

MINUTES  
TOWN OF TOPSHAM  
PLANNING BOARD MEETING  
MAY 4, 2010, 7:00 P.M.

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MEMBERS PRESENT: Donald Spann, Chairman  
Stephen Mathieu, Vice Chairman  
Michael Colleran  
Scott Libby  
Jay Prindall  
Bruce Van Note

MEMBERS ABSENT: Ron Bisson was absent.

STAFF PRESENT: Planning Director, Richard Roedner; and Assistant Planning Director, Ron Melanson, was present representing the planning staff.

A meeting of the Topsham, Maine Planning Board was held on Tuesday, May 4, 2010 at the Municipal Building at 100 Main Street, Topsham, Maine.

**1. CALL TO ORDER AND ROLL CALL**

Chairman Spann called the meeting to order at 7:00 p.m. and asked the recording secretary to conduct the roll call. Roll call was conducted and it was noted that all members were present except for Ron Bisson who had been excused.

**2. APPROVAL OF MINUTES FROM THE APRIL 20, 2010 MEETING.**

Motion was made by Mr. Mathieu, seconded by Mr. Van Note, and it was

VOTED

To approve the minutes of the April 20, 2010 meeting as corrected.

(Corrections: Pg. 1, Item 3, change "John" Jenkins to "Don" Jenkins and "recluse" to "recuse." Pg. 7 No. 1 Finding of Facts, change "Landfill" to "Land Trust.")

3. **PUBLIC HEARING - THE PLANNING BOARD WILL HEAR ALL COMMENTS AND CONCERNS ON A SITE PLAN AND CONDITIONAL USE APPLICATION OF MARINER TOWER II, LLC, TO CONSTRUCT A 75-FOOT HIGH CELL PHONE TOWER AT 14 OAK STREET, TAX MAP U01, LOT 109. THE PROPERTY IS LOCATED IN THE R-1 ZONING DISTRICT AND IS OWNED BY CLIFFORD AND PAULINE FARR. THE PUBLIC HEARING IS A CONTINUATION FROM THE MARCH 16, 2010 PUBLIC HEARING.**

Chairman Spann began the discussion stating protocol for the Public Hearing including:

- When you come to the podium, please state your name and address;
- Speak through the Chair;
- Turn off cell phones;
- Be respectful of others;
- No side conversations;
- Please exit the room after the meeting so the Board may continue to address other items;
- No applause in order to assure that the meeting is conducted in as professional a manner as possible.

Chairman Spann said the order of business will include:

1. We will have a discussion regarding the site walk which was conducted at 6:00 p.m. this evening (5-4-10).
2. Summary of where we are from the Planner.
3. Presentation from the applicant.
4. Board questions of the applicant.
5. Receipt of public testimony, allowing time for all wishing to speak to do so.
6. No additional public comments will be received following the closing of the Hearing.
7. Deliberations by the Board.
8. Findings of Facts Determined.
9. Vote Taken

Summary of the Site Walk - Mr. Roedner said at the last meeting this agenda item was continued to tonight's Public Hearing and gave the applicant an April 13, 2010 deadline to submit new information and/or revised information. Revised information was submitted on April 15<sup>th</sup>. Mr. Roedner noted staff review comments in file, including a memo from Tom Saucier on the Drainage Report and a memo from Alan Frasier of the Water District which came into the Planning Office the date of this meeting (5-4-10).

Mr. Roedner reported that the Topsham Planning Board convened a site walk at 6:00 p.m. at 14 Oak Street, to walk the site of the cell phone tower proposed by Mariner Tower II, LLC. Members present included Don Spann, Stephen Mathieu, Michael Colleran, Scott Libby, Jay Prindall and Bruce Van Note. In addition, Rich Roedner, Planning Director and Rod Melanson, Assistant Planner, were present.

No members of the public attended the site walk.

Chris Ciolfi, representing Mariner Tower II, LLC, directed the Board along the proposed access drive, explaining the markings of the site, showing centerline of the drive as well as clearing limits.

At the location of the proposed compound area, Mr. Ciolfi noted that Mariner Tower was considering shrinking the proposed cleared area from 70' x 70' to 70' x 40', leaving an additional 30' of vegetated area between the compound and the neighboring homes. Mr. Ciolfi also noted that this would re-position the road, further from the neighboring properties.

The Board was concerned about the number of large trees that would be removed by the existing proposed site layout, and noted that the proposed changes would result in far fewer larger trees being cut down.

The site walk was concluded at 6:40 p.m.

The applicant had attempted to fly a balloon, but by the time the group arrived the winds had shifted and the balloon could not be extended to its full height.

Chairman Spann said he had a couple of thoughts to ask the Board. One - we have a submitted plan, and what we were actually shown this evening on the site walk was what was on the plan, but also a new proposed plan which has not come before the Board. Secondly, we have still some unresolved discussions in regards to drainage. Mr. Spann said, with all that being said, the Board needs to discuss whether or not they think there is an application before them this evening to review.

Mr. Mathieu addressed Mr. Ciolfi and said "I think we were pretty clear that we were looking for more information, and the site walk was very helpful. What that site looks like is going to be directly related to how I vote for Conditional Use and I think it probably has the biggest impact on the conditional use because, really, the Performance Standards around the transmission tower and stuff - we are not going to go there, unless you meet the Conditional Use Standards and the impact it has on that neighborhood is where I see that being, and obviously you are trying to accommodate it, so you are doing it for the right reasons, but by doing it you are coming here tonight, in my mind, with an unfinished plan, and I am not inclined myself to spend time with you and your unfinished plan. What I would like to do is go see what you propose to do, be able to assimilate that and look at that and say does that or does that not meet Conditional Use and the impact standards. Everybody in this town comes in and has to go through our Conditional Use Standard if it is a conditional use, not a permitted use, and we get to weigh in on that. Chris, why now? Why is the site roped out one way, when you can see yourself that you are hitting some of the biggest trees, and then propose something else when we are ready to vote? It doesn't seem like you have a finished plan tonight for us to review."

Mr. Ciolfi responded that he appreciated the Board taking the time to come out and look at the project. He said "We believe we have, as I've said, a plan that meets your conditions and the many meetings and discussions that we have had with the Board, hearing from the neighbors, from different town engineers, we do not believe we have a static plan. We are trying to make the best project we possibly can and we are continually trying to improve on the project. We believe we can go forward with our original plan tonight as presented. What we are trying to do is present an opportunity for the Board to say, if you reduce the size of the compound, we will make that a condition of the approval. Avoid certain trees, or mark up exactly which trees you want to remain

as a condition of approval. There are many ways to handle that and what we showed you tonight on the site walk was kind of an evolution of the plan as we are trying to make it the best project possible."

Mr. Mathieu said "We showed up at the site walk to see what you want to do and we were shown two different things. We didn't ask you to do that. I asked, specifically, would you be able to save those trees or whatever, but I certainly didn't say show me a smaller compound and yet it was already taped off. That's not the compound that's on our plan to review. I certainly didn't say show me a whole different way up to this property, although, I would expect the applicant to try to find the best way into the property and protect the trees based on the issues at hand and have it roped off for us to come see. It doesn't appear that the plan we have in front of us to review shows the other way, right?"

Mr. Ciolfi said Mr. Mathieu was correct.

Mr. Mathieu continued "My inclination is not to put you off, I see it as you are trying to accommodate the Board, but we have to approve a plan and we don't get to approve a plan that doesn't have...that's not a condition of approval...we have to have a mapped plan that shows where's the compound, where's the road, and make good decisions for our town on what the impact is and whether it meets our standards or not. And you haven't given us the tools to do that tonight. Only one other comment. I don't like coming in, as hard as we work, I've got staff down here and it's not fun to come in and have a submission on Stormwater on April 30<sup>th</sup> that our peer reviewer got on May 2<sup>nd</sup> when the deadline for review was April 13<sup>th</sup>. I can't do my job. My job is to represent my Town. On that alone, I really think it should not have been here tonight. But, regardless, because how am I supposed to read a Stormwater Management Plan? I know it is similar, but there are differences and then we are getting something from Tom Saucier today, e-mailed at 8:15 a.m. with his comments that says it appears that discrepancies exist. There may not be any discrepancies, but how am I supposed to know? You guys need to dot your I's and cross your t's and bring us a plan that we can approve. If you want to improve the plan that you have in front of us, you need to tell us that now. Otherwise, I am very inclined to ask this Board to table this. I wouldn't reject it, but I would table it, get your plan together with what you want to see and let us evaluate whether it meets our standards or not."

Mr. Ciolfi told the Board that his client was doing everything they could to present a better plan.

Mr. Mathieu asked Mr. Ciolfi if they were going ahead with the plan they have or are they looking to adjust the plan. Mr. Ciolfi asked for a short break in order to talk with the applicant.

Following the break, Mr. Ciolfi returned to the podium and told the Board that their intent is to build the best project possible. He said given the Board's legitimate concerns, they would prefer to come back before the Board with an adjusted plan. He added that the changes discussed will only make it a better project.

Mr. Mathieu asked for a commitment that everything will be submitted to the Board by a legitimate submission date so the staff will have time to get the material to the Board and

the Board has time to fully review it.

Mr. Van Note added that he will not consider the material presented if not submitted on time.

A discussion followed regarding a submission date to provide ample time for all parties to review the new information. It was agreed to move the July 6 meeting to June 29 to continue the hearing on this item. The submission deadline was set for June 8, 2010.

Mr. Ciolfi noted the issues, including why alternate sites won't work, a revised plan showing new road alignment, compound size, camouflage issue, and drainage issue. Request was made to show on the plan the dozen or more large trees to remain standing.

Mr. Libby said we talked about the screening trees, but there are screening trees that may be saved by moving the road. However, some of the trees are not in the lease so the issue remains if the trees are going to be screening trees or possibly cut down by the land owner in the future. Mr. Ciolfi said the majority of trees to be cut are in the octagon area. The road will be shown in the center of the 50-foot right of way, or 25-feet on each side of the road. The leased area is approximately 2 acres.

Mr. Van Note asked if there was a legal description of the 50-foot right-of-way. Mr. Ciolfi responded that they have a lease-hold interest with the landowner. Mr. Roedner said the question which has been asked at various time is what about the trees outside the lease-hold. Mr. Ciolfi said they have no control of the area outside of the lease-hold area. He said, however, that the Mr. Farr, the landowner, has said he does not plan to cut any of the trees outside of the lease-hold area.

Mr. Prindall expressed concern about the ultimate potential height of the tower. He said it is an important factor to him in the conditional use discussion. He said there is a big difference from a 75-foot tower to a 103-foot tower. Mr. Ciolfi said the applicant is asking for a 75-foot tower, but added that the ordinance encourages co-location and the ordinance allows towers to be up to 125-feet.

Motion was made by Mr. Mathieu, seconded by Mr. Van Note, and it was unanimously

VOTED

To table the Application to a date certain for June 29, 2010 with submission materials due in the Planning Office by June 8, 2010.

With no further business to address, motion was made, seconded, and the meeting was adjourned.

Respectfully submitted,



Patty Williams, Recording Secretary