

TOWN OF CAPE ELIZABETH  
**DRAFT** MINUTES OF THE PLANNING BOARD

June 20, 2017

7:00 p.m. Town Hall

Present:	Carol Anne Jordan, Chair	Jonathan Sahrbeck
	Peter Curry	Henry Steinberg
	James Huebener	Victoria Volent

Absent: Josef Chalot

Also present was Maureen O'Meara, Town Planner.

Ms. Jordan called the meeting to order and asked for approval of the minutes of the May 18, 2017 meeting. The minutes were approved as presented 5-0 (one abstained). The minutes of the June 6, 2017 workshop were approved as presented 5-0 (one abstained).

OLD BUSINESS

**19 Wells Rd Tower Overlay District Amendment-** The Cape Elizabeth Town Council has referred to the Planning Board a request by Global Signal Acquisitions IV LLC (Crown Castle) to establish a Tower Overlay District located at 19 Wells Rd (R5-30), Sec. 19-10-3, Amendments [to the Zoning Map] Public Hearing.

Ms. Jordan recused herself and Mr. Curry stepped in as Chair.

Ms. O'Meara outlined the procedure for a zoning map change. She said the decision is made by the Town Council, but they need a review by the Planning Board prior to making the decision.

Victor Manougian of McLane Middleton and Paul Peckens represented the applicant.

Mr. Manougian said the subject property is owned by the Jordan family. Crown Castle has an existing tower on land owned by the Strouts. The current lease will expire in July 2019. Crown Castle has been asked to leave the Strout property and take their tower. He outlined the process of this rezoning request. They started with the Council, who referred it to the Planning Board, who will send a recommendation back to the Council. The Council will send it to the Ordinance Committee, who will send it back to the Council. When it is approved, they will need to come back to the Planning Board for Site Plan Review. The proposal is for a minimal expansion of the Tower Overlay District. They are doing this because of a breakdown with their current landlord.

They want to move to an abutting parcel of land and support a local farm. The Fire Chief has approved the move, and Crown Castle will again have a fire department antenna on the new tower at no cost to the Town. The Police Chief also has supported this project, and Crown Castle has offered them an antenna at no cost to the Town.

They plan to construct a 180 ft. monopole. It is a smaller profile than the existing tower. The proposed project abuts the existing Tower Overlay District, so it is a minor addition rather than a whole new district. Part of the overlay is in the RP-1 buffer zone. They will not be touching the buffer zone on the ground at all. They have re-routed the access road to avoid the buffer.

Paul Peckens of Crown Castle said the site covers an average of 8,000 vehicles per day and 1,000 households. He said 70% of all 911 calls originate from wireless phones. This network is critical to the Town and the Police and Fire departments. They are working to ensure no interruption of service.

He then talked about the company, Crown Castle and their qualifications. He said they did photo simulations from 6 vantage points. He showed photos from those points.

Steve Kennedy, RF Engineer, is the one who locates the site. They want the service area to be within 1/4 mile or less of where it is currently. He said they will continue the existing coverage. He showed plans of the current coverage and the coverage with the proposed tower.

Mr. Steinberg asked how accurate these representations are.

Mr. Kennedy said they are very accurate, and have been validated with drive tests.

Mr. Sahrbeck asked to see the photo taken from Tiger Lily Lane and noted that you can't see the tower from there because of the tree cover.

Mr. Curry opened the public hearing.

Bill Bamford of 112 Spurwink Road is in favor of the project. He said farmers need extra income.

Bill Jordan of Wells Road said this is not farmed land. This will give a reliable source of steady income, which is especially welcome from November through March.

Ms. Volent wanted to know if soils tests had been done to determine if the land is RP-1 or RP-2.

Stephanie Jordan, soil scientist, said the wetlands to the north do not meet the size, nor the soil types to be RP-1.

Mr. Steinberg asked about the guy wires on the pole, and was told there are no guy wires on the monopole.

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the plans and materials submitted, and the facts presented, the request by Global Signal Acquisitions IV LLC (Crown Castle) to establish a Tower Overlay District located at 19 Wells Rd as depicted on the attached map be recommended to the Town Council.

Mr. Sahrbeck seconded the motion and it was approved, 5-0.

**27 Fowler Rd BB District Zoning Amendments** - The Cape Elizabeth Town Council has referred to the Planning Board a request by Brad Pearson to change the zoning for 27 Fowler Rd (U20-10) from Residence A to Business B and to make text changes to the Business B Zoning District to permit a landscaping contractor, Sec. 19-10-3, Amendments [to the Zoning Ordinance and the Zoning Map] Public Hearing.

Ms. O'Meara said this is a request to change the zoning from RA to BB. It requires a map change and a text change to permit a use as a landscape contracting business. The Planning Board decided to schedule a public hearing to get comment on the Zoning Map change and the text changes. After receiving public comment, the Board would return it to a workshop for discussion.

Ms. Jordan opened the public hearing.

Paul Seidman of 21 Oakview Drive wants to know the implications of re zoning for one single proposal, and then what range of uses could be there.

Mark Boyer of 333 Fowler Road said his concern is for the traffic. He is experiencing between 50 and 100 heavy trucks a day right now. That combines with the cut through traffic, which does not adhere to the speed limit. They have met with the Police Chief and he is trying to enforce the speed limit. There is concern for families. There will be an increase in the traffic if this is approved. He is also concerned about where this might stop. Will Fowler Road become an industrial area?

Paul Seidman wanted to add that he wonders if this might be something to be taken up by the Comprehensive Plan.

Julie Sprague of 7 Odyssey Lane said she hates to think of the Town growing into the modern age. People walk down her road and she doesn't want heavy trucks there. She doesn't want development to get ahead of itself.

Ed Kelly of 339 Fowler Road is in favor of the rezoning. He feels it is a natural fit with farms and a gravel pit. They provide jobs and all are needed to build every house in this town. He is in favor of jobs, growth, affordable homes. He wants more houses for people. He said trucks and buses are needed, but the school could use smaller buses.

No one else came to speak, so the public hearing was closed.

Mr. Curry would like to take this back to workshop. He also wants a site walk. He is concerned about accommodation zoning for the benefit of one party.

Mr. Sahrbeck asked Ms. O'Meara about when these types of changes have been made in the past. He also asked if this would trigger site plan review.

Ms. O'Meara said she would always advise them to look at the bigger picture. When zoning changes are made it is almost always at the request of a property owner. She gave several examples of those changes. She also said the text change would need site plan review.

Ms. Volent said the burden should be on the applicant. When you outgrow a home business, you need to look if there are other places in town where you can locate that business.

The board wants to send this back to workshop.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the map and materials submitted, and the facts presented, the request by Brad Pearson to change the zoning for 27 Fowler Rd (U20-10) from Residence A to Business B and to make text changes to the Business B Zoning District to permit a landscaping contractor be tabled to the August 1, 2017 workshop.

Mr. Curry seconded the motion and it was approved, 6-0.

**Agricultural Easement Amendment** - The Cape Elizabeth Planning Board will hold a public hearing on an amendment to Sec. 19-7-2, Open Space Zoning, of the Zoning Ordinance to clarify the application of the state definition of

farmland to an agricultural easement, Sec. 19-10-3, Amendments [to the Zoning Ordinance] Public Hearing.

Ms. O'Meara said the timing of the proposed amendment is both awkward and sensitive. The amendment has been brought forward by the Planning Board because there has been a question raised about an existing ordinance provision that talks about farmland having a priority as open space. That provision references the State Law regarding farmland. That law has a definition of farmland. The Town referenced state law in order to use the farmland definition. Farmland in the town does not need to be registered under that law to be classified as farmland. The State definition requires that a farm must be at least 5 acres and generate \$2,000 a year in income. The easement itself can be on a lesser amount. This is a very timely amendment because the Maxwell Woods is under current review by the Planning Board. There has been information provided to the Town that there is a potential legal challenge of this provision, and the Town's interpretation of it. The Town is hoping to keep its legal bills to a minimum and has moved to clarify their position on this issue.

Ms. Jordan opened the public hearing.

Becky Fernald of 313 Spurwink Road said this Ordinance was adopted in 2015 after a long process of public participation. Any change in this Ordinance would need a similar type of process. Open space is vitally important to the townspeople. There needs to be a thoughtful and definitive process to change an Ordinance. The Comprehensive Planning Committee is now meeting, so do not rush this through.

Paul Seidman asked where else in Cape Elizabeth would this clarification apply?

William Jordan of Wells Road, farmer, said that others have earned more than \$2,000 on parcels of less than 1 acre. They have grown produce and sold it at farmer's markets. Just because the parcel is small, it can be farmed.

No one else came forward to speak, so the public hearing was closed.

Mr. Steinberg was concerned that there is no limit on how small a parcel can be.

Ms. Jordan said no other type of open space has a limit on it, why should we put a limit on farmland.

Ms. O'Meara said they are not eliminating a size limit. They are saying that if a developer offers to the Planning Board an agricultural easement, the land that the agricultural easement covers must be part of a farm that is at least 5 acres in size. So there is a minimum size for the farm and a minimum requirement

for the income. This puts a tool into the toolbox if you are trying to preserve a farm that's 5 or 10 or 100 acres. The home parcel that the agricultural easement comes from has to meet the definition of a farm.

Mr. Sahrbeck is in favor of eliminating that restriction that limits a farm to 5 acres.

Mr. Curry was concerned that people see this as changing the Ordinance. He sees it as clarifying the language, not changing it. He also said a farm does not need to have contiguous parcels, some of them less than 5 acres.

Ms. O'Meara discussed the priorities in the open space requirements. She noted that the developer is not seeking a density bonus for the farmland. If they were seeking the density bonus, she would think they would need to look at it more closely, but even then, she thinks it would qualify. She said that if we were calling this just open space, they would need to allow public access. With an agricultural easement, they do not allow public access because farmers do not want people and dogs to wander through their crops.

Ms. Volent said there are letters published in the Cape Courier that are meant for the Planning Board and the Town Council. One of the issues raised is that the land is assessed as vacant, not farmland. She said that means the land is undeveloped, no driveway, no septic, etc. If your land is assessed as farmland, that means your land is enrolled in the State Farmland Classification Program. She cited several farms that are in the Cape Farm Alliance and are less than 5 acres, and are not classified as farms in the assessor's database.

Ms. Volent said she is very disappointed by those who published letters, that we are not working together to save agricultural land. There has been widespread support for the preservation of farmland in this town. The recommendation by at least 2 residents to sue the Town exposes the rift between those citizens and the ones who support the preservation of farmland. She supports this amendment.

Ms. O'Meara wanted to make it clear that the Comprehensive Planning Committee will not be finishing their work until the end of 2018, with no adoption of their plan until 2019. If this amendment is adopted, it will apply throughout the whole town.

Mr. Sahrbeck asked if the Comprehensive Planning Committee would be looking at the farmland description as part of their review.

Ms. O'Meara replied that at this time there is nothing that detailed in their review.

Mr. Sahrbeck said he would recommend that we send this to the Town Council. The people who have comments, and those who have written to the Cape Courier who have comments, should address them to the Town Council, because they are the ones who will make the decision.

Ms. Jordan said that she is a farm owner and also is in favor of preserving open space whenever the opportunity arises. She is in favor of moving this to the Town Council. She was also a member of the F.O.S.P. Committee. The State came up arbitrarily with the 5 acre definition. Now, with new farming intensity you can have a farm that is less than 2 acres. Because of best practices, we're able to grow more on smaller parcels. This is a town that constantly supports open space preservation, and to fight preservation based on this arbitrary number the State came up with is wrong. She is in favor of moving this to the Town Council.

The process is for this to go to the Town Council and then perhaps to the Ordinance committee and then back to the Town Council for a decision.

Ms. Volent made the following motion:

BE IT ORDERED that, based on the materials and the facts presented, the Planning Board recommends the Agricultural Easement Amendment to the Town Council for consideration.

Mr. Curry seconded the motion and it passed, 5-0.

No one came forth to speak on items not on the agenda.

The Board unanimously voted to adjourn at 8:45.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary