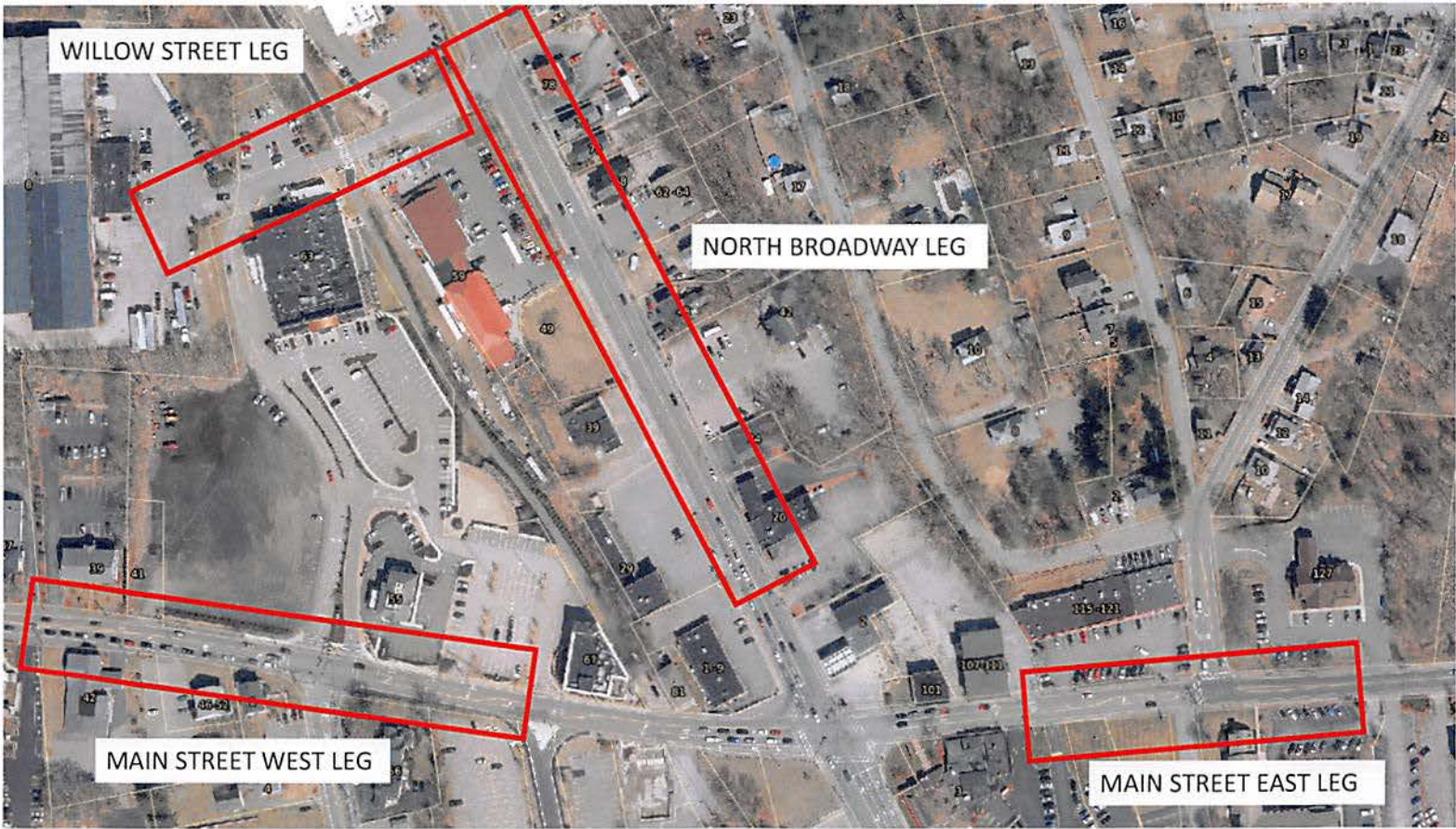


## AREA IMPROVEMENTS



## POLE IMPACTED AREAS



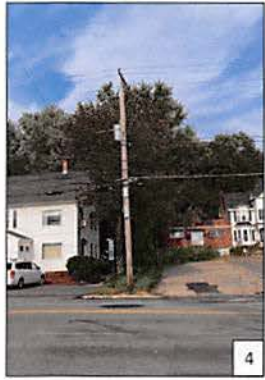
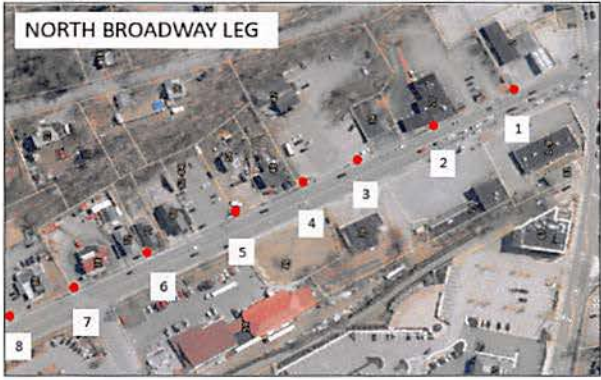


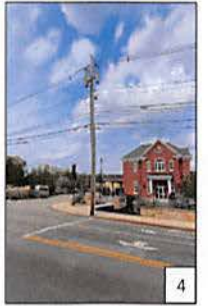
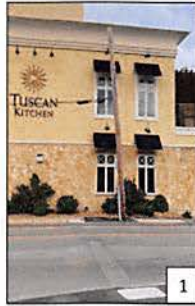
WILLOW STREET LEG

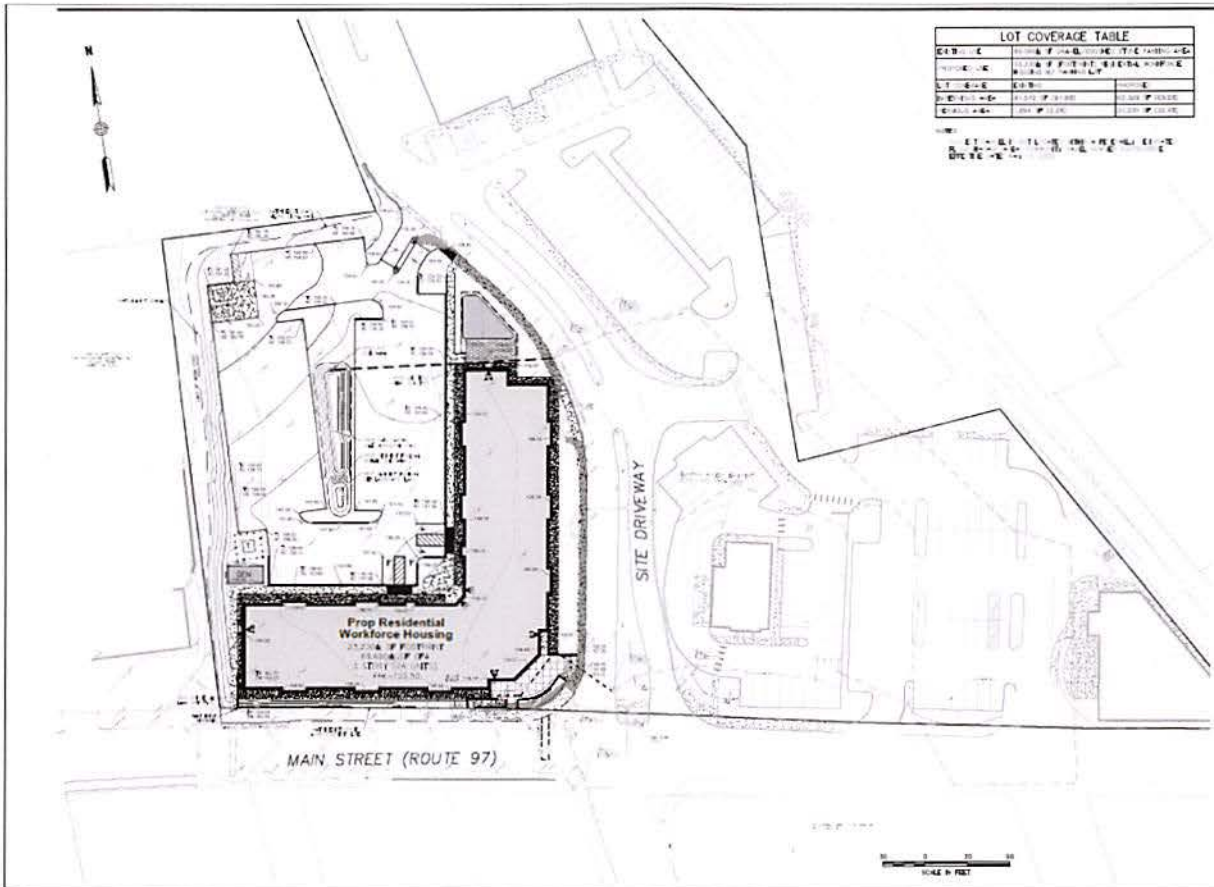
NORTH BROADWAY LEG

MAIN STREET WEST LEG

MAIN STREET EAST LEG







LOT COVERAGE TABLE			
LOT #	AREA (SQ. FT.)	PERCENTAGE	MAXIMUM BUILDING AREA (SQ. FT.)
1	11,200	100%	11,200
2	11,200	100%	11,200
3	11,200	100%	11,200
4	11,200	100%	11,200
5	11,200	100%	11,200
6	11,200	100%	11,200
7	11,200	100%	11,200
8	11,200	100%	11,200
9	11,200	100%	11,200
10	11,200	100%	11,200
11	11,200	100%	11,200
12	11,200	100%	11,200
13	11,200	100%	11,200
14	11,200	100%	11,200
15	11,200	100%	11,200
16	11,200	100%	11,200
17	11,200	100%	11,200
18	11,200	100%	11,200
19	11,200	100%	11,200
20	11,200	100%	11,200
21	11,200	100%	11,200
22	11,200	100%	11,200
23	11,200	100%	11,200
24	11,200	100%	11,200
25	11,200	100%	11,200
26	11,200	100%	11,200
27	11,200	100%	11,200
28	11,200	100%	11,200
29	11,200	100%	11,200
30	11,200	100%	11,200
31	11,200	100%	11,200
32	11,200	100%	11,200
33	11,200	100%	11,200
34	11,200	100%	11,200
35	11,200	100%	11,200
36	11,200	100%	11,200
37	11,200	100%	11,200
38	11,200	100%	11,200
39	11,200	100%	11,200
40	11,200	100%	11,200
41	11,200	100%	11,200
42	11,200	100%	11,200
43	11,200	100%	11,200
44	11,200	100%	11,200
45	11,200	100%	11,200
46	11,200	100%	11,200
47	11,200	100%	11,200
48	11,200	100%	11,200
49	11,200	100%	11,200
50	11,200	100%	11,200



TEC, Inc.  
 246 Galloway Road  
 Salem, NH 03079  
 www.tec-engineering.com

DATE	BY	REVISION
01/15/2024	JRM	ISSUED FOR PERMITTING
01/15/2024	JRM	ISSUED FOR PERMITTING
01/15/2024	JRM	ISSUED FOR PERMITTING
01/15/2024	JRM	ISSUED FOR PERMITTING

OMJ Realty, LLC  
 P.O. Box 1648  
 Salem, NH 03079

2&S Investments, LLC  
 C/O Bean & Bean, LLC  
 3 Graf Road, Suite 13  
 Newburyport, MA 01950

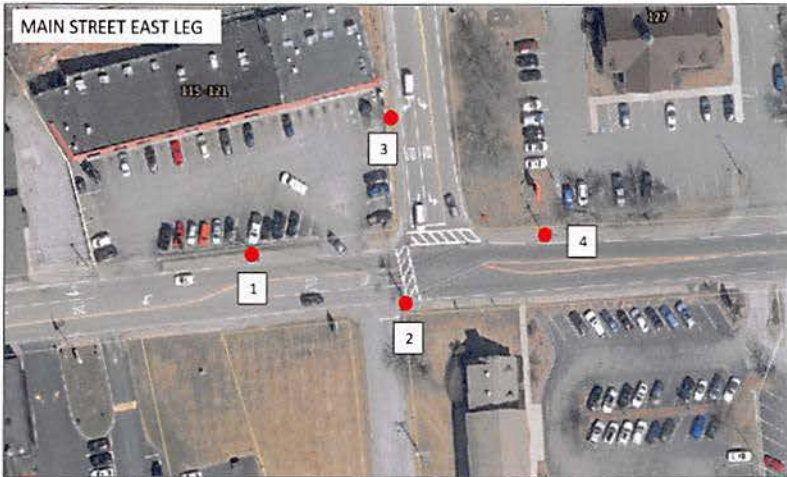
DATE	BY	REVISION
01/15/2024	JRM	ISSUED FOR PERMITTING
01/15/2024	JRM	ISSUED FOR PERMITTING

Permitting  
 Proposed Site Development

41 Main Street  
 Salem, New Hampshire

Grading & Drainage Plan







**SALEM MUNICIPAL SERVICES**  
Roy E. Sorenson - *Director*  
**ENGINEERING ♦ PUBLIC WORKS ♦ UTILITIES**



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Salem, NH 03079  
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August 24, 2023  
Jill Fitzpatrick  
Business and Community Development Manager Liberty Utilities  
9 Lowell Road  
Salem, NH 03079

Dear Ms. Fitzpatrick,

This letter follows the meeting we had on site at the Main Street and Pleasant Street Intersection and/or including the Main Street corridor from the limits of the Depot Intersection Project to a location westerly approximately 900 feet just past 41 Main Street, Map 89, Lot 1141, otherwise known as the site of a Work Force Housing Project by Elm Grove Companies. It was during that meeting that I denied the overhead solution as provided to the Town by Liberty Utilities, and as prepared Keegan Lynch of Control Point Technologies. Shortly thereafter I received an email correspondence from you on August 1, 2023, requesting to be placed on an upcoming agenda for Town Council. Liberty Utilities is hereby notified that they will be placed on the Town Council Agenda for September 11, 2023.

The Agenda Item shall be referenced as:

Liberty Utilities request for pole relocation and associated licensing thereof along a segment of Main Street between Maple Place and Central Street.

My assertion is as follows:

Utilities are extended the general privilege to exist in the Town right of way however they have no exclusive right and as such exist at their own sufferance. It is statutorily undeniable, RSA 231:177, that a Town has the authority to issue an order, or demand, for a utility to be moved, removed, and/or relocated. Such efforts are at the expense of the owner and are warranted by, and for, public health, safety, or convenience.

The Town of Salem issued a Demand Letter (1), dated February 19, 2020, to Liberty, for removal of their aerial utility, and subsequent relocation underground as part of the Depot Intersection Project. This demand was not lost on merit, fully recognized the spirit and intent of the Depot Intersection Redevelopment Concept Plan of 2011, and was met by Liberty with the underground relocation successfully completed. It was also made known at that time that additional projects, identified as Ring Roads, through and in the vicinity of the Depot Project Area, would be moving into design engineering with the expectation of construction shortly thereafter.

The Town of Salem issued a Demand Letter (2), dated October 4, 2021, to Liberty, for beginning the official process of relocation options of their aerial utility, as outlined in accompanying attachments to that letter, in relation to several proposed new signalized intersections for the Ring Roads (Nodes 4, 8, 20, and 22).



The impetus of this request was the Main Street at Pleasant Street signalized intersection project, Node 4. This project utilizes and maximizes all of the right of way as this is a very compact area. Liberty has since provided the Town with an overhead solution and an underground solution. The overhead solution as designed calls for 50' – 55' poles located at the back of sidewalk and approximately 10' off the face of the building façade of Work Force Housing. This is unacceptable and certainly not prudent. It completely disregards the redevelopment to date, ignores the Town's preferred streetscape, and flies in the face of public health and safety. Categorically it affects the Workforce Housing Development, which is on record through Brian Webster of Elm Grove Properties, opposing the proposed overhead solution. I would most certainly expect Elm Grove Properties to appeal to Superior Court for any approval by the Town Council for the overhead solution, thus moving for relief and seeking damages.

It may be that Liberty will come to the Town Council in an effort to demonstrate the cost of relocating underground as a hardship. The Town is by no means immune from this and will incur costs similar to those associated with undergrounding its own utilities as with the Depot Project. Town costs will be covered, moreover captured, through funding designated for capital improvements specific to that area and which will be used to invest in the public good. From what I understand Liberty has previously testified to the PUC regarding the undergrounding as part of the Depot Intersection Project through DE 19-064. While there appears to be some initial confusion on the PUC's part regarding cost recovery, I believe Attorney Sheehan made it quite clear that the mandate was a legal and public requirement. My question at this time is whether this current request has been placed in any Project and/or Capital Investment List to be included for cost recovery.

I'm not sure why Liberty continues to ignore the Town's vision and economic revitalization as such. As stated previously, the Depot area presents geometric challenges, has limited right of way, and redevelopment objectives that do not support overhead lines and accompanying poles. A large part of the concept plan was focused on traffic safety improvements and enhancing pedestrian opportunities in the spirit of facilitating people by walking to destinations. Design standards for streets, frontage of buildings, connectivity, and mode shift, can only be achieved by exclusive right of way control. This is no more evident than the placement and design of the Workforce Housing building located on the northwest corner of the intersection.

This demand is sound in principle and by no means reckless in its authority. Liberty should be prepared to present its case, including testimony and exhibits, for both solutions, and why one, more than the other, is most prudent albeit safer and more reliable. Liberty should also provide litigious documentation, if applicable, contrary to the Town's position, which it believes offers credence for its inability, reluctance, or refusal, to meet such a demand.

Sincerely



Roy E. Sorenson  
Municipal Services Director

Cc: Town Manager, Chris Dillon  
Town Council  
Engineering Division  
Mike Courtney, Upton & Hatfield, LLP

Russell F. Hilliard  
James F. Raymond  
Barton L. Mayer  
Heather M. Burns  
Lauren Simon Irwin  
Michael S. McGrath\*  
Jeanne S. Saffan\*\*  
Susan Aileen Lowry  
Michael P. Courtney\*  
Nathan C. Midolo\*\*\*  
Brooke Lovett Shilo  
Todd C. Fahey  
Stephanie J. Thomson\*\*\*\*  
Laura M. Dudziak  
Timothy J. Sullivan  
Madeline K. Osbon



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*Of Counsel*  
Thomas W. Morse  
Jeffrey R. Crocker

Exhibit D

\* Also admitted in MA  
\*\* Also admitted in MA & NY  
\*\*\* Also admitted in MN  
\*\*\*\* Also admitted in VT

September 26, 2023

## NOTICE OF DECISION

[Michael.sheehan@libertyutilities.com](mailto:Michael.sheehan@libertyutilities.com)

Michael Sheehan, Esquire  
Director, Legal Services  
Liberty Utilities  
130 Elm Street  
Manchester, NH 03101

RE: Liberty Utilities Request for Pole Relocation and Associated Licensing Thereof  
Along a Segment of Main Street Between Maple Place and Central Street.

Dear Attorney Sheehan:

At a duly noticed public hearing on September 11, 2023, the Town of Salem Town Council, pursuant to RSA 231:159-182, including RSA 231:177, voted to deny Liberty's request regarding the placing of aerial utility, equipment, and any/all appurtenances from the Depot Intersection Project to a location westerly approximately 900 feet after 41 Main Street, Map 89, Lot 114. The Town Council found, on the evidence before it, that the aerial utility, equipment, and any/all appurtenances do not serve the public good, but, instead, cause safety and health concerns for pedestrians and vehicles as the structures are too close to the Town's maintained road, and interfere with the use of the sidewalk. Liberty's alternative plan to place the aerial utility, equipment, and any/all appurtenances to the back of the sidewalk is similarly against the public's good for the reasons stated above, and as an attractive nuisance to neighborhood children. Lastly, Liberty's current and proposed alternative plans placing of aerial utility, equipment, and any/all appurtenances is against the public good as this area has recently undergone significant town and private improvements to which the placing of these structures would harm the aesthetic features of this area.

10 Centre Street, Concord, NH 03301  
Concord – Peterborough – Portsmouth

September 26, 2023  
Page 2

Liberty Utilities shall respond within 10 days from receipt of this letter articulating a plan and schedule to remove their aerial utility, equipment, and any/all appurtenances from the Town right of way, and relocate such underground as described in the previous demand letters sent by Municipal Services. All work shall be coordinated through the Municipal Services Department and include any/all collaboration of utilities collocated on the current configuration.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a 'C'.

Michael P. Courtney

MPC/cab