



BERWICK PLANNING BOARD

Municipal Meeting Room, Town Hall, 11 Sullivan Square, Berwick, Maine 03901

November 15, 2012 Meeting Minutes

I. CALL TO ORDER – 6:30 P.M., Chair Kerry Ashburn

A. Pledge of Allegiance

B. Introductions / Roll Call

Regular Board Members Present:

Kerry Ashburn; Peter Perri; Judy Burgess; Paul Boisvert

Regular Board Member(s) Absent:

Ron Morrell was absent at the point of introduction, but entered the meeting several minutes later.

Alternate Members Present:

Ken Poirier; Niles Schore

Staff Members Present:

Patrick Venne, Town Planner & Land Use Counsel; Joe Rousselle, Code Enforcement Office

II. APPROVAL OF MINUTES

November 1, 2012 Minutes

Chair Ashburn inquired whether the Board had opportunity to review the draft minutes as written. After further review and brief discussion, the Board modified the meeting minutes for its 11/1/12 meeting to clarify that a comment on p. 5 of those minutes related to “fall zones” for cell-towers emphasized the protection of surrounding property owners by ensuring such zones were 125% of tower height.

Mr. Boisvert moved to accept the minutes as modified; Mr. Perri seconded the motion.

VOTED: 4-0 to approve, Morrell absent at point of vote.

Motion passed unanimously.

In Favor: Peter Perri; Judy Burgess, Kerry Ashburn, Paul Boisvert

Opposed: None
Abstain: None
Absent: Ron Morrell

Staff indicated the minutes would be updated to reflect the modifications approved and returned to Chair Ashburn for signature at a later date.

III. UNFINISHED BUSINESS:

A. Adoption of Findings and Conclusions in Support of Board Decision

- a. Project:** Rental Unit Consolidation
- b. Location:** 11 Berwick Road, Map R-47, Lot 31, R1 Zone
- c. Applicant/Representative:** Lamb Pond, LLC/Shawn Fahy
- d. Review:** Conditional Use

Board Discussion: The Board reviewed the findings and conclusions as prepared by staff and discussed whether any changes were in order. Ms. Burgess and Chair Ashburn discussed whether inspection by the Fire Chief should be included as part of a finding that the applicable performance standards would be conditionally met. Ms. Burgess referenced a staff recommendation that, because inspections of that sort are necessary anyway, it need not be included as an express condition of approval.

Chair Ashburn noted that the condition had in fact been included in the draft findings and conclusions prepared by staff. Town Planner Patrick Venne clarified that because Fire inspections are standard in new construction anyway, it may be superfluous to condition approval of the application on such an inspection. At the same time, Mr. Venne noted that because such inspections are standard whether or not they are an express condition it would make little difference if such a condition was included as a matter of Board custom, even if unnecessary.

Mr. Perri asked a question related to the third proposed factual finding, related to the existing nature of the structure and consequent inapplicability of off-street parking requirements. Mr. Perri clarified that granting conditional use approval would trigger the standards of Berwick's current Land Use Ordinance related to parking. Mr. Perri asked whether he missed something that states this expressly. Ms. Burgess highlighted the section of the proposed conclusions, more specifically conclusion 1(a), which address Mr. Perri's concern.

Ms. Burgess inquired of Code Enforcement Officer (CEO) Joe Rousselle whether he would make sure the applicable parking requirements and other conditions are met. Mr. Rousselle confirmed he would.

Hearing no further discussion Chair Ashburn asked for a motion and a second to approve and adopt the draft findings and conclusions related to the Board's decision in this matter, as written.

MOTION:

Ms. Burgess moved to accept the Board decision, findings of fact and conclusions as prepared and written by Staff.

Mr. Perri seconded the motion.

By a show of hands, the Board

VOTED: 4-0 to adopt
Motion passed unanimously.

In Favor: Peter Perri; Judy Burgess, Kerry Ashburn, Paul Boisvert

Opposed: None

Abstained: Ron Morrell

Absent: None

IV. REGULAR BUSINESS:

A. Public Hearing:

- a. Project:** Addition of three (3) antennae and associated equipment to existing telecommunications facility
- b. Location:** 19 Little Harbor Road, Map R-36, Lot 46-A, R2 Zone
- c. Applicant/Representative:** New Cingular Wireless d/b/a AT&T as represented by Kristen Smith on behalf of Tison Technology Management, sub-agent of NexLink Global Services, agent of AT&T
- d. Application:** Conditional Use

Applicant's Presentation: Chair Ashburn turned the proceeding over to Applicant AT&T, represented by Kristen Smith of Tison Technology, an agent for AT&T Wireless.

Ms. Smith indicated the Applicant's proposal is to add three antennae and associated equipment onto the existing cell tower and wireless communications facility located on Little Harbor Road. Ms. Smith clarified a factual error in Planning Board Report 2012-01 as prepared by Staff by indicating the Applicant did not propose mere replacement of antennae but rather the addition of three new antennae. She noted that what was being replaced were three "dummy" antennae which serve the function of place holders. Ms. Smith indicated that the non-operational antennae would be taken off and replaced by three new, fully functional antennae.

Ms. Smith indicated that as for the equipment cabinet modifications proposed, they would all take place within an existing shelter at the compound. Ms. Smith stated the equipment cabinet modifications entail a 19" rack with associated electrical panel to serve the three new antennae.

Chair Ashburn inquired whether a picture was available for interested members of the public present to review. Ms. Smith indicated it was and Mr. Venne passed around several images included within the Applicant's submission to all members of the audience present.

Chair Ashburn asked the Board whether it had any questions and, seeing none, opened the hearing for public comment.

Public Comment: Seeing no public comment, Chair Ashburn closed the public comment period of the public hearing.

Board Discussion: Ms. Burgess indicated that she believed a standard policy of a preliminary workshop preceding a public hearing is a good idea. She inquired of staff whether any public comment had been received in the Planning Office. Mr. Venne indicated no public comment was received.

Chair Ashburn asked for a motion and a second to approve the application. Mr. Venne recommended that the Board reference the applicable performance standards in the Land Use Ordinance, and indicated Planning Board Report 2012-01 lays out each standard with relevant observations and staff comments. Mr. Venne suggested the Board review the relevant report and informed it that, in a legal sense, each performance standard should be voted upon as it relates to the pending application, followed by a bottom line vote to approve or deny the application on those bases. Mr. Venne explained that this is for the purpose of defending potential appeals. Mr. Venne explained that staff had prepared Planning Board Report 2012-01 for the Board's convenience to review and reference in a proposed motion as written unless changes were desired following review.

Chair Ashburn read through each performance standard and asked whether the Board must vote on each. Mr. Venne explained that the recommended practice is to vote on each standard, although some towns move on a "blanket" basis, finding all performance standards met after discussing each. Mr. Venne indicated that the Board may wish to examine whether the Land Use Ordinance should provide for waivers in certain circumstances because some applicable performance standards were irrelevant in this case. Chair Ashburn and Ms. Burgess indicated the Land Use Ordinance has no waiver standards and inquired whether that meant they should address each performance standard, relevant or not. Mr. Venne indicated the Board should address each standard relevant or not because no waiver provision existed.

Ms. Burgess indicated she was comfortable with a blanket motion with reference to each performance standard given the minor nature of changes contemplated. Mr. Venne indicated that despite a potential flaw in the way the Land Use Ordinance was set up, resulting in the application of irrelevant standards, the Board was still required to look at each standard.

Ms. Burgess stated for the record that she read each performance standard and staff observation and comments in Planning Board Report 2012-01 prior to

attending the meeting. Chair Ashburn indicated she had as well. Mr. Venne indicated statements like those would probably suffice as legitimate bases for action by Board members as long as the Report and its component parts were referenced in any motion to approve the application, by stating the motion was pursuant to the findings and conclusions stated therein.

Chair Ashburn asked whether the rest of the Board had had opportunity to read through Planning Board Report 2012-01. Paul Boisvert suggested the Board read through the relevant Report as a group because reading it individually may result in missing something. Chair Ashburn suggested and the Board agreed that she should read the performance standards and relevant staff comments for consideration of factual findings and conclusions applicable to each standard. Chair Ashburn stated that she would read through each, and asked that if any Board member disagreed with anything read aloud, that they ask her to stop to discuss. If no disagreement was apparent, Chair Ashburn suggested a blanket motion would be appropriate.

Chair Ashburn read aloud each performance standard applicable under the conditional use review process contained within the Land Use Ordinance and asked whether she should further read the “relevant observations” noted in Planning Board Report 2012-01. Mr. Venne clarified that the observations inquired about related to whether performance standards for whole cell towers, and not just antennae, were applicable. Mr. Venne indicated the key performance standards were those related to conditional use. He indicated that on appeal a judge would seek to determine whether the Board discussed the satisfaction of each applicable standard. Mr. Venne suggested the Board rationalize and think through whether each standard for conditional use approval is met.

Chair Ashburn requested a motion that the Board approve the conditional use for the proposal pursuant to findings and conditions suggested in Planning Board Report 2012-01. Mr. Venne clarified that the conditions contained in that report were merely suggestions which the Board may wish to use as a starting point for further consideration and which the Board may change at its discretion if it saw fit. The Board considered the conditions and Paul Boisvert asked whether there was a motion on the table. Ms. Burgess indicated that staff had proposed a motion for consideration. Mr. Perri asked the Board whether it had any comments or questions and, seeing none, moved according to the proposed motion as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-01 as written, relevant to the performance standards of the Land Use Ordinance; and pursuant to the conditions noted below, the Planning Board concludes that substantial evidence demonstrates the proposed conditional use application of AT&T to modify an existing telecommunications facility at Map 36, Lot 46-A satisfies all applicable performance standards, that the proposed use is compatible with adjacent land use, and approves the same subject to the following conditions of approval: as written.

Conditions of Approval as written in Planning Board Report 2012-01 and incorporated by reference in the above motion:

1. *The project is carried out as approved and as set forth in the application and verbal testimony;*
2. *Neither the replacement antennae nor any other part of the proposed use or modifications may be lit unless mandated by the Federal Aviation Administration or other applicable State or federal requirements;*
3. *Materials and colors for all externally visible antennae replacements and equipment shelter upgrades must match or blend with the surrounding natural or built environment, including the pre-existing tower and other antennae, through use of muted colors, earth tones, and subdued hues to the maximum extent practicable;*
4. *Noise associated with operation of the replacement antennae and any supporting equipment, if any, shall not exceed that of existing antennae and equipment.*

Mr. Boisvert seconded the motion.

Chair Ashburn asked for staff to tally a vote according to roll call.

Further Board Discussion: Mr. Schore inquired whether the conditions of approval should be read into the record. Mr. Venne indicated the conditions were incorporated by reference because of the “as written” part of the motion for consideration.

Mr. Boisvert inquired of staff whether the Board should discuss the clarifying point made by the Applicant at the beginning of the public hearing, that the proposal entailed three *new* antennae as opposed to three *replacement* antennae. Mr. Venne indicated that was a discussion the Board should have amongst itself as it relates to satisfaction of the applicable standards. Mr. Boisvert indicated although it was not something he had thought about before, it did not change his mind as to satisfaction of the standards. Chair Ashburn agreed, and asked whether this clarification changed any of the other members’ minds or opinions. No comments followed. Mr. Boisvert indicated the change and its lack of effect on the Board’s determination should be noted for the record, and Chair Ashburn so noted the change. The Board proceeded to vote on the motion on the table.

VOTED: 4-0 to approve

Motion passed, Morrell abstained.

In Favor: Peter Perri; Judy Burgess, Kerry Ashburn, Paul Boisvert

Opposed: None

Abstain: Ron Morrell

Absent: None

V. NEW BUSINESS:

B. Preliminary Workshop:

- a. **Project:** Commercial Vehicle Storage & Maintenance Facility
- b. **Location:** 420 School Street, Map R-54, Lot 15, R3 Zone.
- c. **Applicant/Representative:** Boulanger Paving by Paul Kennedy
- d. **Application:** Conditional Use / Site Plan Approval

Berwick Community Television Comment (BCTV): An operations manager of BCTV requested permission to interrupt the meeting proceedings and was so granted by Chair Ashburn. The representative of BCTV indicated there had been a recording malfunction for the first 25 minutes of the meeting, and the Board's discussion was not recorded as a consequence. Chair Ashburn summarized the proceeding to that point for members of the public still watching at home.

Applicant Presentation:

Paul Kennedy introduced himself as an agent for Boulanger Paving and handed out two sketch plans to the alternate Board members which were excluded by mistake from the Applicant's original submission.

Ms. Burgess asked the Applicant to more clearly identify the site of the proposed project.

Mr. Kennedy referenced several landmarks to orient the Board. Through Chair Ashburn, the Board indicated it was properly oriented.

Mr. Kennedy indicated the project was 150 feet away from the road to make it fit in with existing land uses better, and spoke to the nature of surrounding uses, many of which are commercial or industrial, and one of which, a mobile home area, is residential.

Mr. Kennedy inquired of the Board whether it would like him to address the parking proposed and other relevant issues one-by-one, and Ms. Burgess responded that would be fine.

Board Discussion:

Right, Title & Interest of Jones Property

Ms. Burgess asked Mr. Kennedy to first explain a late submission received by the Board related to a purchase and sale agreement for a portion of land included within the engineering plans for the project. Mr. Kennedy indicated that agreement pertained to landlocked property which, at the time of the meeting, was owned by a Mr. William Jones. Mr. Kennedy indicated Boulanger Paving entered into a purchase and sale agreement to buy the land, but that the land itself was not necessary to meet any of the zoning, dimensional, or other performance standards applicable in the Land Use Ordinance. Mr. Kennedy indicated the land was shown on the proposed plans for the ease of incorporating it into the engineer's plans and to avoid the difficulty of incorporating it after the Board approved an acceptable site layout. Mr. Kennedy reiterated that if Mr. Jones was not willing to sell the property, he did not believe it would impact his proposal's conformance with zoning.

Soil Condition and Septic System

Mr. Boisvert inquired whether Lot 16-A as shown on the plans submitted was dry or wet, noting that the terrain varies in that area with respect to those characteristics. Mr.

Kennedy stated that his understanding was that it was pretty dry, stating that he asked a consultant working with Boulanger Paving about fill earlier in the evening and did not believe any would be necessary for this project. Mr. Kennedy further stated he had had several “perc-cuts” for septic system feasibility analysis done recently, including one the week of the meeting related to a desire to move the septic system closer to the front of the project. Mr. Kennedy stated that the septic design was complete at the time of the meeting, but he had not picked up the plans yet. Mr. Kennedy stated that, in terms of percolating, the project design team has had no problems. Chair Ashburn asked Mr. Kennedy to clarify his comment, inquiring whether he intended to move the whole project closer to the front of the lot. Mr. Kennedy indicated it was just the septic system he intended to move closer to the front of the project site. Mr. Kennedy indicated the building footprint would remain as shown on the plans unless the Board had concerns.

Mr. Perri asked where the septic system was proposed at present, and Mr. Kennedy indicated it would probably be located under the tar, in chambers. Mr. Kennedy indicated he would show a final plan to the Board at a later date. Ms. Burgess asked whether the only reason a septic system was needed related to employee use of a single bathroom. Mr. Kennedy confirmed this, stating it was a septic system or a port-a-potty. Ms. Burgess asked for confirmation that the bathroom would not be used in connection with the business, and only for employees. Mr. Kennedy confirmed this.

Employee Count

Mr. Kennedy indicated the number of employees who would be present at the proposed project site once built could range from a low of three (3) to a high of ten (10) employees, and noted that everything has been designed to accommodate the upper end of employee presence, which would occur only during a few busy months of the year.

Status of Previous Plans

Ms. Burgess inquired whether the Applicant’s proposal would replace plans approved by the Board previously. Mr. Kennedy confirmed. Ms. Burgess asked whether the structure proposed would store the Applicant’s vehicles in the winter and allow maintenance of those vehicles. Mr. Kennedy confirmed.

Access Ways

Mr. Boisvert noticed that although access was planned off of Route 9, the back of the lot appears to abut Commercial Drive. He noted there were some lots in the rear which are not yet built on. Mr. Kennedy indicated it was only one lot. Mr. Boisvert asked for confirmation that there was no option to access the project site from the rear, i.e., Commercial Drive. Mr. Kennedy indicated an additional lot would have to be purchased to get through-access to the rear. Mr. Kennedy also indicated the desire was to remain on the main road of Route 9, and indicated the alternative option of rear access had been considered and rejected.

Mr. Perri indicated the *structure* could remain on the main road but wondered how difficult it would be to build just an *access drive* to the rear. Mr. Kennedy indicated the project property does not touch a public way to the rear, although it abuts a property which does, and indicated that to build a driveway would require purchasing the rear-abutting lot at a price of \$100,000.

Driveway Permit

Mr. Kennedy indicated he has contacted the State Department of Transportation about an entrance permit but that process was still unfolding. Relevant points of discussion in DOT correspondence included those related to one-way access directions for both in and out lanes. Ms. Burgess asked whether this meant the Applicant would have two driveways: one in and one out. Mr. Kennedy confirmed this was correct.

Hours of Operation

Ms. Burgess asked for confirmation of her understanding that the nature of the business proposed is that drivers leave in the morning and return at night, and the use envisioned does not entail continuous presence at or use of the site throughout the day. Mr. Kennedy confirmed this, and highlighted aspects of the design related to nighttime storage specifically devised to enable overnight parking by entrance on one side and exit on the other. Mr. Kennedy reminded the Board that the Applicant is also involved in snowplowing, which contrary to the standard usage patterns can occur at any time.

Maintenance Use & Associated Noise

Mr. Boisvert asked about the maintenance on the trucks and what degree of it was envisioned at the site. Mr. Kennedy indicated the maintenance was minimal but would occur. Mr. Boisvert asked for clarification about resultant noise. He asked whether it would be mostly related to equipment starting up in the morning and returning at night, and whether noise related to maintenance would be very minor. Mr. Kennedy confirmed this, and also confirmed for Mr. Boisvert that any maintenance would occur within the building. Mr. Kennedy further indicated that, on occasion and during the daytime, the Applicant would stock-pile gravel on site. Mr. Boisvert asked whether the closest and only residential neighbor was the mobile home discussed earlier. Mr. Kennedy confirmed.

Lighting

Mr. Perri referenced structure-and-site comments on page 1 of the Applicant's submission. He discussed the exterior mounted 'pack lights' and asked whether the Applicant intended to meet the Land Use Ordinance's standards for exterior lighting. Mr. Kennedy confirmed he did.

Proximity to Residential Home

Ms. Burgess indicated she believed the land to be covered in trees. Mr. Kennedy confirmed this, and added that they were small trees. Ms. Burgess said she felt that the residents of the mobile home may be sheltered from exterior lighting effects because of the trees, and asked whether the residents would be able to see the structure. Mr. Kennedy said the residents would be able to see the structure. Ms. Burgess stated the structure appeared to be quite a distance from the residential property. Mr. Kennedy noted that the residents had been taken into consideration in siting of the building by sitting it deeper in the lot. Ms. Burgess asked Mr. Kennedy to estimate how far away the residential property line is from the proposed project, and Mr. Kennedy responded it was probably 200 feet.

Fill

Mr. Boisvert asked how much fill would be required for the wetlands between the mobile home area and Route 9 and the structure proposed. He inquired whether any of the building footprint would require fill. Mr. Kennedy said that all of the topographic work associated with this project was complete, and that he had been told earlier that day that

not a lot of fill would be required for the developed area.

Extent of Developed Area

Mr. Perri asked whether the developed area would all be paved. Mr. Kennedy indicated he would have to check into this, but did not think so. He indicated some of the developed area may be gravel. Mr. Perri asked whether the land beyond the line demarcating the developed area from the undeveloped area would all remain wooded buffer. Mr. Kennedy stated he believed this to be true, especially near the mobile home, where the Applicant would make it a point to leave what it could there for buffer conditions. Mr. Perri indicated a desire to attach a condition to any eventual approval related to maintaining a buffer area. Mr. Kennedy clarified lines on the map and directed the Board's attention to the applicable setback line.

Stormwater Management

Ms. Burgess asked CEO Joe Rousselle whether this application triggered a Stormwater maintenance level II requirement. Mr. Rousselle indicated he would need to further review the plans before the next meeting to learn how much the Applicant proposes to develop. He indicated the Applicant would not need this level of review if the project remains under an acre in size. Mr. Kennedy indicated the project as proposed is less than one acre specifically to avoid a tier II maintenance plan for Stormwater.

Sign

Ms. Ashburn asked whether a sign existed on Route 9. Mr. Kennedy said one did not exist, but a paver/roller was present which said "Boulangier Paving" and is not lighted.

Site walk

Ms. Ashburn shifted the course of the discussion toward scheduling a site walk and public hearing. She scheduled a public hearing for December 6, 2012, and asked the Board to determine a feasible date for a site walk. The Board determined November 21, 2012 at 8:30 a.m. worked best and set that time for the site walk.

Applicant's Inquiry & Board Response

Mr. Kennedy asked the Board whether there was any additional information it required or would like to better position him for approval at the next meeting. Ms. Burgess indicated she would like a Stormwater management plan. Chair Ashburn indicated the plan must be final for the next meeting in order to receive approval. Mr. Boisvert asked whether the sale related to the Jones property would have closed by the next meeting. Mr. Kennedy preferred to leave the sale conditioned upon approval, but indicated it could close by the next meeting if the Board required it. Chair Ashburn indicated it could be conditional.

Mr. Boisvert further inquired about the location of the proposed entrance off of Route 9, which the Applicant said was an outstanding issue with the State DOT. Mr. Kennedy responded by stating that he had preliminary approval of standard 42-foot entrance permit, but Mr. Kennedy was interested in a 50-foot entrance width, which would require further discussion. Ms. Burgess indicated that attainment of the permit could be a condition of approval. Mr. Kennedy indicated that the DOT already verbally approved a 42-foot permit, but he wants to try to get a 50-foot permit. This would be the only difference. Ms. Burgess indicated this was purely a State level requirement. She further indicated she could not think of anything additional she would like to see, but asked whether the purchase and sale agreement needed to be finalized in a closed sale prior to

approval. Mr. Kennedy indicated again he could close on the Jones property if needed. Mr. Boisvert said the property as shown was only included to make the plan accurate. Mr. Perri indicated lack of purchase would not impact the project. Mr. Boisvert agreed by stating that the Applicant was not even close to lot coverage maximums.

Mr. Perri asked for an indication of how much crushed stone or soil would potentially be stored on site by Boulanger Paving during the year. Mr. Kennedy indicated he would obtain an amount. Ms. Burgess asked for a mark on the plan as to where this material would be stored on site, as well. Mr. Morrell asked for clarification on where the mobile home actually sits. Mr. Kennedy said he was not sure from the plans. Mr. Morrell indicated that some sort of a buffer may be needed in terms of trucks pulling in. Chair Ashburn agreed and indicated this was a good matter to address at the site walk.

A public hearing was scheduled for December 6, 2012. This concluded the Board's discussion.

VI. OTHER:

A. Downtown Vision Committee Discussion:

Introduction

Frank Underwood introduced himself as Chair of the Committee. He indicated that the Town ended up with a warrant article last June, which was passed and which authorized funding for technical and other assistance to revitalize the commercial/industrial/Shoreland area in and around the downtown. Mr. Underwood indicated that part of the approval process entailed the vision being put forward to the Townspeople for a vote once complete. At the same time, Mr. Underwood indicated that such a vote would be for inclusion as an update to the Comprehensive Plan through the Town Meeting process.

Discussion

Ms. Burgess indicated that the 2004 Comprehensive Plan update updated the implementation steps and did so by talking a lot about the downtown and village areas. Ms. Burgess asked Mr. Underwood whether the intent of the Committee would be to update the Comprehensive Plan. Mr. Underwood outlined the area of interest in rough terms and said that remains to be seen. Mr. Underwood said the hope is to look at downtown amenities and uses and time investments in those issues to coincide with other investments in the area, including Somersworth's Main Street updates, Rochester Street updates, and the Berwick-Somersworth Bridge replacement, which has been postponed for a year due to utility concerns.

Mr. Underwood expanded upon a staff memo as to where the Downtown Vision Committee intends to go by explaining the Committee's origins and the process leading up to the meeting. Mr. Underwood spoke to the status of a mission statement, the status of the Committee as an informal citizen's group, and the Committee's contact list, which he intended to add the Board to.

Mr. Underwood explained the process underlying creation of the Committee's mission statement, and then read that statement to the Board:

"To develop and present to the Citizens of Berwick a Downtown Vision Report."

Mr. Underwood indicated the plan to move forward is to begin with a next step of scoping, in terms of how to begin generating concepts and ideas, and indicated that the Planning Board needed to be brought into this discussion early to ensure any suggested vision can become part of the Comprehensive Plan. Mr. Underwood indicated the Committee may require guidance from the Planning Board, because the Board is the proper channel this effort must go through, and that Board members are welcome to attend any Committee meetings.

Mr. Underwood indicated that the attorney for the mortgage holder of the bankrupt Prime Tanning site attended a meeting of the Committee, which he found encouraging and believed would lead to further productive discussions. Mr. Underwood indicated the Prime Tanning mortgage holder had not yet mentioned any plans for the property.

Mr. Underwood indicated members of the Committee possess technical expertise related to environmental remediation.

Mr. Underwood described a meeting regarding brownfields funding administered by Southern Maine Regional Planning Commission (SMRPC) with staff and Paul Schumacher.

Mr. Underwood indicated the Committee meets the first Monday of every month. He stated the main purpose of his introduction to the Board of the Committee's effort was to give an overview and ask the Board how it would like to be updated about the effort.

Chair Ashburn suggested the Board have a Liaison to the Committee. Mr. Underwood envisioned periodic updates on television to the Planning Board and Board of Selectmen. He also said a Liaison is fine, because the Committee is looking for insight on how to make sure its deliverable is something which can be voted upon by the Town to become part of the Comprehensive Plan.

Mr. Venne summarized the process and acknowledged that what a "better" downtown means has not yet been defined, and further indicated it would be a good idea to keep the Board intimately involved in the Committee's efforts, whether through a liaison or other means deemed appropriate. He indicated that the Committee would discuss further how it wished to proceed in terms of remaining an ad hoc citizens' committee as opposed to an appointed committee.

Mr. Underwood indicated that some of the members on the Committee were on the Town's former Economic Development Committee, and indicated that the Downtown Vision Committee's two vice chairs were Tom Lavigne and Lesley Downes.

Ms. Burgess recalled that sub-committees were established for the update of Berwick's Comprehensive Plan in 2004, and wondered whether this is what the Downtown Vision Committee might do as well. Mr. Underwood stated this had already been discussed, although committee memberships had not been established yet. Mr. Underwood stated this is how the Economic Development Committee was organized, too.

Ms. Burgess indicated that the 2004 Comprehensive Plan update was good for current purposes because it prefaced the growth cap ordinance and led to a policy statement that the Town should grow from the center outward. Ms. Burgess also stated that the plan update included language to the effect that the Town should “continue to work on the downtown revitalization,” referring to a previous effort from the 1980s. Ms. Burgess indicated that the details of the 2004 Comprehensive Plan update were therefore a good starting point.

Mr. Underwood discussed the importance of updating the community’s plan in order to link any action plan to policy. Mr. Underwood indicated this linkage would avoid calling any implementing steps into question on the basis of an outdated plan. Ms. Burgess said the original 1991 Comprehensive Plan was preceded by and based on years of upfront inventory work and analysis, and the 2004 plan update was a major update, even though it didn’t update the whole plan. Ms. Burgess indicated that these sorts of efforts take time and that her understanding was that it was standard to revisit plans every so often. Ms. Burgess indicated that in 2014 it would be ten years from the last Comprehensive Plan update, and Mr. Underwood indicated the timing of this effort may coincide well with an update to the Comprehensive Plan.

Mr. Venne indicated that he did not think it was a bad idea to revisit planning documents every so often, and ten years might make sense as a rule of thumb. He clarified that the State Planning Office had not been abolished, but rather re-organized under a different name. Mr. Venne indicated that SMRCP informed the Town that the Comprehensive Plan did not necessarily have to update its plan within a certain amount of time to ensure consistency. Mr. Venne indicated the “consistency” which really mattered was that between a plan and zoning. Mr. Venne emphasized the importance of making sure whatever document emerges from the Downtown Vision Committee is built on consensus to avoid presenting a narrow view and instead present one reflective of a truly public vision; at this point, the plan could be updated which would allow the Board to return to the subject of amending the Land Use Ordinance to implement that plan.

Ms. Burgess agreed and said that is the process which ensued following adoption of the previous plan update. She explained how the process worked over several meetings to amend the R3 district, which resulted from a policy to keep smaller lots in the center of town to protect outlying districts.

Mr. Perri asked a few questions. He stated that from his perspective it looked as though the direction this effort was headed in was that of putting forward an amendment to the Comprehensive Plan and said that after ten years this was probably a good idea, especially in light of recent growth and the Town’s questionable ability to control it effectively. Mr. Perri then asked Mr. Underwood whether the intent of the Downtown Vision Committee was to create a Comprehensive Plan recommendation, which would potentially spur a comprehensive plan committee.

Mr. Perri questioned whether such changes had to go through a separate comprehensive plan committee, and Mr. Underwood responded that that may in fact be the case. Mr. Underwood stated that his recollection was that the previous update entailed a committee of approximately 70 people, split into a number of sub-committees. Ms. Burgess echoed this recollection, stating she further believed the

former committee to be appointed by the Board of Selectmen. Ms. Burgess indicated there should be additional files which explain this process.

Mr. Underwood spoke to the deliverable envisioned for the Committee. He indicated that the deliverable of a “report” was specifically chosen because he envisioned recommendations to be part of the end product presented to the Town. Mr. Underwood believed the recommendations would represent the public input heard along the way. He also indicated that in addition the Committee may examine some of the land use regulations of the Town, to make recommendations as to how those might also be amended. Mr. Underwood stated this might be beyond the Committee’s charge and/or expertise, but might entail recommendations as to updating the “type” of zoning used in the downtown. In this context, Mr. Underwood spoke about the potential of exploring other approaches to zoning which have been used in urban areas, including “form-based” zoning. Mr. Underwood indicated this process would have to be further refined through the Planning Board’s involvement, and ultimately would depend on a public vote.

Mr. Perri also asked whether the Committee would bring in consultants to review the Land Use Ordinance. Mr. Underwood responded it was too early to say. He stated, however, that that was one of the reasons the warrant article was established, to explore these things. Mr. Underwood said that outside assistance would be needed for at least a desired “charrette” portion of the effort. Mr. Underwood indicated that SMRPC could be utilized too, as well as a grants writer. Mr. Underwood said exactly how the expenditure of funds authorized in the warrant article took place would be decided by the group but had not yet been discussed fully. Mr. Underwood noted that any outside assistance related to the Land Use Ordinance would likely be done with guidance from the Planning Board, as it is the administrator of the ordinance.

Mr. Boisvert stated the first deliverable is the Downtown Vision Report, and that everything else is open ended, with multiple parts, and asked whether this could result in spin-off groups related to business development. Mr. Underwood stated that the Vision Report would include some recommendations as to implementation. Mr. Underwood described the Vision Report as a document that would show where the Town wants to go and how it needs to get there. Mr. Boisvert said this sounded like more than a vision, because it actually has steps recommended to achieve the vision.

Mr. Underwood provided examples of the discussion which had begun to occur at the Committee meetings, stating one member of the Committee desired green space, and someone else desired a gazebo for people watching, and that downtown had a lot of potential to be pretty. Some other people were talking about how downtown used to be, with mixed uses, Mr. Underwood said, and so the Committee’s vision was simply to develop positive energy about the downtown around these ideas.

Mr. Underwood said the effort would take time, and would be fun. Ms. Ashburn asked whether the Planning Board should just wait for another update or do something else. Mr. Underwood said Ken Porrier is already on the contract list for the Committee and had been attending the meetings with his wife. Mr. Underwood said that any other Board Member who wished to be placed on the contact list could be as well.

Mr. Venne said the purpose of this meeting was to serve as an introduction and to get Board feedback so that, in the event something positive emerges from the Downtown Vision Committee, the Board is not surprised by the results and the product is not questionable in terms of where it came from.

Ms. Ashburn said communication is the key to success and it is good to continue talking about this. Mr. Underwood said that there are other boards in town too which may need to be updated, including the Board of Appeals and all Department heads. Mr. Underwood also said that Coast, as a public transportation provider, was important.

Ms. Burgess clarified that the geographic scope of the study was not merely the 7 acres occupied at present by Prime Tanning. She wondered whether the effort would potentially look at zoning districts. Mr. Underwood said the project was intended to look at a number of different areas in and around the downtown, and because of what DOT is doing on Rochester Street it may make sense to draw that corridor in as well. He said this may end up requiring modification to the Land Use Ordinance. Ms. Burgess referenced the land use map and the C/I and R1 district boundaries. She said this area was the “village” area in the Comprehensive Plan. Mr. Underwood read the warrant article into the record, which related to updating the Comprehensive Plan with respect to an “urban overlay” district, to which Prime Tanning is central. The warrant also referenced the neighboring commercial/industrial districts. Ms. Burgess said that the urban overlay zone only encompassed a portion of the C/I zone. Mr. Underwood said the Committee would not be concerned with micro managing the line between zones, but rather to focus on the downtown generally in order to enhance it through improvements potentially making it a walkable community which is multi-modal and “bikable.”

Mr. Perri said he would like to be on the contact list, and recommended updates be channeled through planning staff. Ms. Burgess said that email was a good way to stay updated. Mr. Boisvert clarified that the contact list was email-based. Mr. Underwood confirmed.

Mr. Perri applauded the Downtown Vision Committee’s efforts, but stated that without cooperation from Prime the Town has very little control over development of that site. Mr. Underwood stated the conclusion of the Committee at its first meeting was that, to ensure its efforts were not in vain, it needed to know what Prime Tanning’s owner was thinking about the future of that property. Mr. Underwood described the efforts which led to meeting with attorney Roger Clement, who represents the mortgage holder which recently foreclosed upon the Prime site.

Mr. Perri said that if the vision goes forward around Prime, Prime needs to be part of it. Mr. Underwood said he got the sense that the soon-to-be owner of the Prime site wants to see something happen there, and asked staff to confirm. Mr. Venne indicated that while he could speak for neither Mr. Clement nor his client, he too had a positive feeling about the owner’s potential position. Mr. Venne stated that like any owner the owner of the Prime site wants to see what is in its best interests, but added that that may not simply mean bottom line interests. It may potentially include what is mutually satisfactory for both itself and the Town in light of community desires and consensus and what is going on around the site. Mr. Venne also clarified that the

Town does, in fact, exercise a lot of power over what goes on at the Prime site. Mr. Venne indicated that by changing the plan, zoning could be changed, and that by changing zoning, what is feasible on the site is also changed. Mr. Venne stated that the trick is to not overstep, to not go too far, to make sure that the Town does not preclude all reasonable development options at the site by desiring more than is practical. Mr. Venne stated that this would avoid both legal and practical economic development problems for the Town. Mr. Venne concluded by stating that at this point the idea was to figure out what works for the property owner and decide what the Town wants to see, and to find some common ground. Mr. Venne stated that both sides—the Committee that has formed as well as Prime Tanning’s soon-to-be title holder—both seem very willing to come to the table and have that discussion.

Mr. Underwood agreed and said that he believed this could happen as early as January or February. Mr. Venne indicated this could very well be the case, but that the Town must await further communication to know for sure.

Mr. Perri indicated that developers always want to have a good relationship with the Towns in which they develop, but some leave people with a sour taste. Mr. Underwood clarified that the potential Prime owner is not a developer *per se*, but may be more interested in how to attract others to the site to use or develop. Mr. Venne said that even this could not be concluded at this stage; it appeared to be a situation of protecting the financial interest which served as collateral in a mortgage recently foreclosed upon, and not necessarily anything more at this point. The discussion, Mr. Venne said, is to see what is practical, in light of a hope that something *could* happen at the Prime site.

Ms. Burgess said economics will dictate what happens downtown. Mr. Underwood spoke to the number of cars which cross the Berwick-Somersworth Bridge, and estimated it must be the second or third most heavily traveled bridge between the two states. He emphasized that all of that traffic goes through downtown. Ms. Burgess indicated she believed DOT had up-to-date travel count information for the bridge traffic. Mr. Underwood said the Downtown Vision Committee had used a mock-up of a future traffic pattern downtown for its initial kick off meeting which showed a roundabout downtown.

Mr. Boisvert indicated that while the future of the Prime site was critical there had also been a lot of changes in Berwick more generally since the Comprehensive Plan was adopted. Mr. Underwood agreed and said that he hoped the Committee didn’t choose just one target to focus on. Ms. Burgess indicated that the Penny Pond property owned by the Town on Logan Street is very close to the downtown area. She said that the whole 22 acre parcel could not be developed, but it’s green space, and could be connected in some way. Mr. Underwood said he would like to see all of these issues discussed. Mr. Underwood said that when the Committee discussed why each member present chose Berwick as their town to reside in, it became apparent just how many people really like the Town, and a recurring comment was that when they drive through the downtown they would like to see more than just a big white brick building. Ms. Burgess again mentioned how the Comprehensive Plan update was a good starting point. This concluded the discussion.

Next Steps:

a. Approach:

Mr. Underwood said he would add those who wish to be added to his contact list for the Committee.

VII. NON-AGENDA ITEMS

CEO Rousselle informed the Board that the Land Use Ordinance indicates approved subdivisions which are not constructed within three years of approval lapse and become null and void. Mr. Rousselle indicated one such subdivision exists off of Worster Road. He stated that particular subdivision was approved over seven years ago, and he had the map and lot number to provide. Mr. Rousselle indicated this is something the Board needs to act upon and that perhaps a matter for it to look into should be what other approved but un-built subdivisions exist. He indicated he would be looking into this as well. Ms. Burgess inquired about whether the particular subdivision referenced by Mr. Rousselle was phased. Mr. Rousselle said he did not see anything about a phased approval.

Mr. Perri indicated that, originally, the ordinance specified that approved subdivisions must be built within five years, and this period was shortened to three years, approximately four years ago. Mr. Perri mentioned this to make sure the approval date was evaluated in light of what requirement applied at that time. Mr. Rousselle indicated the subdivision to which he was referring was old enough that it would be null and void under either standard.

Ms. Burgess also indicated that at the time the requirement was five years, the standard was written such that if it was phased there was no limit. Ms. Burgess indicated that when the three year standard applied, it applied even to phased developments. Ms. Burgess indicated she believed there were probably three or four subdivisions which were never built in recent years. Mr. Perri indicated he thought it was a good idea for the Board to send letters to owners of un-built subdivisions. Mr. Rousselle said he would look into the others.

Mr. Perri stated that within the R1 zone his understanding is that the residential growth cap allows a certain number of permits per calendar year, and wondered whether there might be a loophole to this requirement if a development splits land before applying for subdivision approval. Colonial Green was cited as an example.

This concluded the discussion.

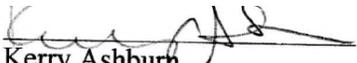
Ms. Ashburn requested a motion and a second to adjourn.

VIII. ADJOURNMENT

Mr. Perri moved to adjourn. On a second by Ms. Burgess the Board voted unanimously to adjourn at 8:34 p.m.

Minutes prepared by Planning Director & Land Use Counsel Patrick Venne for consideration at the Berwick Planning Board's December 6, 2012 meeting

Signed as modified and accepted by vote at the Board's December 6, 2012 meeting:


Kerry Ashburn,
Chair, Berwick Planning Board

12-29-12
Date