

**TOWN OF BEDFORD**  
**May 6, 2019**  
**PLANNING BOARD**  
**MINUTES**

A meeting of the Bedford Planning Board was held on Monday, May 6, 2019 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Jon Levenstein (Chairman), Harold Newberry (Vice Chairman), Karen McGinley (Secretary), Chris Bandazian (Town Council), Rick Sawyer (Town Manager), Jeff Foote (Public Works Director), Charlie Fairman (Alternate), and Mark Connors (Assistant Planning Director)

**I. Call to Order and Roll Call:**

Chairman Levenstein called the meeting to order at 7:00 p.m. Regular members Randy Hawkins, Mac McMahon and Kelleigh Murphy, alternates Matt Sullivan and Priscilla Malcolm, and Town Council Alternate Phil Greazzo were absent. Mr. Fairman was appointed to vote. Planning Director Becky Hebert was also absent.

**II. Old Business & Continued Hearings: None**

**III. New Business:**

1. **35 Constitution Drive, LLC (Owner)** – Request for approval of a condominium subdivision to create two condominium units at 35 Constitution Drive, Lot 13-69, Zoned OF.
2. **John L. Lang Revocable Trust (Owner)** – Request for approval to subdivide one parcel into three residential lots at 27 Old Mill Road, Lot 19-29, Zoned R&A. *This application has been postponed at the request of the applicant.*
3. **Mareld Co. Inc. (Owner)** – Request for approval of a site plan amendment to expand the parking area for the Bedford Square Shopping Center, 25 South River Road, Lot 46-53, Zoned PZ.
4. **American Tower Corp./T-Mobile (Applicant), Richard and Elizabeth Morgan (Owners)** – Request for site plan approval to construct a 130-foot monopole telecommunications tower and associated site improvements at 25 Tirrell Road, Lot 26-1, Zoned R&A.

**IV. Concept Proposals and Other Business:**

5. The Board will elect its officers and liaisons to other Boards and Commissions.

Mr. Connors stated all the applications have been reviewed by staff, and staff would recommend that the Board find the applications to be complete. The abutters have been notified, and in addition, for the telecommunications application, staff has fulfilled its responsibilities under RSA 12-K – notify all municipalities within a 20-mile radius. It is the opinion of staff that none of the applications pose a regional impact. By accepting the agenda, the Board would be adopting the staff recommendation that the applications are complete and none of the applications pose a regional impact.

**MOTION by Vice Chairman Newberry to approve the agenda as read. Ms. McGinley duly seconded the motion. Vote taken – all in favor. Motion carried.**

**1. 35 Constitution Drive, LLC (Owner) – Request for approval of a condominium subdivision to create two condominium units at 35 Constitution Drive, Lot 13-69, Zoned OF.**

Chairman Levenstein recused himself from this application. Vice Chairman Newberry served as Acting Chairman.

Jason Lopez of Keach-Nordstrom Associates, Inc. and owner Tom Riley were present to address this condominium subdivision application.

Mr. Lopez stated the property is 35 Constitution Drive, Map 13, Lot 69. We have been before the Board a few times on this project. Tonight we are looking to just subdivide two condominium units. On the posted plan we have the existing building, the Unit A, approximately 19,000 square feet and then we have the proposed addition of 44,000 square feet, 2-story, Unit B. All exterior features and improvements will be held in common. We have provided the required site plan, we have the required floor plans, some elevations, and then we were asked to provide the latest approved architectural rendering of the exterior. With that, I can answer any specific questions.

Acting Chairman Newberry asked are the elevations different than what we have seen before? Mr. Lopez replied no. That is what was last approved I believe last year in July of 2018.

Acting Chairman Newberry asked for any comments or questions from the Board. There were none.

Acting Chairman Newberry asked for any comments or questions from the audience. There were none.

**MOTION by Councilor Bandazian that the Planning Board grant final approval of the subdivision of Lot 13-69 into two condominium units, in accordance with the plans prepared by Keach-Nordstrom Associates, Inc., dated January 8, 2019, and the building floor plans by Stone River Architects, dated March 13, 2019, with the following conditions to be fulfilled within one year and prior to plan signature:**

- 1. The Planning Director shall determine that the Applicant has addressed all remaining technical review comments to the Town's satisfaction.**
- 2. All recording fees shall be submitted to the Planning Department at the time of recording.**
- 3. Staff shall review the condominium documents prior to recording.**

**Town Manager Sawyer duly seconded the motion. Vote taken - all in favor. Motion carried.**

Chairman Levenstein returned to the meeting.

- 2. John L. Lang Revocable Trust (Owner) – Request for approval to subdivide one parcel into three residential lots at 27 Old Mill road, Lot 19-29, Zoned R&A. *The application has been postponed at the request of the applicant.***

This application has been postponed at the request of the applicant.

- 3. Mareld Co. Inc. (Owner) – Request for approval of a site plan amendment to expand the parking area for the Bedford Square Shopping Center, 25 South River Road, Lot 46-53, Zoned PZ.**

Jeff Kevan of TF Moran was present to address this application for a site plan amendment on behalf of the applicant.

Mr. Kevan stated the purpose of this was to see if we could do some parking lot improvements and renovations at the Bedford Square Plaza to try to get some additional parking up in that western parking lot where T-Bones and so forth are. The large tree island in the middle skinnies up the access aisle and creates some pinch points within the interior of that so we are proposing to remove that island, add two endcap islands towards the T-Bones area, curb those islands and landscape them, maintain the island here, as shown on the posted plan, and up the side, and then we are adding some additional landscaping. We are also proposing some parallel parking spaces along the drive aisle in, which picks up about 20 parking spaces within that limit of work area. It is not looking at the parking overall on the property, just within that limit of the work area, so we go from 131 spaces to 151 parking spaces.

Mr. Kevan continued again, what we are doing is creating these endcap islands, which we think will better define that circulation pattern in there, get some landscaping on the ends and define those islands and then we are adding landscaping along South River Road to try to bring that landscaping up closer to your current Performance Zone standards. On the north side of the property right now there is a stockade fence that runs along there, and you can see those property owners are pushed up on or over that property line. We are proposing to replace that fence but replace in its present location, elevation and so forth, so the abutters won't see or have anything different up against them. That fence will go back in as a 6-foot stockade fence and then we

would add these parallel parking spaces, which we are intending to have people tell their employees to park out away from the building. That is basically what is being proposed.

Chairman Levenstein asked the Board for any comments or questions.

Ms. McGinley stated I have a question on the employees that will be parking there. Are they there for the day or will there be a lot of movement? Mr. Kevan replied we don't think there will be a lot of movement. We think it will be employees parked, go into work for their shift and then leave. Mr. Fairman stated I think my question has pretty much been answered. I was concerned about parallel parking there if it was going to be used by customers because when it gets to be a busy time, there will be a lot of traffic, but if it is employees, I think that resolves my question. I am glad to see the island go. It does create problems getting into some parking spaces as well as pinching off. I think the end islands are important because people park beyond the parking spaces now. It is all good.

Mr. Foote stated this is more a question for Mr. Connors. When we had our review committee meeting, I thought we talked about some sort of striping down through the middle of that. Can you tell me what the result of that was? Mr. Connors replied we did ask them to widen the access driveway to 24 feet, which they did. I don't know if they added striping but we could add that in. Mr. Kevan stated I don't believe we have been asked to do that; I don't see any issue with it. Mr. Foote stated it is going to be somewhat congested between the people back out into the travel way and the parallel parking, so just some sort of median just to bring some semblance or organization to it with a stripe. Mr. Kevan responded we can paint a stripe down the middle. Mr. Foote asked a single stripe? Mr. Kevan replied yes.

Town Manager Sawyer stated I really just don't believe you need another 11 spaces, especially for employees, when there is plenty of room in the back parking lots, especially for employees to park all of the time. I get that out in front of T-Bones that it is the tight area and then people looking to park, but the side and back parking lots where the employees are supposed to be parking now, there are always plenty of spaces there. Mr. Kevan stated I think it is just adjacent to the uses is what we are looking at too. Town Manager Sawyer stated again, I wouldn't add anything that would add potential conflicts to that driveway that is the most active part of the site, in my opinion, with people trying to get to the post office mailboxes and in and out of the post office as you get a lot of turning movements there. I don't see the need for the 11 parking spaces. If you have some parking lot counts that show us that you are always running at 80 percent full or something like that. Mr. Kevan stated there are some representatives of the owners that are here if you want to hear from them. Town Manager Sawyer stated, and the other thing is that it is right up against the back side of residential abutters. I know it is zoned Performance Zone and there is a fence, but still you're going to have more noise right next to the property line. I don't see the need for it on the site. Mr. Kevan responded we don't see there being much of a change in the experience by the abutters in that the grade comes up, there is slight rise there in grade, and that fence is going to site on top just where it does currently. Again, this isn't going to be a spot where people are pulling in and out, high turnover, so we think this is fairly insignificant.

Chairman Levenstein asked how do you envision them coming in? Are they going to go around the building? Mr. Kevan replied I think they will have to come down and turn around in that parking lot just to the north of the building and then pull into the space. Ms. McGinley stated I think they are more likely to do the more south route around, which is on the east side of the property, and I don't know if that works.

Vice Chairman Newberry stated doesn't the grade go up there from the road grade? Are you going to have to make a cut there? Mr. Kevan replied yes; there will be a cut. We are sloping it back and, again, maintaining that fence location. Vice Chairman Newberry stated I have to agree with Town Manager Sawyer. Unless there is a really compelling need for those additional spaces, I think it is just setting up a situation that is going to be problems for both people trying to park there and for traffic coming through. Mr. Kevan responded the owners feel there is a significant need for them to get parking in this location.

Ms. McGinley asked what would be the hours that those employees would be parked there? Mr. Kevan stated T-Bones is open through their hours, so people would park there through that time period. Chairman Levenstein stated it seems awfully far from T-Bones. Mr. Connors asked is there a time of day that you find that you have, I don't know if the owners could address it, that there is a parking shortage at the site? Dan Fraser stated I am one of the owners. Just to address a couple of things that have come up. As far as parking for our employees go, off from that work area they are requested to park out in the zones that aren't in that dotted line. There has been vandalism out there, there have been dangerous situations out there, it is dark, it is far, far away from the building, and that goes for most of the tenants in this area. As far as hours go, our employees would park there from 10:00am to 2:00am. Once they are in at 10:00am, those 11 spaces will be locked up for the rest of the day. Our employees who generally work throughout the day and evening, but for all of those tenants to move into those areas that aren't in the dotted area out back and work until 10:00pm – 11:00pm, 1:00am – 2:00am, it is just not a safe situation at all. That area is well traveled, it is well lit, it is very safe for our employees. Mr. Connors asked so they would be accessing the parallel spaces as late as 2:00am? Mr. Fraser replied they would be walking out there to get in their cars and leave. Mr. Connors stated I guess the concern is that it is so close to those residential abutters. Mr. Fraser stated we are that close at most of our properties. We haven't had an issue in 35 years. Mr. Kevan stated we are talking about 8 feet off from the current property line. Again, so instead of driving through there, they would just be getting in, starting their car and pulling out. I think with the change in grade and the fence, I don't see it as a significant change in condition for those abutters. Mr. Fraser stated and to touch on is the parking lot congested; it is very congested at peak hours. The yoga place, some of those retail shops, it is really hard to get parking within the dotted area during peak hours for T-Bones, and I can only speak for T-Bones. Mr. Fairman stated I wouldn't want customers parking there, as I said earlier, so I think one of the things that you could do is put signs up that state employees only or employee parking. That wouldn't necessarily keep people from parking there, some people signs don't apply to, but during the real busy times if it is full, you are going to want to park there rather than go out back, which I have had to do a couple of times. Mr. Kevan responded we are happy to do that if that is what the Board would like.

Vice Chairman Newberry asked those parallel spaces are only going to be 8 feet wide? Mr. Kevan replied I think they are 8 or 8.5 feet wide, which is what we have been seeing as a

standard parallel parking space. Vice Chairman Newberry stated they are 22.5 feet; those will be marked by stripes or something. Mr. Kevan responded yes.

Chairman Levenstein asked is there going to be lighting back there by those spaces? Mr. Kevan replied just existing lighting. Ms. McGinley asked which is what? Mr. Fraser responded I don't know exactly where the poles are off the top of my head, but that area is pretty well lit compared to the rest of the area that is off from that grid.

Ms. McGinley stated I have two concerns. One is the safety of the parkers because it is away from the properties, and if they are too high, could they interfere with the residents. Mr. Fraser replied I can't be definitive on the residents, but as far as parking there, it is much better than where we are parking now. We are parking much further away. Mr. Kevan stated there are some poles in the north islands, the islands in the north parking lot, that would cast light out into that drive aisle. Ms. McGinley asked are you talking about new lighting? Mr. Kevan replied no, this is all existing lighting. We weren't proposing to make any lighting changes. The same thing as far as keeping in mind where we are in relationship to the residents, we felt that it was lit well enough now. We would not make a change for that.

Chairman Levenstein asked how many spots are you going to gain by getting rid of the island? Mr. Kevan replied I haven't broken it out just per the island. It is a total of 20 altogether. It must be in the range of nine or ten.

Chairman Levenstein asked for any comments or questions from the audience. There were none.

Vice Chairman Newberry going back to the parallel spaces again. Is that 22.5 going to be enough that people are reasonably going to be able to get in and out of those spaces? Mr. Kevan replied yes; that is what you will find up and down Manchester's Elm Street. Vice Chairman Newberry asked 22.5 is standard for parallel spaces? Mr. Kevan replied yes.

Councilor Bandazian asked what is the maximum number of employees per shift? Mr. Fraser replied at my restaurant it is 25. Councilor Bandazian asked so where do the other employees park? Mr. Fraser replied way, way back in that north lot and currently the rest of them have to park off from that grid out in the northeast corner. Chairman Levenstein asked who parks in the 20 spaces or 31 spaces behind the building? There is a parking lot behind the post office it looks like. Charles Doneux of Mareld Company responded those parking spaces in the back of the building either employees park back there but also there is an easement from the adjacent property that when we purchased these condos an easement had been extended so that also is parked by the adjacent property. Someone did raise a question about the parking at the lower end of the lot. The way that the buildings are set up, which are Buildings 1, 2 and 3, Dartmouth Hitchcock has control over all of the parking down by their building, and they are very diligent about making sure that the other buildings don't encroach on their parking spaces. Ms. McGinley asked what are committed to them? Mr. Doneux replied the Dartmouth Hitchcock building is as shown by Mr. Kevan on the posted drawing and it belongs to them right up into the corner, and I think the T-Bones people do park in there and at various times Dartmouth has complained to us about it. Ms. McGinley stated because I see at times that back parking lot if it

is 5:00pm and you are trying to make the post office, you go around there and nobody is there. It is much more open than the front. Mr. Doneux stated absolutely around the back.

Chairman Levenstein asked did you look at any other ideas about getting parking or is that pretty much what you get? Mr. Kevan replied this is where they have the need for it. Removing the tree made a lot of sense, again, because of how it hinders movement within that front parking area. There isn't a whole lot of other space to add parking on this site.

Mr. Kevan stated with regard to the waiver, we made one request for interior landscaping. Basically I think we are down 400 or 500 square feet of interior landscaping space. We have added those two endcap islands, we have tried to add landscaping where we could, so we did add the landscaping down South River Road trying to mitigate that as much as possible.

Chairman Levenstein asked for further questions or comments from the Board. There were none.

**MOTION by Vice Chairman Newberry that the Planning Board grant the waiver from the Bedford Ordinance Section 275-63, Performance Zone Landscape Standards, to allow reduced interior pavement strips and a reduced side landscape strip on the north side of the property. Ms. McGinley duly seconded the motion. Vote taken; with Town Manager Sawyer voting in opposition, the motion carried.**

**MOTION by Vice Chairman Newberry that the Planning Board grant final approval for the site plan amendment to allow an expanded parking area at the Bedford Square Shopping Center, 25 South River Road, Lot 46-53, as shown on the site plans by TF Moran, last revised April 18, 2019, with the following conditions to be fulfilled within one year and prior to plan signature:**

- 1. The applicant shall address all outstanding technical review comments to the satisfaction of the Planning Director and the Director of Public Works.**
- 2. The applicant shall revise the site plan to make the north and west parking lots on the site conforming with current accessible parking requirements.**
- 3. The applicant shall revise the plan to show the two existing dumpsters in the north parking lot within fenced enclosures and note their location on the plan.**
- 4. The applicant shall pay any outstanding engineering review fees.**
- 5. The applicant shall revise the plan to show a new stockade fence installed on the northerly property line at a 6-foot height.**
- 6. Prior to use of the proposed parking improvements, all site improvements depicted on the plan shall be completed.**

**Mr. Fairman duly seconded the motion.**

Mr. Fairman stated I suggested some signage for employees only. Does the Board want to do that or not? Vice Chairman Newberry and Mr. Fairman agreed to add a condition to the motion as follows:

**7. The applicant shall add adequate signage to the proposed parallel parking spaces to indicate that it is intended for employee parking.**

Ms. McGinley asked this fence is being changed? Mr. Connors stated it is a condition that they replace the fence. Mr. Kevan stated we are replacing it in-kind. Ms. McGinley asked you are going to have to take down dirt? Mr. Kevan replied just because we are doing excavation thereby we are going to have to take down the existing fence and we will replace it with a new stockade fence in the present location. Ms. McGinley asked how high will the stockade fence be? Mr. Kevan replied 6 foot, which is what it is currently. Ms. McGinley asked 6 feet from the elevated spot? Mr. Kevan replied yes. Ms. McGinley asked will it still be 6 feet where the houses are? Town Manager Sawyer asked is the height of the fence going to drop because you are grading the land? Mr. Kevan replied no; we are maintaining the grade at the fence, so we are not changing the grade at the fence. The top of the fence will be at the same elevation it is today. Ms. McGinley asked and how much distance will there be between the actual cars and the abutters? Mr. Kevan asked do you want the abutting property line or do you want the fence? Ms. McGinley replied the fence. Mr. Kevan stated the fence looks like it is 4 – 5 feet but the abutting property line is another call it 8 feet on the other side of the fence. The abutters kind of think they have land up to the fence. We are not proposing to change that at all. Again, we are removing the fence because of its condition and we have to excavate near it, and then we are going to replace the fence in the present elevation, location and so forth. Ms. McGinley asked but the elevation is not going to be to the new parking lot? Mr. Kevan replied no, we are not lowering the location where the fence goes back. Ms. McGinley stated I thought that is what it was and I just wanted to make it clear. I am fine.

Mr. Foote asked you anticipate you will have ample snow storage capacity? Mr. Kevan replied yes. Obviously they have to remove snow from the property after a certain point and they will have to continue to do that. Mr. Foote stated thank you.

Town Manager Sawyer stated I didn't know if you wanted to make a condition on the item that Mr. Foote brought up about line striping down the main driveway or not. That is up to you. Chairman Levenstein asked do you want to add a condition Vice Chairman Newberry? Mr. Kevan stated I put it down, so we will put it on either way. Vice Chairman Newberry asked you will just add that to the plan? Mr. Kevan replied yes.

**Chairman Levenstein called for a vote on the amended motion. With Town Manager Sawyer and Mr. Foote voting in opposition, the motion as amended carried.**

**4. American Tower Corp./T-Mobile (Applicant), Richard and Elizabeth Morgan (Owners) – Request for site plan approval to construct a 130-foot monopole telecommunications tower and associated site improvements at 25 Tirrell Road, Lot 26-1, Zoned R&A.**

Attorney Will Dodge from Down Rachlin Martin law firm was present to address this request for site plan approval on behalf of the applicant. John Rogers and Ian Culver from American Tower Corporation were also present.

Attorney Dodge stated there has been a lot of history on this. We made the original application back in 2016. Just as kind of a bare bones reminder, the purpose of this facility is to improve wireless coverage for T-Mobile and for other potential future co-locators in an area of Bedford roughly speaking sort of in the south central area of Bedford. You can see some of the coverage that is proposed by the site and it is designed to interconnect with other existing sites.

Attorney Dodge stated getting right into it; with all of the various interactions that we have had with staff since the Federal District Court issued its decision on the issue of adequate alternatives, and since the Zoning Board of Adjustment then issued a Special Exception, I think everything really boils down to four issues. Those issues are really the color of the facility and the fence itself, the issue of the equipment shelter versus screened equipment cabinets, the no-cut condition on treed areas of the property, which is a condition that we just learned about today, and a reconfiguration of the planting plan, which we also just learned about today. I am hopeful that we will walk through those, and I am thinking that the first of them is going to be, at least from our perspective, fairly easy.

Attorney Dodge stated the issue is what should be the color of this monopole tower. The height is approved, the configuration of the antennas is approved, what we had proposed with the Zoning Board of Adjustment is to basically use what is called a reduced array configuration. If you look at the top of the photo on the screen, the antennas are basically the same color as whatever the pole is. We had proposed this chocolate brown color. I think staff at least agreed or didn't object to it but said we ought to offer the Planning Board some different alternatives. Posted now is what we call the galvanized steel model, which is literally just galvanized steel. There is no paint on it at all, that is what it would look like bare bones with no paint whatsoever. Posted now is the monopine, and what I would say about the monopine design is that the Zoning Board, for what it is worth and in the interest of comity between both boards, was emphatic that this would be horrible for this location and I think frankly that we are in agreement, but just so you have looked at the other alternative, you can see it. Posted again you can see the sort of brown monopole color, it is not exactly the same as the transmission structures that are right next to it, but it is similar to some of those wood structures for the distribution lines going down the street. It has been our experience that really either of these works well, but that most communities where we have installed something that is colored with that brown, they end up seeing it kind of blend into the background more easily. Again, posted is that brown monopole that we are proposing, now is the galvanized steel, which tends to stick out much more from our perspective, and then there is the monopine. I understand the general point that at least looking at these photo simulations staff brought up that if it is from farther away maybe the monopine looks better, but the trouble is I think that the human eye is really good at picking out that one of these things does not belong there, and on the photo simulation it actually ends up frankly looking better in 2-dimensions than it would in 3-dimensions. That is really our recommendation. The way that this works is American Tower orders the tower with a paint color and then the manufacturer gets that paint, whatever type we choose from, from whatever hardware store we choose from, and that is what they use to paint it. So we went to ACE and we

picked these three colors: ballet barre, morning coffee, star anise. I think it is safe to say it might be a little bit easier to see the actual swatches we provided to staff. We think that really any of them would probably be suitable. Probably the morning coffee one is probably closer to what we do but it is really entirely up to you. That is the easy issue. I will go straight to the more difficult issue.

Attorney Dodge stated this issue is whether we need an equipment shelter. Just looking at the Zoning Ordinance, Section 275-43 says new commercial ground mounted facilities shall be designed in accordance with the following. There are several requirements in that section and one of them is that all equipment for new commercial ground mounted facilities, including but not limited to generators and cabinets, generators and cabinets are nowhere to be found in the ordinance, must be housed within an equipment shelter, another term that is not defined anywhere. The equipment shelter shall be designed in accordance with one of the following requirements: 1) Equipment shelters shall be located in underground vaults, which is problematic to us for multiple reasons, not the least of which it is hard to figure out how you put a shelter into a vault. 2) Equipment shelters shall be designed so that the shelters are architecturally consistent with respect to materials and appearance to the buildings in the area of the wireless telecommunications facility. 3) What I point out here is that the very next section is called landscaping requirements and it says all ground mounted telecommunications facilities shall require a landscaping plan that provides for screening the base of the facility and all equipment within existing vegetation and new plantings. The import of those two sections being there, in addition to the other requirements, that this whole section is about screening, is about reducing the ultimate visual impact of as many components of the facility as you can find. What is it exactly what we are talking about. I am posting on the screen what a typical equipment cabinet is and this one is one that is used by the US Border Control up at a tower in St. Albans, but it is not all that different from what you would find in other places. They tend to be about 10 feet high, they don't always have a staircase like that, that is kind of a fancy thing, but just gives you some idea. They usually have a slightly pitched roof and they can basically house multiple different pieces of equipment. A cabinet or an outdoor cabinet of the type we are proposing is basically this steel box, and as you can see here, this is actually another site that is in Merrimack that very close by. You have your steel cabinet, you have your fence next to it, in this case there was no screening or any requirement with respect to the fence, and usually if it is sited correctly, you have some landscaping all around it that basically screens it. Our position is that right now what we have, and this is I think on C-401, you can see that we have that fence but you can also see if you are looking at where the laser pointer is on the screen, we have that cabinet sticking up. The cabinet would stand up to about 7 or 8 feet, the fence as currently proposed is about 6 feet and you can see the design of that fence is basically a wooden picket fence. Our plan was going to be to just use the same color as the Planning Board would choose or we would choose for the tower so that everything is consistent, and I think the issue is this. Given that the unmistakable purpose of the whole requirement is to screen everything, our solution to this is just to raise the height of the fence so that the shelter is not peering above the fence. There is this concern that, and I think the staff alluded to it in their report and VHB the consultant also alluded to it, that while wait a minute no, this is something for which a variance is required, and I am ashamed that I didn't think of this sooner. But I went back and I looked at the minutes when the application was first being deliberated upon and what was very clear is that the Zoning Board of Adjustment said yes a shelter is required but we think that if this were to be approved, and of

course they didn't approve us based on alternatives, but they walked through all of the criteria and they had approved us on all of the criteria except for the alternatives analysis, and what they said at the time is, and I have the minutes that I have provided to Mr. Connors from April 18, 2017, nearly two years ago, I think that we could add a recommendation for follow-up with Ms. Elmer's office falling into a new category of criteria where we are developing, that may not be satisfied but could be satisfied, that ultimately the idea would be it would be fair to defer to the Planning Board members for the ultimate design to be sensitive to the architectural consistency of the area but not to specifically require that there be an equipment shelter. So this issue had an opportunity to be litigated, ultimately the litigation was really focused on the characteristics of the tower itself as opposed to the equipment, but we think the right way to go here is to simply raise the height of the fence and hide the cabinets that way. We can go through some of the other items and when I get to the hardship discussion, I can discuss this a little bit further. Mr. Connors asked that section you referenced, what page is that on? Attorney Dodge replied there are couple of different sections that are great reads, including that yours truly thought that the issue of the equipment shelter was a Planning Board function and Chairman Morin was emphatic that no it is not, it is a Zoning Board function, so I feel like all of us have been around on this a number of times and that might be an issue to clarify for the future. But if you go to Page 31 "Chairman Morin stated that the application is for metal cabinets" and I pretty clearly brought forward to the applicant today and it says shelter, it says some type of building basically, not cabinets, it is pretty straightforward. I don't know what else to say on it. "Ms. Stirling stated I do think it to be fair they did say in testimony that if they had to build the structure, they would consider doing that and they would just defer to the Planning Board members for the design to be sensitive to the architectural consistency of the area. If we were to approve, I think we could put that as a recommendation for follow-up." But then basically they say we can leave this as a condition of approval. So they never say this is something for which you need a variance, this is something that is antithetical to the Special Exception requirement, it basically says let's leave it to the Planning Board to decide the appropriate cases in this circumstance.

Attorney Dodge stated since we are on this subject, there is one other argument about this that I am going to bring up, and I did actually bring it up in my waiver request, which are Exhibit M, and that is this. One of the things that the Ordinance encourages, and that clearly, I think the staff is also encouraging, is that there be less towers overall in Bedford, but there have been a lot of applications lately and we understand that. Part of why you want to not put in a condition like the everything has to be in equipment shelters is to encourage co-location, and most of the carriers today, the AT&T's, the T-Mobile's, the Sprint's, the Verizon's, they are using these outdoor cabinets. They are cheaper, they are more effective, they have less issues than what has happened in the past with some equipment shelters, so putting in a requirement that there always has to be a shelter is going to be problematic for some of those carriers and they might just simply seek to look elsewhere to build their own structures. If we have a condition that effectively screens the equipment cabinets from the outside, and keep in mind that we are about to talk about the tree conditions on the property, those combination of things are going to effectively screen the cabinets and meet the intention of the ordinance. Mr. Fairman asked is the 8-foot fence high enough for all other carriers? Is any of their equipment above 8 feet? Attorney Dodge replied you never know for certain but what I can tell you sitting here is that I have seen dozens if not hundreds of applications for equipment modifications of all kinds, you never have anything that is over 8 feet in terms of these cabinets, and moreover, the trend in the industry,

notwithstanding that we are building a new tower, is ultimately toward getting smaller. So realistically speaking, it is likely that they are going to get smaller before they would get bigger.

Vice Chairman Newberry asked does this equipment generate any noise? Attorney Dodge replied a marginal amount. I think on average it is basically like a fan. The generator makes noise, just like any generator would, but the operating equipment itself just basically has a cooling fan. Mr. Fairman asked the generator is a backup generator? Attorney Dodge replied it is a backup generator, it has a kick test that goes on for about a half-hour a week just to test it, keep everything running, but apart from that it would only go on in the event of a prolonged outage. Mr. Fairman asked how often is the test? Attorney Dodge replied it is usually once a week. You always set the timer so it is the middle of the day and not on a weekend. That is something that is industry standard. Mr. Fairman stated while we are on the subject of generators, where is the fuel stored? Attorney Dodge replied it is what is called a belly tank, which is right underneath, it is a component with a double-seal. Mr. Fairman asked that is propane? Attorney Dodge replied this will be diesel. It is a double-walled tank that the generator will sit right on top of it. Mr. Fairman stated I assume the Fire Department has to check all of that and approve it. Attorney Dodge replied yes; that is appropriate for sure. The operating equipment itself is basically like a fan.

Town Manager Sawyer asked all of your T-Mobile equipment is within the 10 x 12 area shown in the compound? Attorney Dodge replied yes. Town Manager Sawyer asked is there a reason why the utility transformer can't be inside the compound? Mr. Rogers replied typically we would put the transformer on the outside. It is ease of access for the power company is why we do it. They require a certain amount of space to access, so if we put it just inside, it doesn't meet code. Town Manager Sawyer asked do you know how big their transformer is height-wise typically? Mr. Rogers replied typically probably 3 x 3 and probably about 3 feet off the ground. Attorney Dodge stated it is a great question and it only occurs to me at this time, I think I have seen this on every single site that we have looked at, it is kind of this industry standard. Mr. Fairman asked there is plenty of room inside the fence for other carriers' equipment? Attorney Dodge replied absolutely. Town Manager Sawyer stated it looks like they are using 15 – 20 percent of the site, or maybe 10 percent. Mr. Fairman stated that was my thought.

Attorney Dodge stated the last two issues are the requested no-cut condition, which as you can see from the slide that I posted on the screen and that is in the staff report would basically cover most of the remaining treed areas on the property. We have not had the chance, because we just saw this today, to speak with the owner but our ultimate sense, especially given that the lot is almost completely developed once we have finished our addition, is that there is not going to be an objection to that, subject to us being able to work out the exact language with staff so that if there is a reason to cut like some sort of safety condition that we can work through that.

Attorney Dodge stated then as far as the trees; just to explain, it is probably easier to see it on the screen, you have the proposed planting plan that shows I guess it is eight trees total that are on the rear of the compound, so on the northern side of the compound, and what staff is suggesting is to take three of those and put them right in front of the stormwater retention basin and then take the other five and basically put them down on the roadside. Again, we have not spoken with the owner yet about whether they are amenable to doing that, but keep in mind that one of the

things that we did get the owner to agree with after a lot of discussion is getting rid of this second driveway that exists right now. Our engineer, who unfortunately we couldn't get in touch with today, had expressed concerns to me in the past that you couldn't put too many trees right in front of that stormwater basin without affecting it. I think the way that we would like to approach this is to say we would agree to the condition but that the precise configuration of where those eight trees go is something that we would work out with staff post approval. Ideally I am thinking, again, subject to all of those caveats I just stated, that maybe we would have something more like one or two trees by the pond and then those other one or two we would put down where we are sort of erasing that driveway altogether. Mr. Connors stated we would be fine with that. This is just kind of a conceptual and we are open to working with you.

Attorney Dodge stated that is the extent of our presentation. I will just briefly state that, again, I think it is Exhibit M in the application has our waivers. The driveway width it sounds like there is a condition. Ultimately what we want is for the driveway to be wide enough both for construction purposes but also for purposes of getting a fire engine up to the compound, we have sufficient width, but we would also like to ultimately do as little tree cutting as possible, so essentially just have what we need, and it sounds like, if I am understanding correctly Mr. Connors, that staff is okay with that subject to us just working out the precise details of the final curb cut itself. Mr. Connors replied yes. Just working with Public Works to make sure it meets our standards.

Attorney Dodge stated with high intensity soil mapping; I think staff agreed. We had asked for a waiver for that just because there is no septic being proposed here but we do have very good soil information from the Phase 1 and then the additional utility pole. That is really a function of the power company saying this is the way it has to be in order to ultimately do underground from Tirrell Road all the way up to the compound. Town Manager Sawyer asked do you have any more information on that? There is a utility pole right in front of the site right next to the driveway. Mr. Rogers replied yes. The power company said a new pole is needed because there are two transformers already on that pole, and the only way to get a new service to our site is to put a new pole there. Chairman Levenstein asked are they going to put a new pole that has three transformers on it? Are they going to get rid of that other pole? Mr. Rogers replied no. That pole is servicing other houses. Mr. Foote asked why couldn't they set the pole parallel and adjacent to the access road so you are cutting less trees? Mr. Rogers replied we did have it proposed there once and it was kicked back from the Town. We had to have the power company come back and relocate it. We did originally have it there. Mr. Foote asked what was the objection with the Town? Mr. Connors stated it wouldn't have been the Town. Maybe it was the utility company. Mr. Culver stated it was the distance between the poles. Where we had the pole originally, the distance between the two poles didn't make sense so the utility company told us that we could not put that pole there just because of the distance between the two poles, the one on the farther side of the house and then there is one kind of in between the abutter 21. It was just the distance where we wanted it and it wouldn't work. Mr. Foote asked the poles were too close? Mr. Culver replied yes. Mr. Foote asked and how close would they have been? Mr. Culver replied I believe when I measured it that it was about 109 feet, if I remember correctly. Town Manager Sawyer stated you don't necessarily have to do a straight run back to the compound, you could come off from the pole and go up the side of the driveway couldn't you. Mr. Culver replied we had planned to do that originally but EverSource didn't like that idea.

Town Manager Sawyer stated they will run the wire wherever you put the conduit. Mr. Foote stated what we are saying is you could keep the pole drop in the existing location and then bring it towards the drive and then head up through. I don't think EverSource gets too excited about conduit locations on private property. Attorney Dodge responded no, but there was a leach field concern. I agree that that was another issue that came up when we were looking at this. Mr. Foote asked so where is the leach field? Mr. Culver replied the septic is in between the house and the garage, so then the leach field runs across where our access road is right on this corner of the garage. So he was worried if we were to trench in down there that we would be disturbing that leach field area. Attorney Dodge stated looking at the screen, these are the houses, the leach field runs right across there, so the issue was trenching right there, so there was a concern about disturbing a part of the leach field. Mr. Foote stated I guess I don't understand why that wasn't shown on the plans. Attorney Dodge stated I think our plans, if you look at them, are getting pretty cluttered as they were, and it just simply didn't make it on. But if that is something that should be on them, I am sure we can have a separate page to put that on. What I would say is that putting more trees down on the front of the frontage is going to help a lot with whatever negative effects come of the line and the new pole.

Ms. McGinley asked what size are those trees going to be? Attorney Dodge replied they are green giants. They basically grow to 50 to 60 feet, I think. Town Manager Sawyer stated it is what they are labeled as. Ms. McGinley asked what are the size of them when you plant them? Attorney Dodge replied the maximum height that they ever grow is to 50 to 60 feet. I think when they come in they are short like 6 to 8 feet. Ms. McGinley stated that is better than 2 feet. Town Manager Sawyer stated you have to be careful planting 50- to 60-foot-high trees along the power line there in the front, but the way I would envision this it would be subject to the approval of the Planning Director and you guys can work that out. Attorney Dodge responded right. Town Manager Sawyer stated I don't think you would want a tree any closer than the one that is in the front yard that you are taking down. Chairman Levenstein asked right by where the power pole is? Town Manager Sawyer replied yes.

Vice Chairman Newberry stated I would like to go back to the color of the pole. Any of the browns are going to contrast with almost any imaginable color of the sky. Other than maybe a brilliant blue sky or a black storm cloud, the gray is going to tend to contrast less with the sky most of the time, so I am surprised that you advocate for the brown, which basically contrasts with almost any color of the sky I can imagine. Attorney Dodge responded I literally have heard every iteration of this argument imaginable, and the reason that the gray doesn't go quite as well when you do have a blue sky, like in the posted picture, and you tend to see it all standing out a lot more. Whereas with the brown, it tends to look like a lot of the trees, especially when you have quite a bit of tree coverage in the area. Are either of those great arguments? No, but what I will also tell you is that from experience the communities where we have done one that is basically a color like this, and keep in mind, if it is the interest of the Planning Board to just go with galvanized steel, that is fine with us as it actually ends up being cheaper. But what we have seen with a lot of communities is that this ends up being liked more in the final version than going with just steel. Vice Chairman Newberry asked so liked more is based on a pole or a lack of complaints? Attorney Dodge replied a little bit of both. I am sure in your experience you would find that the two are definitely synonymous in a sense, that the things that don't go well you hear about forever, and the things that tend to blend in, tend to blend in and just become part

of the landscape. Mr. Fairman stated 18 galvanized poles is not an easy thing to make it stay. Have you had pretty good luck in keeping the paint there? Attorney Dodge replied 15 years ago there were a lot of problems, but I think those are pretty well done. Ms. McGinley stated I will say that when I did cell phone tower work when I was still practicing is that over these years, the boards across the state putting in these poles, this color is probably the least offensive overall, the brown, because it becomes a part of the landscape like you would in a very large power poles that are near your property. Councilor Bandazian stated I agree with Vice Chairman Newberry having seen many a gray day here in Bedford. We have a pole that is 2-tone on Chestnut Drive, the base is brown, and it stands out to me, the Planning Board intended it to blend in with the tree line. The upper part that is more of a sky blue, maybe it is galvanized, but that does not stand out to me. We have a monopole on Ridgewood that I think most residents don't even know is there. Ms. McGinley asked where does the 2-tone start and what is the topography around the pole, if you can recall? Councilor Bandazian responded the one on Chestnut Drive is a little bit elevated, but the brown painting was intended to only go up to the tree line, 30 or 50 feet. I don't remember right now.

Mr. Foote stated we hear that the site is going to be at least 15 or 20 percent, the Town Manager was guessing, based on the area being utilized, so if you add in other users, what is the top of that pole going to look like. Is it going to change? I work at 55 Constitution Drive and they are in there every week adding something onto that, so I am wondering what this is going to look like. Attorney Dodge responded realistically it is just going to depend on each carriers' demands, but realistically there will probably be other installations on there that will look similar. Given the overall design of this, the actual top of the array is going to be similar to what the Zoning Board of Adjustment ultimately approved, so that reduced array. You may see one, two, three more of those below it. Mr. Fairman asked will they match the color? Attorney Dodge replied if the Planning Board conditions that it has to be a color, then yes, they will have to match the color even on a co-location. That is both State law and Federal law. Vice Chairman Newberry asked so subsequent installs may be lower on the pole? Attorney Dodge replied they may be; it is really going to depend on each carrier. If a carrier had to go up, then just depending on the circumstances by how high they are going to need to go up, they may need to go back to the Zoning Board of Adjustment. In other circumstances no, it is just going to depend on the individual installation. Mr. Culver stated they are usually 10 feet apart.

Councilor Bandazian stated there is probably no good time to bring this up but I am going to. You are proposing to have two uses on a residential lot, one commercial and one residential. I have no problem with what you are doing with the cell tower, what I would like to see is a plan for removal of the residential structures. We are very, very strict with our residents about home occupations, for example, and when there are two uses on a property, the commercial enterprise has to be done within the footprint of the building. Another example would be our accessory apartments and where we do that the exterior of the building has to be matching the existing building, no front facing doors, so we are very exacting in Bedford when we allow two uses on a property. So I would like to see a plan for removal of the residential structures. I know you are paying rent, you haven't indicated what that is in the materials, that is left blank, but I suspect it is only a matter of some additional dollars to relocate the Morgan's to a house that is as nice or nicer and you won't have to deal with them on your property. Attorney Dodge asked could you please clarify. Are you talking about at the end of the lease? We have a defined lease that could

go as long as 25 years, if I am not mistaken. Are you saying they have to move now in order for us to build the tower? Councilor Bandazian replied that is what I am saying, yes. Attorney Dodge responded okay; I guess we can't agree to that clearly and moreover; the Special Exception makes clear that the use is permitted in this district even if you have dual uses on the property. Councilor Bandazian responded I don't know that it says even if you have dual uses on the property. The Special Exception that you were granted allows you to have the telecommunications facility. I am now looking at the motion before the Zoning Board of Adjustment, I also looked at the order from the court, and it doesn't say anything. The court wouldn't have had jurisdiction over that issue. They were dealing with the threshold issue, and I agree you are perfectly entitled to have the tower there. This is separate and distinct now that we are considering a site plan. Chairman Levenstein asked Mr. Connors, what have we done in the past? Mr. Connors replied the Town's interpretation is that it is an accessory use to the primary use of the property. I don't think it is very unlike the Wallace Road application we approved last year, which also has a residence on it. That is in a silo but the silo is being torn down and replaced, it is not going to serve an agricultural function though it is just existing to shield the cell tower. We discussed it with our legal counsel and he confirmed that it has been the Town's approach in the past that we allow telecommunications towers as an accessory use to the primary use. Councilor Bandazian stated I would say that I looked at the Table of Uses and we have a section for accessory uses that is right above the telecommunications section and telecommunications facilities are not included among the accessory uses. Attorney Dodge stated Councilor Bandazian, I think if you really want to press this, then I need a postponement in order to brief and just probably speak with the Town's counsel about this issue. We have never heard of this before and as far as I know, every property in Bedford where there is a tower has a separate use on that same property with people actively going back and forth. Councilor Bandazian stated I will correct you; there are three that do not have a separate use. Attorney Dodge responded well I guess I would feel like I need to investigate that myself to be certain. If that is the condition, because obviously this has constitutional dimensions, it has all kinds of issues tied up in that. It is entirely up to you how you would like to proceed there. If you want us to address this, then we will, but we can't address it right now. I didn't have any notice that this was of concern. Chairman Levenstein asked do we have anything in writing from Town counsel about this issue? Mr. Connors replied I do; I can read the email if you would like. Ms. Hebert had contacted him and he said 'I do not interpret Bedford's Zoning Ordinance as defining a new commercial ground mount wireless telecommunications facility as a principal use. In reviewing Article 6 in its totality, 275-39(B) lists as permitted non-commercial wireless facilities, HAM radio antennas, commercial wireless facilities located on previously approved towers, utility poles or structures, and commercial wireless telecommunications facilities located on roofs, walls, or other structures. The common theme with these facilities or antennas is that they presuppose that there is already a principal use on the property that can be attached to. In fact, as part of the Special Exception criteria for new commercial ground mount wireless telecommunications facilities, the applicant has to show that there are "no existing structures that are suitable to locate its wireless telecommunications facility." Section 274-41(A) Bedford thus encourages applicants to attach to other structures before constructing a new facility. I do not see any specific reference that would then define a new cellular tower as a principal use. Doing so may certainly have the unintended consequences of limiting the actual amount of less intensive sites in the Residential District. I interpret the new cell towers as similar to utilities that are not principal uses. I understand that this has been Bedford's practice for many years and I

would suggest we not change course now.’ Town Manager Sawyer asked who is speaking there? Mr. Connors replied it is Michael Courtney from Upton and Hatfield.

Chairman Levenstein asked is there any further discussion from the Board.

Mr. Foote stated I am not sure it is discussion or someone making a motion. I guess where I am sitting I have concerns about the septic system location. It sounds like we have other concerns, I hear that there is a possibility to delay this, and for me I would be a lot more comfortable voting on this if I knew where the septic system was in relation to the underground utilities. I didn’t see anything on this where they had any turning movements for the fire truck to get in and out, and if someone else had concerns and wanted to delay the vote, I would tend to agree with them at this time. Attorney Dodge stated in response to both of those issues. With the issue of the fire truck, the idea is not that the fire truck itself is going to be able to turn around, but we have spoken with the Chief and in fact he submitted a letter that is in the staff report saying they are fine with it subject to making sure that curb cut is right. So the idea is they go up, they come back, they are not going to turn around. Mr. Foote responded I agree 100 percent, but I don’t see it. Attorney Dodge responded I believe that the Fire Chief sent in his letter of approval to the staff. Are you looking for something else just so that I understand? Mr. Foote replied typically what is submitted is the developer will show turning movements for various vehicles entering the site. I am going to guess that when you get that monopole in, you are going to have issues with that as well, and it would be nice to have some turning movements showing the fire truck making a couple of those switchbacks after coming off from Tirrell Road to access the site. Chairman Levenstein asked you mean the turn movement onto the property not once you get to the pole? Mr. Foote replied correct. Mr. Connors stated I spoke with the Fire Chief about it and he said that it is not something they commonly respond to a cell tower, and he didn’t have concerns. I would be reluctant to add a lot of new pavement to the site for improved turning movements because it would negatively affect the aesthetics of the site. Attorney Dodge stated that was our concern as well, and I note that the proposed Condition #8 says the applicant shall work with the Department of Public Works to revise the driveway design so it is consistent with the current Town standards and I think that was the source of the major issue. That is just one issue. As far as the septic, I understand the concern and I agree that ideally we would have had that now. I know that we have worked on this because we have been to this site so many times. It is something that we could easily correct. In other words, if that was an additional condition, that is something that we could turnaround relatively quickly. Mr. Foote stated my concern is that I don’t know where that septic system is in relation to the underground utility, the pole that is proposed from the adjacent pole. It seems like there are a few missing components here for me to have a level of confidence at this time.

Mr. Fairman stated we do have a letter from an abutter that we ought to at least address and mention. The abutter is requesting an 8-foot fence running alongside of the driveway because the property is an eyesore from his property at the present time and has concern is about it continuing to be an eyesore. I don’t know that it is going to get any worse because of this project but there is the fact that there will be trees coming down along that area of the property. Chairman Levenstein asked actually are there trees coming down there? I thought that was the no-cut area. Attorney Dodge stated Mr. Chairman, that is correct. That would be part of the no-cut area and we concur with the staff that the best thing we can do right there is just have the no-

cut area. Mr. Fairman asked that is back far enough, I can't tell from the pictures, it is back far enough to get to the no-cut? Attorney Dodge replied yes, those trees are on the Morgan property and the site itself is out of that frame by quite a bit. Chairman Levenstein stated he is not complaining about your site; he is complaining about the neighbor's. Mr. Fairman stated that is correct. Attorney Dodge stated but I think insofar as that is true, the no-cut is something that he does not have now that he would have as a result of the project. Vice Chairman Newberry stated from the picture it is really not clear whether there is anything less than a 20-foot fence that would actually screen the offending equipment anyway. Mr. Connors stated it would have to be under 6 feet if it is within the setback area. Vice Chairman Newberry stated my point is it is not clear that a fence there is going to achieve a real screen. Mr. Fairman stated the no-cut provides him some future protection. Attorney Dodge stated right.

Chairman Levenstein stated there is no one in the audience to speak at this time.

Town Manager Sawyer stated I guess I am struggling with Condition #10 to know whether the Planning Board has the ability to call a fence a shelter or not. That is in the zoning ordinance and not subject to our review necessarily. We get to decide what the aesthetics of that shelter are but I don't know if we can necessarily agree with you and have it hold up or not. I honestly don't know. Chairman Levenstein stated you were going to have a cabinet. Attorney Dodge responded we sort of see that if the intent of that ordinance is to screen more than it is to have any particular type of structure, and it is not a model of draftsmanship, that particular provision, the point is that we think with a taller fence and that looks like the other wooden elements of the architecture on the property, painted the same color as the tower or if we decide to just leave it gray, then we will paint the fence gray to make it almost look like the tower, if that screens effectively, then that comes within the realm of the hardship provisions so the Planning Board could waive the requirement for a specific shelter. Chairman Levenstein responded the problem is we can't waive it. The Zoning Board of Adjustment could waive it because of a hardship. Attorney Dodge stated and yet the Zoning Board of Adjustment pointed at the Planning Board to say you guys figure it out. Chairman Levenstein stated I guess then the other question is, and that is whether the cabinet is a shelter. If the cabinet is a shelter, we certainly have the power to put a fence in front of it because that is aesthetics, I would think. Town Manager Sawyer stated I think we can administer fences all we want; I am not sure we can interpret the ordinance at all on the zoning side necessarily. Chairman Levenstein stated I don't necessarily disagree with you, though I am not really sure what the difference is in my mind. Town Manager Sawyer stated if we approve a condition as #10 currently reads, I am not sure. Chairman Levenstein asked when you went to the Zoning Board of Adjustment, did you show them the cabinet? Attorney Dodge replied we did. Chairman Levenstein asked was that what you said was the shelter? Attorney Dodge replied we did, and that was the very issue that came up. I think Chairman Morin thought that it says that it has to be shelters, but I think that the Zoning Board of Adjustment was suffering the same confusion as what is really the difference between a shelter and a cabinet. Since this seems to be focused on ultimately not being able to see it either from other parts of the property or from off the property, can the Planning Board simply have some discretion over how that ultimately manifests itself. The situation that we want to avoid is where you have a cabinet like this one posted, where we have to come up with some kind of a wood shed, if you will, that goes over these because it has problems, for operational reasons and, again, discourages more

tenants from potentially coming onto this property and thus potentially causing further tower proliferation.

Ms. McGinley asked how many tenants do you anticipate on the tower? Attorney Dodge replied at the moment I think just two. T-Mobile is a certainty; we had some discussions with the Police Department that have been kind of off and on over the years, and I think they are probably just waiting to see if we ultimately get it approved. There are no other commercial parties right at the moment, but I would anticipate that it won't be long once the tower is built that you would have at least one or two others.

Chairman Levenstein stated getting back to the cabinet versus the shelter. Town Manager Sawyer, wouldn't the way to do this wouldn't we approve or not approve what they are proposing and then if somebody has an issue with whether the cabinet is a shelter or the shelter is something different, they would go and bring it to the Zoning Board of Adjustment appealing the decision? I think that is the way, unless there is an administrative decision from somebody where they could appeal that. Town Manager Sawyer responded I am just saying if we only do a fence, I don't know that it relieves them of the responsibility to provide a shelter. Chairman Levenstein responded but if we do that, the remedy of somebody would be to go to the Zoning Board of Adjustment and say what we did was wrong or to the court. I don't see the court; I think probably the Zoning Board of Adjustment would be the right spot, but I don't know how we can say they have to put a shelter when we don't know what a shelter is. Town Manager Sawyer stated I think I know what a shelter is and we have seen them in plenty of places and they do work and can house equipment like this. Ms. McGinley asked wouldn't it be easier to show us exactly what is going to go on that site given the amount of energy that you have put into it and we need to make a good decision so that this can conclude? Attorney Dodge responded it would be helpful for us to know if we are going to take this up at postponing to deal with the leach field and deal with this other issue.

Attorney Dodge asked at this point what is the sense of the Planning Board on the color issue. Ms. McGinley stated please describe it again. Attorney Dodge responded it would really be the brown or the gray, not the monopyne. We don't want to inflict that on anybody. Ms. McGinley stated I think they are about equal. Vice Chairman Newberry stated gray. Town Manager Sawyer stated I wanted to hear from the abutters. I really don't have a preference. I would have gone with whatever the consensus of the neighborhood was and that is not here. Mr. Fairman stated brown. The only reason, in my opinion, that going with the gray is that there is no paint on it to peel, but if they can paint it so it doesn't peel, they have a history of doing that, the brown is better. Councilor Bandazian stated gray. Mr. Foote stated I am indifferent. Town Manager Sawyer stated just to clarify, if the galvanized is the gray, I think galvanized was another choice. Mr. Fairman stated it is just a bare galvanized pole, it is not painted. Town Manager Sawyer stated I thought I heard in the presentation, and maybe you can correct me, galvanized versus gray. Are those two different things? Attorney Dodge replied I don't think we were thinking of them as different things. We were thinking of galvanized as galvanized. Town Manager Sawyer asked when you are saying gray, you are saying galvanized? Just stark galvanized? Attorney Dodge replied yes. Mr. Fairman stated that is what I heard. Chairman Levenstein stated okay, go with galvanized.

Attorney Dodge responded so then I think it is incumbent upon us to address the leach field issue. Chairman Levenstein stated and address the two-use issue. Attorney Dodge stated yes. Chairman Levenstein stated and structure versus cabinet. Do you have any which have some sort of structure over them? Attorney Dodge replied not cabinets. An equipment shelter of this variety posted on the screen was used for years, and I am sure that is where the language in the zoning ordinance came from, but it was before the technology developed to just have an outdoor cabinet. The trouble with those shelters is they are in a sense for one thing they are taller, so essentially you are asking to screen more than you otherwise have to, secondly they are not necessarily as efficient. The equipment ends up doing better when it not enclosed. Chairman Levenstein stated so we know what the two options are basically. Mr. Foote asked does anybody recall what the approved condition was for Wallace Road? Chairman Levenstein stated that is a silo. Mr. Connors stated there is a shelter. It looks like a shed. Vice Chairman Newberry stated I think they were replacing an existing shed basically, if I recall correctly. Mr. Fairman stated going back to the equipment cabinet picture. Of what we see there, how much would you have for yourself? Just two cabinets or is that four? Mr. Culver replied right now it would be just for one and then what he is pointing to is called a PPC, it is where the power comes in and feeds out to that cabinet so they have power and DELCO in there. That big cabinet and that one small one that are shown. Attorney Dodge stated but this particular installation looks like there are three carriers. Mr. Culver stated yes it is. Chairman Levenstein asked just out of curiosity, how many carriers do you think that shelter would hold? Attorney Dodge asked this big shelter in the posted photo? Chairman Levenstein replied yes. Mr. Culver replied if it is a 10 x 10, it is usually one. Attorney Dodge stated in the past that was true. A feature of T-Mobile is that they are not really the late comers, but late comers in comparison to AT&T and Verizon and Sprint, so they have been using the smaller cabinets more recently and really haven't relied on shelters as much. Chairman Levenstein stated theoretically if you got a ruling from the Planning Board that said you had to do this, you could bring that to the Zoning Board of Adjustment and get that changed without actually probably have a variance. Couldn't you appeal that administrative ruling? Councilor Bandazian stated I don't think it would go to the Zoning Board of Adjustment. Attorney Dodge stated I think that would go to the Superior Court.

Vice Chairman Newberry stated so I think part of the intent of the ordinance is to prevent a structure that looks like this, I would think. Mr. Fairman stated this is really ugly. I much prefer the shelter and fences. Vice Chairman Newberry stated to my mind is it reasonable given this particular site location and using fencing creatively whether that really addresses it, and I think that was your argument earlier this evening. Chairman Levenstein responded yes, I think it is a good argument but it is a question of whether legally we can do that. Attorney Dodge responded I understand. Chairman Levenstein stated that is another thing to ask our counsel, since we are asking him probably for something more. Town Manager Sawyer stated we certainly can.

Town Manager Sawyer asked does your plan currently show a 6-foot fence around the enclosure? Attorney Dodge replied it does. I think what we think, just in light of the conversations we have been having over the course of the day especially, is that the sensible thing to do is to extend it up to like 8 feet or design it such that future cabinets or future shelters have to be below the fence line. Chairman Levenstein stated we have no limitation on how we can make the fence internally like that. Is that right? Mr. Connors replied as long as it is within the setbacks. Chairman Levenstein stated and that is not a problem over there. Mr. Fairman

stated I agree that that should be one of the conditions is that any future shelters or cabinets would be below the 8-foot fence so you can't see them.

Ms. McGinley stated I have a question about the two uses on a property since I don't think the owner wants to tear his house down. Wouldn't that have been raised before? Was it not an issue with the Zoning Board of Adjustment? Chairman Levenstein replied no. As far as I can tell it wasn't ever raised. Councilor Bandazian responded not on remand. Attorney Dodge stated I will say it is the first time I have ever heard that argument anywhere. Not to say that it is not valid. Councilor Bandazian stated I am surprised.

Councilor Bandazian stated I guess the other thing that would be useful would be to see where the utility poles are, where you anticipate them being. Town Manager Sawyer stated they are shown on the site plan but they are small and they are hard to find.

Chairman Levenstein asked how much time do you need? You don't want it in two weeks? Attorney Dodge replied no, I think we should take the month. Chairman Levenstein asked Mr. Connors, can we do that? Mr. Connors replied it would be for the June 10<sup>th</sup> meeting.

Vice Chairman Newberry stated while you are doing that, if you could incorporate the no-cut and the landscape changes in something other than magic marker would be good. Town Manager Sawyer stated that was what staff did to show that. Mr. Fairman stated it would give you a chance to talk to the homeowner about those as well. Attorney Dodge replied absolutely. Ms. McGinley asked are we still sure about the structures on a site? Chairman Levenstein replied we are going to talk to our Town counsel and get a better opinion and he is going to discuss with our counsel his feelings probably. Attorney Dodge responded if that is acceptable. That is the most efficient way to do it so that when I come back here, that issue is either live or dead. Chairman Levenstein stated I agree that that is the way to do it.

**MOTION by Councilor Bandazian that this application be tabled to the June 10, 2019 Planning Board meeting and this motion shall serve as public notice. Mr. Fairman duly seconded the motion. Vote taken – all approved. Motion carried.**

## **5. The Board will elect its officers and liaisons to other Boards and Commissions.**

Current liaison appointments:

- Mr. McMahon on the Conservation Commission.
- Mr. Fairman on the Historic District Commission.
- Chairman Levenstein is on the TIFF Advisory Committee.

Chairman Levenstein stated we will keep Mr. McMahon on the Conservation Commission and Mr. Fairman on the Historic District Commission unless one of the new members would like to take over. We can discuss that at the next meeting. I will stay on the TIFF Advisory Committee unless somebody else really wants to do it. It is very low pressure.

- Southern NH Planning Commission

Chairman Levenstein stated the Planning Board forwards a nomination to the Town Council for appointment to the Southern NH Planning Commission. What is open is the 2021 vacant alternate position. Mr. Fairman asked how often do they meet? Ms. McGinley stated once a month on the third Tuesday of the month at a lunch meeting. Mr. Fairman stated I will think about it.

Chairman Levenstein stated why don't we table these elections to a meeting where more Board members are present. Vice Chairman Newberry stated that is a good idea.

**MOTION by Town Manager Sawyer to table the appointments and election of officers to the next Planning Board meeting. Councilor Bandazian duly seconded the motion. Vote taken - all in favor. Motion carried.**

#### **V. Approval of Minutes of Previous Meetings:**

**MOTION by Town Manager Sawyer to approve the minutes of the April 22, 2019 Planning Board meeting as submitted. Vice Chairman Newberry duly seconded the motion. Vote taken; motion carried, with Chairman Levenstein and Mr. Foote abstained.**

#### **VI. Communications to the Board:**

Mr. Connors stated the Friendly Toast restaurant has opened in the Market & Main development.

#### **VII. Reports of Committees: None**

#### **VIII. Adjournment:**

**MOTION by Town Manager Sawyer to adjourn at 8:35p.m. Ms. McGinley duly seconded the motion. Vote taken – all in favor. Motion carried.**