

**FARMINGTON PLANNING BOARD**  
**153 Farmington Falls Road**  
**April 13, 2015**  
**Minutes**

Planning Board members present were Clayton King, Donna Tracy, Lloyd Smith, Gloria McGraw, Tom Eastler, Bill Marceau, and Craig Jordan. Alternate member, Jeff Wright was unable to attend.

Others present were Selectman, Joshua Bell; Town Manager, Richard Davis; Code Enforcement Officer, Steve Kaiser; Code Enforcement Assistant, Jane Ford; Town Attorney, Frank Underkuffler; Michael Otley, and Bobbie Hanstein and Pam Harnden representing the press.

Representing McDonald's were John Cusack and Eric Dubrule of Bohler Engineering LLC, Southborough, MA.; and owner, Ken Doyle.

Representing Bay Communications II LLC, Northeast Wireless Networks were Mark Cook and Jonathan Springer of Springer Law Office, Portsmouth, NH.

Representing AutoZone was Dustin Roma of Milone & Macbroom, Inc., Portland, ME.

**1. Designate alternate members, if needed.**

N/A - *[There is one vacancy for an alternate member at this time].*

**2. Review minutes of March 9, 2015 and March 16, 2015**

**March 9, 2015**

Mrs. Tracy made a motion to approve the minutes of March 9, 2015 as submitted.

Dr. Eastler seconded the motion.

VOTE: 7 – Affirmative 1 – Absent None opposed.  
Motion carried.

**March 16, 2015**

Mrs. Tracy made a motion to approve the minutes of March 9, 2015 as submitted.

Dr. Eastler seconded the motion.

VOTE: 7 – Affirmative 1 – Absent None opposed.  
Motion carried.

### **3. McDonald's Corporation - Construction of a New 4,892 SF Restaurant**

#### Review Finalization

303 Main Street (same location)

U14 – Lot 044 – A

Design Review

Shoreland Zoning Application #15-SZ-01

Floodplain Application #15-FP-01

#### Design Review

Mr. King began by stating that McDonald's already received approval for Site Review and Soil Erosion Control/Storm Water Management at the last meeting on March 9, 2015.

Civil Engineer, John Kucich presented both renderings of the proposed McDonald's and stated it was his understanding that some of the Board members like the original and some liked the revised rendering. He said main differences in the revised version are that the exterior brick goes all the way up to the roof, the middle parapet was eliminated, and a white cornice was added on the top of the brick.

Mrs. McGraw said she went on a road trip while in Florida and said that it seems that the revised version is the new style McDonald's is using there and that she is okay with the second version.

Mr. Jordan said that he does not like the "big eyebrow" [elongated yellow arch] out in the front of the building and asked if it would be possible to have that removed as there will be the traditional golden arches on the building and out on the front sign, adding that this site is well identified and is the only McDonald's within a 20 mile radius.

Mr. Kucich said they can't remove the eyebrow due to corporate branding requirements.

Mr. Jordan said that Buzz and Taffy Davis sent other designs of McDonald's with different architectural features that did not have the eyebrow.

Mrs. Tracy said that she liked the new changes and will go along with the revision. She also thanked Mr. Kucich for working with the Board.

Mr. Smith said that after seeing the McDonald's in Auburn, he likes the original design better than the revised version.

Mr. Marceau said he likes the original design.

Dr. Eastler said he also likes the original design.

Mr. King said he saw the brand new McDonald's in Rockland and agrees with Mr. Jordan regarding the eyebrow, as the sign with big arches will remain out front.

Dr. Eastler said he likes the original design but will go along with the Board's consensus.

Mrs. McGraw asked if they would eliminate the big sign with arches for the eyebrows on the building.

Mr. King asked for any public comments and there were none.

Mr. King made a motion to accept the original design.

There was no second to the motion.

Mrs. McGraw made a motion to accept the revised design and added that the Board can't make them change their designs.

Mr. King seconded the motion.

VOTE: 7 – Affirmative 1 – Absent None opposed.  
Motion carried.

#### Shoreland Zoning Application #15-SZ-01

Dr. Eastler made a motion to approve the Shoreland Zoning application as presented.

Mrs. Tracy seconded the motion.

Mr. Jordan said at the last meeting there was an abutter [Mrs. Parsons] who had an issue regarding the property lines.

Mr. Doyle said they met with that abutter and walked the property line. He said the property is in her brother's name and they will be meeting with him as well. He added that some of the limbs that need trimming are extending from the abutter's property, but none of the project construction components will be on the abutter's property.

VOTE: 7 – Affirmative 1 – Absent None opposed.  
Motion carried.

#### Floodplain Application #15-FP-01

Dr. Eastler made a motion to approve the Floodplain application as submitted.

Mr. Marceau seconded the motion.

VOTE: 7 – Affirmative 1 – Absent None opposed.  
Motion carried.

Mr. King asked if any accommodations will be made for the employees during the construction period.

Mr. Doyle stated that half of the employees are college students who will be leaving anyway, and the other half will have employment at the McDonald's in Jay or Rumford with carpooling provided.

It was also stated that construction will start June 1<sup>st</sup> and they plan to open on Labor Day.

Dr. Eastler stated that a student of his put his video regarding the "April Fool's Day" Flood of '87 on YouTube and recommended they watch it to see just how flooded McDonald's was after that event.

#### **4. UMF – Construction of 5,800 SF Central Heating Plant**

##### Review Finalization

Located on the corner of Perkins Street and Quebec Street

Map U13 – Lots 073, 074, 075, & 076

Design Review

Facts and Findings

Mr. King asked if there was anyone present to represent this proposal and there was no one present to represent the finalization of this proposal.

##### Review Finalization

Mrs. McGraw made a motion to accept the revised design [with the enclosed exhaust stack].

Dr. Eastler seconded the motion.

VOTE: 7 – Affirmative 1 – Absent None opposed.

Motion carried.

##### Facts and Findings

Mr. King asked if everyone on the Board had a chance to review the Facts and Findings.

Mr. Kaiser said Attorney Underkuffler reviewed them and he presented a clean copy incorporating his modifications for the Board members' signatures.

Mrs. McGraw asked exactly what is this [Facts and Findings].

Mr. King said it encapsulates everything that happened at the meetings and everything that was recorded in the minutes.

Mr. Kaiser said in cases like this where it is more complicated and there is some controversy, Facts and Findings are prepared to document the details of the review process and the decisions made by the Board.

The Board members then signed the Facts and Findings.

## **5. Mark Cook - Bay Communications II LLC/Northeast Wireless Networks [NEWN]**

### Continuation of Review

Construction of a Wireless Service Facility (Cell Tower)

Located off Titcomb Hill Road – Property owned by Horn, & Co., LLC

Map R11 – Lot 002

Wireless Telecommunication Application #15-WT-01

Soil Erosion Control/Storm Water Management Application #15-SS-03

Mr. Cook began the discussion by stating that they are a licensed FCC carrier and they are doing parallel applications with the Town and the FCC.

Mr. King asked Attorney Underkuffler if we need to make a new motion and Attorney Underkuffler said, no. [In the minutes of March 9, 2015, Mr. King made a motion at that meeting to accept the Wireless Telecommunications Facility Siting Application. Dr. Eastler seconded the motion. No vote was taken at that time].

### Discussion on the Balloon Test:

Mr. Cook said they rescheduled the balloon test for April 2, 2015 due to the fact it was too windy on the original test date, March 31<sup>st</sup>. He said six photos were forwarded [to the Code Office this morning] and the pictures encompassed the north, south, east, and west directions as follows:

- Photo #1 - view west toward the project site off Titcomb Hill Road
- Photo #2 - view southwest toward the project site off Titcomb Hill Road
- Photo #3 - view from in front of 376 Titcomb Hill Road
- Photo #4 - view north toward project site from Court Street
- Photo #5 - view east toward project site from Fairbanks Road and Pillsbury Lane
- Photo #6 – view east toward project site from Fairbanks Road and Sunny Hill Drive

Mr. Cook said in photo #6 you can see the existing tower between the two pitched roofs. He said he feels good about the location and the tree canopy would be good for screening.

Mr. King expressed his disappointment that photo simulations of a tower were inserted into the photos instead of the actual balloon, as it was hard to assess the visual impact. He said balloons were always shown in the past. He added that he did like the aerial shot. He then asked the Board members if they had any questions or comments.

Mrs. McGraw had no comments regarding the balloon test.

Mr. Jordan said the tower was photoshopped in and asked if there was an actual balloon in the air.

Attorney Springer said, yes, it was a red balloon at tower height. He said the crew goes to the different locations, takes the shots, and goes back and inserts the [virtual] tower using PhotoShop.

Mr. King said his wife, Joyce, saw the balloon from his store [CJ Appliances on Titcomb Hill Road].

Mrs. Tracy had no comments regarding the balloon test.

Mr. Smith said he wished he knew what day the test was going to be conducted, thinking it was to be on March 31<sup>st</sup>.

Mr. Kaiser said that Mr. Cook emailed him about the date change to April 2<sup>nd</sup> due to the windy conditions on the original test date, March 31<sup>st</sup>. He said he forwarded this update to everyone.

Mr. Cook concurred that the Town was notified of the change.

Mr. Marceau had no comments regarding the balloon test.

Dr. Eastler said that he was okay with the balloon test.

#### Wireless Telecommunication Application #15-WT-01 - Continuation

Mr. King said we are here to discuss the construction of the proposed tower to be built on the Horn property and asked the applicants if they had anything to add.

Attorney Springer said one of the issues regarded was whether or not there was a vernal pool near the site, and he said they also emailed an initial Phase 1 Environmental Site Assessment [emailed on 4-13-15] which showed that there was no indication that the proposed project was located anywhere near a wetland. He said at the last meeting [March 9, 2015] some people said that there was a vernal pool on this site. He said that because there is snow still on the ground, he can't send anyone out there yet to verify the Phase 1 report, that there is no vernal pool.

Attorney Springer said that the Horn property has been in the family for decades and owner, Dave Horn, emailed a letter to Mr. Kaiser dated March 27, 2015 and asked if the Board members had seen the letter, and everyone said they had. He then read a portion of the letter in regards to a vernal pool:

Mr. Horn wrote: *There was also an objection [in regards to the meeting of March 9, 2015] based on possible "vernal pools" near the proposed tower location. This is, I believe, an objection raised to hide the real objection – "I don't want to look at it." I have been over the area where the tower is proposed to be located and have never seen any wet areas that might be considered "vernal pool". I cannot say unequivocally that there are none, but I've never seen any. In addition, the Town of Farmington has no maps of "vernal pools" in the town so they are of no help.*

Attorney Springer said that if this project is approved, when the snow is gone we would have to establish whether or not there is a vernal pool and, if so, we'd have follow the required setback for the construction site.

Mr. King asked, when you say "we" who do you mean.

Attorney Springer said "we" meaning Bay Communications.

Mr. King asked Attorney Springer if he walked the area and he replied, no.

Mr. Cook said he has, and he and the surveyors didn't see any signs of vernal pools. He added that when the snow melts, they'll do a final vernal pool assessment.

Mr. King asked about lot size issue.

Mr. Kaiser said the Town's Zoning Ordinance has lot size requirements for property to be out-conveyed only, but nothing regarding leased property. He said this site is 210' x 210', a little over an acre.

Attorney Underkuffler said the question is – is the leased area a lot or not? He said that the only definition of lot is found in the Town's Subdivision Ordinance, and this is not a subdivision, so it's up to the Board to consider whether it is a lot or not. He said the Board is not necessarily bound by past practice of not treating leased areas as lots, and some leases are very long which might induce you to require such areas to meet lot size requirements.

Attorney Springer said he is not a Maine attorney, rather a New Hampshire attorney, and telecom leases doesn't constitute lots based on a recent Maine court decision, no matter how long the lease.

Attorney Underkuffler asked if that ruling was driven by language.

Attorney Springer said it was carte blanche, not just one case.

Attorney Springer then addressed the issue Mr. Deschenes raised [at the March 9th meeting] regarding the FCC, SHPO, and the MOA [which is just a draft], which all parties must OK, including NE Wireless and US Cellular. He said this process could take another six months to a year, adding that Farmington doesn't require co-location in its ordinance, and you can't prevent this tower just because there is another one nearby, concluding we meet all the criteria under your ordinance.

Mr. King said we can't force you to co-locate, and then asked the Board for their comments and questions.

Mrs. McGraw had no comments.

Mr. Jordan said we currently have a tower that you could co-locate on, and it's too bad you wouldn't do this voluntarily.

Mrs. Tracy had no comments.

Mr. Smith expressed concerns regarding approvals with conditions. He said the questions regarding vernal pools, and whether a leased area is considered a lot, should be answered before the application is approved.

Attorney Underkuffler agreed with Mr. Smith on the lot issue, and said you have the time, you're not rushed.

In response to Attorney Underkuffler's questions regarding lot size and leased property, Attorney Springer made reference to the court case Horton v. Town of Casco regarding the construction of a telecommunication tower on a leased lot. He also said he doesn't agree with lot size as being an issue and said that this is the first time this matter has been mentioned in this case. He added that vernal pools are not an issue, and it's not going out on a limb to grant conditional approvals.

Attorney Underkuffler said it would be unusual to approve this application with the lot question unresolved, and he would like to look over the Horton v. Town of Casco case. He also said he is generally not in favor of approving with conditions.

Attorney Springer said there is no indication that there is a vernal pool on that property.

Mr. Smith asked Attorney Springer if he ever walked the property.

Attorney Springer said no, but they submitted the Phase I Environmental Site Assessment and it indicates that there is nothing [wetlands] near the site of the proposed tower. He said when the snow clears, they will have someone walk the site.

Mr. Cook said he did walk the property and he looked for ferns and other indications of a vernal pool, and did not see any.

Dr. Eastler said Peter Tracy, who is a Certified Forester, has walked that property a good portion of his life and he would like Mr. Tracy to go back to the site and look at it, and get back to the Planning Board with his findings.

Mrs. McGraw said even if there is a vernal pool, it would only have to be a certain distance from a structure.

Mr. Cook said it would have to be 250' from the vernal pool and that wouldn't affect the leased area.

Mr. Smith said he is extremely familiar with the woods and has seen vernal pools in the summertime and lots of times there are no ferns and many wetlands are not documented. He said all it needs is to be a depression in the ground. He said that it is his understanding that vernal pools have been mapped only in the southern part of the State. He added that if found, they are supposed to be reported, but most aren't.

Mr. King asked if the person doing the Phase I report walked the property.

Mr. Cook said we do the paperwork first, then go out into the field and do a comprehensive review. He added that the consultant checked the property, and said there is a very small pond on a separate parcel hundreds of feet from the site.



Mr. King questioned the credentials of the person who prepared the Phase I Environmental Site Assessment. He said it was not on the paperwork.

Mr. Cook said it was edited down. He said he can send that information regarding his review and the consultant's.

Attorney Springer approached the Board table with a very large report, and showed Mr. King the name of the person who prepared Environmental Site Assessment and his credentials, and Mr. King was satisfied.

Mr. Smith said he feels the Board should have the opportunity to review the full report. He said if you are submitting it [Full Environmental Site Assessment] I would like a month to study it.

Attorney Springer then took the full Environmental Site Assessment back from the Board's table.

Attorney Underkuffler said he would like to research the case study of Horton v. the Town of Casco on the Internet.

Mrs. McGraw made a motion to take up the AutoZone Parts applications and table the current review so that Attorney Underkuffler could research the case study of Horton v. the Town of Casco [on the Internet].

Mrs. Tracy seconded the motion.

VOTE: 7 - Affirmative 1 – Absent None opposed.  
Motion carried.

## **6. AutoZone Parts, Inc. – Construction of New 7,381 SF Store**

### Initial Review

Wilton Road (Between Burger King and Walmart)

Map U37 – Lot 020-A

Site Review Application #15-SR-03

Soil Erosion Control/Storm Water Management Application #15-SS-04

### Site Review Application #15-SR-03

Civil Engineer, Dustin Roma, was present to represent this proposal and said that they had previously received a variance from the Board of Appeals [15' variance of the standard side setback of 25'].

Mr. Roma said they are negotiating with Walmart regarding the use of their driveway via a new median strip opening instead of creating another curb cut on the highway.

Regarding surface water runoff, Mr. Roma said they will be utilizing the existing storm drainage and will be adding three more catch basins on the site to capture runoff which will connect to an existing basin towards Walmart, but independent of their system.

Mr. Roma said they checked with the sewer department and were told they could hook onto the existing sewer main which runs under the building, and they will have to reroute the line to the parking lot area with several new manholes with a new easement. Mr. Roma said that they will be tapping into the existing public water and stated that they will go to the Fire Marshal to determine the required water pressure.

Mr. Roma said the sidewalk around the building will be made of monolithic concrete.

Regarding the exterior lighting Mr. Roma said they will be using cutoff fixtures around the building and will be keeping the illumination on the property per the photometric plan.

Mr. Roma said the parking lot will be concrete which will prolong the life of the surface vs. bituminous.

Regarding landscaping, Mr. Roma said he looked at the standards and they do meet them if not exceed, these requirements.

Mr. Roma said because things are tight on the Burger King side, they're planning three different evergreen types on the backside of the building.

Mr. Roma said they will be erecting a free standing pylon sign and building signage, and he has been in contact with Code Enforcement Office to insure these meet Town requirements.

Mr. Roma displayed two renderings, front and side views, to show what the building will look like, and noted that the street side will have large windows.

Regarding traffic, Mr. Roma said typically there will be approximately 458 vehicle trips daily [229 in and out] that will be controlled by the [existing] traffic light.

Mr. Roma said they have extra parking spaces at 37 vs. the required 30 spaces, as AutoZone likes to have between 35-40 spaces and concluded that they are ready to move forward.

Dr. Eastler made a motion to accept the Site Review application as submitted.

Mr. Smith seconded the motion.

Dr. Eastler said he feels they did a nice job [with the application] and to inform them of the importance to excavate deeper than 48" for frost depth, perhaps 4' – 6', because that area is sitting on glacial till with an abundance of clay, silt and gravel. He said he also recommends the use of geotex fabric.

Mr. Roma said they will rely on data from the extensive borings that were done.

Dr. Eastler suggested they look at the Walmart parking lot, saying they did a lot of borings too and it was still under designed. He said you will find many heaves in that parking lot as well as the Mt.

Blue Shopping Center parking lot across the highway. He said due to the character of the frost, you need to go down deep enough with gravel as clay and water will be pumped up by frost and traffic over time. He said if it isn't done right in the beginning, the owners will have to deal with a significant expense 5-10 years later. He said he likes the concrete parking area, and asked if they plan subsurface drainage.

Mr. Roma said they've designed perimeter drains around the building footings.

Dr. Eastler said the building drainage is OK, but the parking area needs more.

Mr. King asked about snow removal.

Mr. Roma said for the first storm they will do the best they can, and afterwards they will have it hauled away.

Mr. King asked if there was any alternative color scheme.

Mr. Roma said what has been presented here tonight is their preferred brand style and color, which is used most often.

Mr. King said the AutoZone store in Rockland has the same color scheme, and asked Mr. Roma if he's seen them do anything different.

Mr. Roma said he has not.

Mr. Marceau was asked if he had any questions and he said he was all set.

Mr. Smith asked about exterior lighting.

Mr. Roma said that will not be a problem [they will follow Ordinance standards].

Mr. Smith asked how goods would be delivered into the store.

Mr. Roma showed how the trucks would enter [pointing it out on the site plan] and said they like to avoid loading docks. He said there will be a large door and the trucks will have lifts that will back into that area where the stock will be unloaded. He said they will use tractor trailers and other types of trucks, probably no longer than 50'.

Mr. Smith asked about delivery hours.

Mr. Roma said deliveries will usually be early in the morning about 6:00 A.M., before the store opens for business.

Mr. Smith asked what the T10 shrubs were.

Mr. Roma said these were sumac which were chosen for low maintenance.

Mr. Smith they will give good screening but he has a problem with spruce and pine on the Burger King side. He said as white pine ages, it can get very ugly. He said the softwoods will spread out and encroach onto Burger King. He said it will be a problem when they drop their needles on the roof.

Mr. Roma said there was a chance they could change to hardwood, but when it grows they will lose the screening.

Mr. Smith said softwood doesn't belong there.

Mr. Roma said he would look into changing this.

Mr. King asked Mrs. Tracy if she had any questions, and she said her question about landscaping had already been answered.

Mr. Jordan asked if the Walmart deal on the driveway access was finalized.

Mr. Roma said that is pending and we first need Planning Board approval.

Mr. Jordan also made a comment regarding a 6" water main that was exposed [in an area that was not snow covered], used daily, except on weekends, was 6' down and froze this winter. He added that this is an indication of what Dr. Eastler said about our severe weather.

Dr. Eastler said 48" frost depth protection is not enough, you need at least 6'.

Mrs. McGraw asked where the storm drainage goes after going into the catch basin by the Walmart driveway.

Mr. Roma said that connection was approved by the Public Works department, and the flow goes into Hardy Brook.

Mr. King reminded the Board that any approval is conditional on their successful completion of access arrangements with Walmart.

Dr. Eastler suggested that Mr. Kaiser work with Mr. Smith regarding the type of trees to use for screening.

Mr. Kaiser asked Mr. Smith if maple trees would be preferable to oak trees.

Mr. Smith said either would be preferable to softwoods.

Mr. Roma said he would reduce the number of softwoods accordingly.

VOTE: 6 – Affirmative 1 – Opposed 1 – Absent  
Motion carried.

## Soil Erosion Control/Storm Water Management Application #15-SS-04

Dr. Eastler made a motion to approve the Soil Erosion Control/Storm Water Management application as submitted.

Mr. Jordan seconded the motion.

VOTE: 8 - Affirmative 1 – Absent None opposed.  
Motion carried.

The Board asked that the landscaping modification in PDF format be sent to the Code Office.

### **5. Mark Cook - Bay Communications II LLC/Northeast Wireless Networks [NEWN]** Continuation of Review

Attorney Underkuffler said he researched the Horton v. Town of Casco case online regarding lot size [in the Code Office], and said that ruling determined that a lease of land is not a transfer of land, and that a five year lease is not permanent enough to establish a lot. He continued that leased land is less like a lot, and therefore less exclusive, and whether or not the lease is recorded is immaterial. He said such recordings do not make a deed. He concluded that this issue all depends on what's in the lease.

Attorney Springer said the Horton case was about an AT&T renewable lease, not just a five year lease that was renewable nine times, which equals a total 50 year lease. He said this was not considered a lot. The subject tower is not exclusive as it has a total of six slots - five available for co-location.

Attorney Underkuffler said the Town could add a co-location requirement to their approval, which would settle the exclusivity issue and make the lot size issue irrelevant.

Attorney Springer said in the tower projects we do record a lease memorandum to make it publicly clear that it is not a deed, and the lease uses the terminology "license" and not "new lot", and there is no "exclusive" right therefore co-location is insured, and they are happy to agree to co-location.

Mr. King said he feels that he is comfortable that the vernal pool issue has been settled, and Attorney Underkuffler has made the lot size issue moot. He said he is looking for guidance from the Board.

Attorney Underkuffler said that the Board may want to make a co-location agreement a condition of approval, and this would be incorporated into the lease and therefore meet the requirements of the Horton case. He said that a written decision can work out this language.

Mr. King said we're picking up where we left off on 3-9-15 when a motion was made to approve this application which was seconded at that meeting.

Attorney Underkuffler asked if the Board had found the application to be complete, and whether they've filed with the FCC.

Mr. King said two conditions of approval were made – FCC approval, and that the lease was not creating a lot.

Mr. Kaiser read from page 22 of the March 9<sup>th</sup> minutes: *"Mr. King made a motion to accept the Wireless Telecommunications Facility Siting Application. Dr. Eastler seconded the motion."*

Mrs. McGraw moved that we are in receipt of a complete application for the cell tower proposal.

Dr. Eastler seconded.

Mr. Otley asked what about the FCC approval? He said it's required in the Ordinance.

Mr. Kaiser said it is not clear whether that applies to the applicant or the site.

Mr. King said this applies to the applicant being a licensed FCC carrier.

Attorney Springer said the FCC doesn't approve the site.

Mr. Otley then asked, why do they do all the environmental studies in order to get approval?

Attorney Springer said we don't need FCC approval, there is only SHPO review and approval from the Planning Board and when we're done here we're all set. He said Mr. Otley shouldn't complain, as the status of his tower is questionable.

Mr. King said the answer to whether there is an FCC license for this project and if they need to provide it to the Board is - no.

Attorney Springer said NEWN is the entity with the FCC license.

Attorney Underkuffler said FCC approval is not defined and you have to give it a reasonable interpretation. He said you could say the application is complete, then approve with the condition that they obtain all other approvals.

VOTE: 6 – Affirmative 1 – Opposed 1 – Absent  
Motion carried.

Attorney Underkuffler outlined the discussed approval conditions:

- FCC approval
- Lease conform to Horton v. Casco
- Vernal pool exclusion

Mr. Jordan asked if we can approve projects with contingencies.

Attorney Underkuffler said yes, you can, but to avoid problems they need to be spelled out.

Attorney Springer said they won't do anything until everything is settled, and suggested the wording "the applicant shall provide co-location".

Attorney Underkuffler said it is better to see the lease.

Mrs. McGraw asked if they could change the wording, eliminating contingencies or conditions, and use the word "including" instead.

Mr. Cook said they already have a signed lease.

Attorney Underkuffler said if they could submit a copy of the lease, then they could decide if it meets the Horton case. He added the only thing they have to prove is that they are not creating a lot.

Mr. Jordan said in the past, we have seen copies of the lease.

Attorney Underkuffler said they have to show a vested interest.

Mr. Cook said they have a memorandum of the lease recorded.

Mrs. McGraw made a motion to approve the Wireless Telecommunication Facility Siting application as presented contingent on:

- Approval and license from the FCC
- Approval and proof of a lease that does not create a lot per the Horton v. Town of Casco case
- The lack of vernal pool.

Mr. King seconded the motion.

Mr. Otley said it asks for it [FCC approval] in the Ordinance.

Mr. King said that is why we have the Town Attorney here.

Mr. Smith said he thought the vernal pool information Attorney Springer gave to the Board was supposed to stay and then he took it back.

Mr. King said they volunteered more than we needed.

Mr. Smith asked, why isn't it fair for us to study it [the full Environmental Site Assessment].

Attorney Springer said they rarely submit the full Phase I study and that it would be unfair for them to wait another 30 days.

Mr. King asked what you submitted was a condensed version.

Attorney Springer said, yes.

Selectman Bell said the Board accepted the vernal pool information when it accepted the full application as complete.

VOTE: 6 – Affirmative 1 – Opposed 1 – Absent

Soil Erosion Control/Storm Water Management Application

Dr. Eastler made a motion to accept the application as submitted.

Mr. King seconded the motion.

VOTE: 6 – Affirmative 1 – Opposed 1 – Absent

**7. Other Business**

Mrs. McGraw said she reads comments about the Board and wondered if there's some way to summarize the role of the Planning Board.

Dr. Eastler said that's why we have a Comprehensive Plan.

Mr. King said he is asked why we don't make applicants use existing buildings instead of approving new developments [vacant Rite Aid] and he says it isn't the Board's responsibility.

It was stated that there is a general lack of public concern and people don't get involved unless it involves them personally.

There being no further business, the meeting adjourned at 9:10 P.M.

Minutes submitted by Jane Ford

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Planning Board

\_\_\_\_\_  
Date