

**PLANNING BOARD MINUTES**

**WEDNESDAY, JULY 15, 2020**

**REMOTE MEETING – 6:30 P.M.**

**Present:** Christa Schwintzer, Joe Sprecher, Michael Costello, Jud McIntosh, John Beckett, Dave Thompson, Lisa Buck, Phil Ruck

**Absent:** None

**Town Staff:** Kyle Drexler, Jessica Chadbourne

**Acceptance of the Agenda**

Phil Ruck asked for a motion to accept the agenda.

Motion: Lisa Buck

Second: Michael Costello

Mr. Ruck then asked Jessica Chadbourne to take a roll call vote. The vote to approve the agenda passed unanimously.

**Approval of the Minutes of the June 17, 2020 Meeting**

Mr. Ruck asked the board for a motion to accept the minutes.

Motion: Christa Schwintzer

Second: John Beckett

Mr. Ruck then asked for any comments on or corrections to the minutes. Christa Schwintzer commented that she found the minutes to be well done and that it was helpful to have the whole discussion with regards to the Oak St antenna laid out. John Beckett pointed out a correction for page 3, where the word eternal had been accidentally substituted for the work external. With no further comments or corrections from the board, Mr. Ruck asked Ms. Chadbourne to take a roll call vote. The vote to approve the minutes, with the noted change, passed with 7 for and 1 abstaining, as Lisa Buck was absent from June's meeting.

**Old Business**

**Item A: A continuation of a minor site plan review application for an accessory use at 36 Oak St that would allow Verizon Wireless to place equipment within the steeple of the structure.**

Mr. Ruck asked the returning applicant to summarize the new information they wished to present to the board. Before the applicant could begin, Jud McIntosh reminded Mr. Ruck that he would be recusing himself from any decision making on this issue as he owns a rental property that abuts 36 Oak St. He apologized to the board for not having recused himself from the discussion the prior month. At the time he did not consider his rental property and its proximity to the project. Mr. Ruck admitted that he had not caught the issue either, and he reminded the board to carefully consider each new project and whether they have any potential conflicts of interest that would require them to recuse themselves.

Scott Anderson spoke on behalf of Verizon, and provided the board with an update on the Oak St antenna project. He confirmed that Verizon had negotiated with the church to relocate the external equipment onto a portion of the existing parking lot, which resolves the issue under shoreland zoning

with regard to the 20% maximum for impervious surfaces. He said they also verified, via Kyle Drexler's conversations with the Orono town attorney Roger Huber, that the ordinance does not require the equipment installation to be located inside the building. Only the antenna needs to be concealed. Mr. Anderson reminded the board that per the new site plan the equipment installation would now be located in a previously developed area, and what's more it would be small and completely surrounded by a fence. All efforts are being made to make it as unobtrusive as possible.

Mr. Anderson then moved onto the more pressing issue raised by Mr. Huber, as to whether an antenna installation can be considered a subordinate use for a church. The team at Verizon was responsible for providing the board with research indicating that antennas are customarily incidental to church uses. That is: are antennas located in church steeples at other sites and with enough frequency to be considered, again, customarily incidental. Is it commonplace? Verizon submitted a supplemental letter to the board on the 10th of July on the use of church steeples as wireless facilities. Mr. Anderson detailed three main points from that letter:

1. The letter provided a rundown of church steeple installations that Verizon is aware of from the last decade or so. He specifically called the board's attention to two projects in Maine - located in Camden and Kittery - that are examples of why Verizon uses church steeples. Both of these towns see enormous increase in cell phone traffic during the summer months, but a 200 ft cellphone tower would never be permitted somewhere like downtown Camden. So in these picturesque downtown New England towns that see such dramatic seasonal increases in demand, causing capacity issues, the issue becomes how to provide improved service without the installation of a tower. Verizon has been using church steeples to combat this issue for over a decade. They're tall, they're centrally located in towns, and they're full of air. There is no storage in these space, or utilities to contend with. Steeples are high, empty spaces that are big enough in volume to support a couple of panels and provide increased coverage to these high demand downtown areas.
2. The letter also provided a list of other municipalities in Maine that have identified steeples as alternative tower structures that carriers are expected to explore first as installation options before other sites can be considered. In some towns you have to prove that your installation can't go into a steeple before the town will let you build a tower, even if a tower is permissible. Or, at a minimum, alternative tower structures are facilities where installations are allowed when towers are not allowed. Which is very similar to the situation we have here in Orono. So the ordinances being drafted to govern the development of these networks are recognizing that steeples are an integral part of building out these networks in a way that doesn't result in the use of new towers.
3. The third point pertained to the language used in the Orono ordinance and the conversation had with Mr. Drexler and Mr. Huber. When the ordinance was revised this was the type of site that was contemplated: something downtown where you wouldn't want a new tower, something concealed within an existing structure, which is low profile and not an intrusion on the surrounding neighborhood.

As a result of the information provided in the supplemental letter, summarized in the above points, Mr. Anderson offered that cellular antenna installations are customarily incidental uses for church steeples. Therefore the Oak St project qualifies as an accessory use, and he asked for the board's support and a positive vote on Verizon's proposed site plan. He then turned the matter over to Mr. Ruck.

Mr. Ruck asked Mr. Drexler to summarize his recent discussions with Mr. Huber, and give his take on the Oak St project's eligibility. Mr. Drexler recapped the issues raised at the end of the June meeting, which Verizon was responsible for resolving:

1. The lot coverage issue with regards to the external equipment installation. This issue was resolved by the submission of a new site plan, relocating the equipment installation to a corner of the existing church parking lot, thus removing its impact on the 20% impervious surfaces limit imposed by the Shoreland Zoning district. Town staff have no remaining concerns about this issue.
2. The location of the equipment outside the building as opposed to requiring its concealment inside the building like the rest of the antenna installation. Mr. Huber noted that were this antenna to be considered an accessory use and meet the terms of the exemption, the supporting equipment would be considered ancillary and not need to be located inside the church. It could be located on the proposed section of the parking lot and not prove a barrier to approval of the project.
3. The definition of accessory use with regards to the ordinance exemption. Mr. Drexler confirmed that Mr. Anderson was right in saying that the intention of the ordinance revision was to allow smaller scale telecommunication projects like this one to exist in districts where larger, more visible installations are not permitted, so long as they were completely concealed within an existing structure. There were concerns raised by Mr. Huber about whether antenna's in church steeples would meet the standards for "incidental" under the definition of accessory use, but ultimately it was agreed between Mr. Huber, Mr. Drexler, and Mr. Anderson that what is considered "customarily incidental" would be something that changes over time. Antennas in steeples may not have been customary 20 years ago, but they could be considered customary now. It was then up to Mr. Anderson's team to demonstrate that it is now common practice, and that the antenna on Oak St would be customarily incidental and would qualify as an accessory use.

Mr. Drexler clarified for the board that approval of the Oak St project would not set a precedent for other types of accessory uses. It would not - referring back to his example from last month - allow someone to locate a restaurant in their residential home.

Mr. Ruck thanked Mr. Drexler, and agreed that projects like this were the intent of both the ordinance exemption and the comp. plan for the town. He opened the discussion up to the board. There were no comments from the board so he opened the hearing to the public. Ms. Chadbourne noted that they had just received a comment from a member of the public in the chat, which Mr. Ruck then read into the record:

"Just because others are doing it doesn't mean we have to. Who in Orono looks at 5G health concerns."

Mr. Ruck reminded the public that this issue had been discussed in the previous meeting: the proposed antenna is for 4G, not 5G. The board cannot make a decision on possible future changes to the antenna. Mr. Anderson reiterated his point from last month that any plan to update the antenna for 5G would require installing an entirely different system and would necessitate a return visit to the planning board. Thus allowing for further public discussion.

Mr. Drexler added that the list of other towns with steeple antennas that was submitted was an exercise in showing that it's a common practice, and that the project meets the definition of accessory

use. It was not the applicant showing that this is common in other towns and so it should be permitted here in Orono. It was merely demonstrating that steeple antennas are common practice, and thus customarily incidental.

Mr. Ruck left the public hearing open while he asked the board to provide their opinion of the project. He called on Dave Thompson first. Mr. Thompson believed that applicant to have provided sufficient evidence for the board to make a decision, and as far as he's concerned the project will have his vote of approval. John Beckett agreed with Mr. Thompson's response. Joe Sprecher agreed as well that the applicant had proven they meet the definition of accessory use, and he had no objection. Michael Costello stated he was comfortable with the new information the board had been presented. Christa Schwintzer agreed that the applicant had made their case. Jud McIntosh abstained from the discussion. Lisa Buck said she was comfortable as well with the information that had been provided.

There were no further comments from the public, so Mr. Ruck closed the public hearing. He asked for final comments from the board. None were forthcoming, so Mr. Ruck read in the Findings of Fact for this project (Attachment 1). He asked the board for a motion.

Motion: Lisa Buck motioned that the board approve the minor site plan review application for an accessory use at 36 Oak St that would allow Verizon Wireless to place equipment within the steeple of the structure with the following condition:

- 1) That the project will obtain the necessary building permit from the Code Enforcement Officer prior to installation.

Second: Michael Costello

Mr. Ruck asked Ms. Chadbourne for a roll call vote. The motion to approve the minor site plan for 36 Oak St passed with 7 for and 1 abstaining.

Ms. Schwintzer asked that the document detailing the common placement of antennas in steeples be attached to the minutes. Said document is enclosed at the end of these minutes.

**Item B: A continuation of a discussion on a proposed land use ordinance amendment to section 18-130, Excavation, removal and filling of lands.**

Mr. Ruck asked Mr. Drexler to present the board with a summary of where the ordinance was left off, and to highlight the changes made to the text following the February planning board meeting. Mr. Drexler explained that the ordinance originally split earthwork projects into 3 tiers: no permit required (under 20 cubic yard), permit through code enforcement (20-100 cubic yards), site plan approval by the planning board (over 100 cubic yards). There were a lot of issues with the previous language on both sides. There were projects that were going to the board but weren't really complicated enough to need planning board oversight as well as projects being approved by code that really ought to have been referred to the board for site plan approval. The intention of the revised ordinance is to clean up the section and add new standards that consider the impact of the project as opposed to just how much fill is being moved.

He gave the example of a proposal in which you have any removal or filling of over 20 yards on a lot under 20k square feet in the MDR, HDR, C2, or VC district. Whereas before such a project would have just required code enforcement's approval, now it requires planning board approval. The reason being that the districts are denser, and smaller projects then can have a greater impact on abutting properties.

Mr. Drexler provided an overview in his memo to the board of the three substantial changes to the ordinance that had been implemented following the suggestions from February's planning board meeting:

One of the more substantial changes discussed revolved around the conservation plan requirement. Based on the discussion, this requirement was moved to the conditional section. This would allow smaller scale projects that went before the Planning Board to avoid this step, while still giving the Planning Board the option to require it for larger projects that could create more of an impact.

The next larger change was to add an exemption for existing driveway maintenance. This can be found on page 2, section (2) e. This language would exempt any fill project that was simply maintaining an existing driveway from going before the Planning Board, so long as not more than 100 cubic yards was being used. These projects would instead go to the Code Enforcement Officer and obtain a permit. However, if there was any sort of expansion of the driveway involved, then the project would have to follow the criteria in section (2) on page 2 which may require the project go before the Planning Board.

The final change was to provide some clarification as to what "clean" entails when discussing what were allowable materials to be used in earth-moving activities. It would also be possible to reference the Maine DEP rules in the ordinance, as well.

Mr. Drexler admitted that it had been a while since the last discussion, so he was happy to answer any questions or expand further on any of the proposed changes. Mr. Ruck followed this up with his own request for comments or questions from the board.

Mr. Thompson offered to abstain from any decision making about the new ordinance language as he was absent from the February meeting. Mr. Drexler pointed out that it would not be a formal vote and more of a recommendation to the council, and Mr. Ruck agreed, but added that Mr. Thompson was welcome to abstain if he wished.

Mr. Sprecher asked about the second change with regards to existing driveway maintenance. Mr. Drexler noted that it was something he had thought of as well, and if the board wished to extend that limit or exclude a limit for the restoration of previously imperious land that could be recommended to the council as a topic for exploration.

Mr. Ruck asked Mr. Drexler if there was a particular origin for the 100 cubic yards standard. Mr. Drexler was not sure why 100 cubic yards was chosen originally. There is no explanation in the existing ordinance. Mr. Ruck added his support to Mr. Sprecher's concern. Driveway maintenance cases don't need to come before the planning board just because an applicant's driveway happens to be longer than 100 cubic yards.

Mr. McIntosh asked if this 100 cubic yard standard would apply to building houses as well. Mr. Drexler clarified that if earthwork was part of a larger permit it did not require a separate permit for the earthwork itself. For example, the removal and moving of earth necessitated by building a house. Mr. McIntosh also agreed with Mr. Sprecher that 100 cubic yards seemed low, and questioned why the planning board would need to review such projects.

Mr. Thompson agreed as well, pointing out that 100 cubic yards is about six dump truck loads, and not very much at all compared to larger earthwork projects. A lot of projects will exceed that. Mr. Ruck asked him if he had an opinion on a recommended volume. Mr. Thompson responded that it depended on the type of project: the underlying soil, the depth, the width, etc.

Dave Milan, Director of Community Development for the Town of Orono, stepped in to offer some input on the question about the 100 cubic yard qualifier. He stated that it was a result of complaints the office had received from abutters of similar projects of that nature (100 cubic yard projects), and these projects, though small, were causing issues on neighboring properties. He reiterated Mr. Drexler's point that a 100 cubic yard project has a much greater impact in more dense zones like the MDR than it does in more rural zones like F&A.

Mr. Ruck asked if, given that point, the board wanted to consider different standards/thresholds for different zones. He asked for opinions on that point. Mr. Thompson agreed that it should depend on the zone. Mr. Drexler added that the idea of different standards is inline with what the revised ordinance was already intending to do and if the board wanted to recommend a different number or that more research be done it would be a valid request.

Mr. Ruck asked if the board wanted to leave it up to the council to sort out the limits, or if they wanted Mr. Drexler to do some more research and bring the ordinance back to the Planning Board at a future meeting. Ms. Schwintzer suggested that there were two separate issues being discussed: the cubic yard limit for fill being different between zones, and the existence of a pre-existing impervious area (driveway etc) and whether restoration of that area with new fill needs to be seen by the planning board at all.

Mr. Drexler agreed that you could have a situation where any replacement with no new impervious cover is always authorized by code enforcement, and also a situation where any new impervious cover projects in say the F&A, and set the limit at 200 cubic yards to trigger planning board review.

Mr. Thompson asked if there had been any discussion of best management practices in earlier consideration of the ordinance revisions. Mr. Drexler pointed out that at the beginning of the ordinance there was previously existing language stating that any of these projects, regardless whether oversight belongs to code or the planning board, have to take best management practices for erosion control into consideration. That is applicable to any earthwork project.

Mr. Ruck suggested it might be best if the board have another look at the ordinance after Mr. Drexler has had a chance to take the board's new suggestions into consideration. Mr. Drexler acknowledged that there was a light schedule expected for the August meeting, and it would be possible to bring the proposal back in a month for a final decision from the board.

Mr Ruck asked for any further input from the board. Ms. Buck asked if it would make sense to consider what % of a lot size is involved in the moving of earth for these projects, and whether that would help to determine yardage limits, etc. Mr. Drexler pointed out that lot coverage comes into play in general with regards to the land use ordinance, and most districts do have that standard, but as far as a calculation to consider the amount of fill it was something he had considered but ultimately other standards were decided upon. But it is something that could be revisited.

Mr. Ruck asked the board if they wanted to see the ordinance one more time after Mr. Drexler has revisited the above issues. Mr. Costello, Mr. Thompson, and Ms. Buck agreed. Mr. Drexler agreed that he would do further research into the suggestions of the board for next month, and per Ms. Schwintzer's request, he promised there would be printed copies of the ordinance provided to the board next month with the proposed changes highlighted.

The revision of the fill ordinance was tabled until the August Planning Board meeting.

## **New Business**

### **Item A: A minor site plan review application by Hetty Richardson and David Kotecki for**

**earth-moving activity of over 100 cubic yards to pave a driveway located at 431 Main St in the Forest and Agriculture District.**

Mr. Ruck asked the applicant to present their project to the board. Hette Richardson of 432 Main Street introduced herself and explained her situation to the board. There is a driveway on their property that stretches from the road up past their house that they arranged to have repaved in the fall of 2019. The contractor asked if they wanted to even out the oddly shaped parking space behind the house, and they did not, but they did ask that the area be made 1 foot wider as there was a point where, when backing up, they often had to drive off the edge of the paved area. This added 20 square feet of paved area. There is additional, old impervious ground on the property that they are no longer using and maintaining. Their contractor came out, dug down 18 inches, removed all the asphalt and old gravel, then put a new liner down, and placed new gravel. After a period of settling they returned, added more gravel, packed it down, paved, and that was it. Ms. Richardson apologized for not seeking planning board approval beforehand, stating that it never occurred to them they might need approval to refinish the driveway.

Mr. Ruck asked Mr. Drexler to present his summary to the board. According to Mr. Drexler, a driveway is not considered a land use so there are no zone issues to consider, and because it was an existing driveway there were no curb cut or drainage concerns. The only issue of concern was the absence of communication with the Penobscot County Soil and Water Conservation District, which is a requirement for projects of this kind under the old ordinance. So the town asked the applicant to reach out to the district to make sure there were no after the fact issues. The town received a letter back from the District Manager stating that the site had been reviewed, soil erosion practices had been put in place during construction, and the district found no issues. That was the extent of the review.

The applicant provided photos of the finished product, and staff identified no additional issues with the project. The case is coming before the planning board solely because the current fill ordinance language requires it.

Mr. Ruck asked for questions from the board. He did not have any of his own, and pointed out that - per the new ordinance language - this was not an issue the board really needed to be reviewing. There were not comments or questions from the board. Mr. Ruck opened the public hearing. There were no comments from the public, so Mr. Ruck then closed the public hearing. He asked for further comments from the board.

Mr. Costello asked if the contractor, Wellman Paving, suggested a permit might be necessary.

Ms. Richardson replied that when they received the notice of violation they called Wellman, who was just as surprised as she was because in 20 years of doing driveways they had never been required to get a permit.

Mr. Ruck read the proposed Findings of Fact for the board (Attachment 2), then asked for a motion from the board.

Motion: Jud McIntosh motioned to approve the minor site plan review application by Hetty Richardson and David Kotecki for earth-moving activity of over 100 cubic yards to pave a driveway located at 431 Main St in the Forest and Agriculture District, with the following condition:

1. That the applicant will obtain any necessary after-the-fact permits from the Code Enforcement Officer and resolve any remaining issues due to obtaining the permit after-the fact.

Second: Lisa Buck

Mr. Ruck asked Ms. Chadbourne for a roll call vote. The motion to approve the minor site plan at 431

Main St passed unanimously.

### **Other New Business**

There was no additional new business.

### **Discussion**

Mr. Ruck asked Mr. Drexler about forthcoming projects for the August meeting. Mr. Drexler referenced a few conditional permits that were issued during the shutdown that will need to be considered after the fact by the board. There have been no new applications yet.

Mr. Ruck asked the board if they wanted to take a month off as it is summer, and they have done as much in the past. But after taking a survey of the board the decision was made to meet in August and tidy up some ongoing matters, at the same 6:30 time as before.

### **Adjournment**

Mr. Ruck asked for a motion to adjourn the July meeting of the Planning Board.

Motion: Lisa Buck so motioned.

Second: John Beckett

The motion passed unanimously and the meeting was adjourned at 8:00 pm on July 15, 2020.



Attachment 1

**PROPOSED FINDINGS OF FACT  
STRUCTURE CONSULTING GROUP  
SITE PLAN REVIEW  
July 15, 2020**

Pursuant to Article VI, Section 18-177, of the Orono Code of Ordinances, the Orono Planning Board has considered the application of Structure Consulting Group for a minor site plan for the placement of eight Verizon antennas within the church steeple located at Tax Map 27-2 Lot 55 in the Village Commercial District, and, based on all evidence presented by the applicant, reviewing agencies, town departments, and the public, found the following:

1. **Requirements of the district:** That the proposed project is allowable in the Village Commercial District as an accessory use, and that the proposal complies with the applicable dimensional requirements of the district.

Furthermore, that the applicant has demonstrated through a document dated July, 10 2020 that wireless antennas within a church steeple meet the definition of accessory use in Section 18-31 of the Land Use Ordinance, and the accessory use is considered to be both subordinate and customarily incidental to the principal use of the lot based on the evidence provided by the applicant showing that placing wireless antennas within a church steeple has become a common practice.

2. **Compliance with Town ordinances and codes:** That the proposed accessory use meets the provisions of applicable regulations of the Town, including all pertinent sections of Chapter 18, Land Use Ordinance.
3. **Utilization of the site:** That this construction is within the natural capabilities of the site and is located in a suitable area of the site.
4. **Traffic and pedestrian access:** That the added accessory use will not generate any additional traffic to the site and require no access by the public.
5. **Storage of materials:** That there will be no exposed storage of materials.
6. **Stormwater management:** That no changes to stormwater management are expected as a result of the project.
7. **Erosion control:** That the project will take proper erosion control measures if needed.
8. **Water supply and sewage disposal:** That there is no change in water or sewer capacity needed.

9. **Utilities:** That adequate provision has been made for all utilities.
10. **Natural features:** That adequate provision has been made to preserve the natural features of the site.
11. **Groundwater and surface water quality protection:** That the proposed project does not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems
12. **Hazardous, special, and radioactive materials:** That the use of the site does not involve the handling, storage, or use of hazardous, special, or radioactive materials.
13. **Shoreland relationship:** That the site is within the limited commercial shoreland zone, however, no new impervious cover will be created as a result of the project.
14. **Solid waste management:** That no changes to solid waste management are proposed.
15. **Historic and archaeological resources:** That the site is not known to contain historic or archaeological resources.
16. **Financial capacity:** That the applicant has the financial capacity to carry out the project.
17. **Noise and lighting:** That the facility will operate within the noise and lighting standards in Town ordinances.

Attachment 2

**PROPOSED FINDINGS OF FACT  
HETTY RICHARDSON AND DAVID KOTECKI  
SITE PLAN REVIEW  
July 15, 2020**

Pursuant to Article VI, Section 18-177, of the Orono Code of Ordinances, the Orono Planning Board has considered the application of Hetty Richardson and David Kotecki for an after-the-fact minor site plan for earth work in excess of 100 cubic yards located at Tax Map 33 Lot 3 in the Forest and Agriculture District, and, based on all evidence presented by the applicant, reviewing agencies, town departments, and the public, found the following:

1. **Requirements of the district:** That the project is allowable in the Forest and Agriculture District, and that the proposal complies with the applicable dimensional requirements of the district.
2. **Compliance with Town ordinances and codes:** That the project met the provisions of applicable regulations of the Town, including all pertinent sections of Chapter 18, Land Use Ordinance.
3. **Utilization of the site:** That this construction is within the natural capabilities of the site, is a repaving of an already existing driveway.
4. **Traffic and pedestrian access:** That no traffic or impacts to access were created as a result of the project..
5. **Storage of materials:** That there will be no exposed storage of materials.
6. **Stormwater management:** That the project is not creating any new impervious cover.
7. **Erosion control:** That the applicant provided for erosion control both during construction and permanently that meet best management practices.
8. **Water supply and sewage disposal:** That there is no change in water or sewer capacity needed.
9. **Utilities:** That there is no change to any utilities.
10. **Natural features:** That adequate provision has been made to preserve the natural features of the site.
11. **Groundwater and surface water quality protection:** That the proposed project does

not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems.

12. **Hazardous, special, and radioactive materials:** That the use of the site does not involve the handling, storage, or use of hazardous, special, or radioactive materials.
13. **Shoreland relationship:** That the site is not within a shoreland area.
14. **Solid waste management:** That no changes to solid waste management are proposed.
15. **Historic and archaeological resources:** That the site is not known to contain historic or archaeological resources.
16. **Financial capacity:** That the applicant had the financial capacity to carry out the project.
17. **Noise and lighting:** That no additional noise or lighting were created due to the project.

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July 10, 2020

Via Electronic Mail

Orono Planning Board  
c/o Kyle Drexler, Town Planner  
Office of Community Development  
Town of Orono  
59 Main Street  
Orono, ME 04473

Re: Verizon Wireless/Site Plan Review  
36 Oak Street

Dear Members of the Board:

On behalf of the applicant, Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Structure Consulting Group, I have included some additional information for the Board’s review of the proposed wireless communication installation at the United Orono Methodist Church at 36 Oak Street. Specifically, the following is a discussion of the “accessory use” issue identified by the Town Attorney.

Town Ordinance Language

As you know, the proposed installation in the church steeple is permitted if it is an “accessory use” to an existing commercial or institutional use, as set forth in Section 18-145(b)(5) of the Land Use Ordinance. The term “accessory use” is defined as a “use on the same lot with, and of a nature customarily incidental and subordinate to, the principal use.”<sup>1</sup> It is certainly the case that the use of the site for a wireless telecommunications facility is “subordinate” to the primary use of the site as a house of worship. The question that has been raised for the Planning Board’s consideration is whether a cell antenna installation inside a church steeple is “of a nature customarily incidental” to a church structure.

The phrase “customarily incidental” has been interpreted by the Maine Supreme Court to mean a use “having a reasonable relationship with the primary use or structure” and “reasonably associated with the primary use or structure.”<sup>2</sup> In other words, the proposed installation of wireless antennas in a church steeple is customarily incidental to the operation of the church if

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<sup>1</sup> Ordinance § 18-31.

<sup>2</sup> *Town of Shapleigh v. Shikles*, 427 A.2d 460, 465 (Me. 1981).

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such installations are reasonably associated with church steeples. For the following reasons we respectfully suggest that they are.

First, over the past decades church steeples have become an integral part of the expansion of wireless service within downtown areas and areas where towers are restricted or prohibited. Verizon Wireless and other wireless carriers have installed church steeple sites in numerous cities and towns in Maine and New England, including:

Peaks Island, ME  
Kittery, ME  
Camden, ME  
Hudson, NH  
Hanover, NH  
Portsmouth, NH  
S. Meriden, CT  
Warren, RI  
Ashby, MA  
Clinton, MA  
Medfield, MA  
Middleboro, MA  
Vineyard Haven, MA  
Fitchburg, MA  
Ipswich, MA  
Natick, MA  
Worcester, MA  
Sudbury, MA  
Saugus, MA  
Woburn, MA  
Newburyport, MA

...and hundreds of additional church sites across New England and the United States. Churches are a prime location as they are often of sufficient height and are located in village or downtown areas where service challenges exist. These more densely developed areas also often have restrictions on new towers (you don't want a 200 foot tower in the middle of the town square). Thus, church steeples are increasingly providing an effective solution to improving cell service while eliminating any visual impacts associated with much needed wireless installations.

Second, the common use of church steeples for wireless facilities is reflected in the fact that many municipal telecommunications ordinances specifically identify "steeples," or "church steeples" as so-called "alternative tower structures." An alternative tower structure, or "ATS," is an existing structure that can hold wireless antennas as an alternative to a new cell phone tower. The towns of Yarmouth, Cape Elizabeth, Harrison, Farmington, Bridgton, Cumberland, Kennebunkport, Benton, Readfield, Lewiston, Raymond, Waterboro and many other municipalities in Maine encourage carriers to first consider ATSs in lieu of a new tower, and specifically include "steeples" as an ATS that must be considered. These ordinances recognize that church steeples are a preferred, and now customary, location for new antenna installations.

Although Orono has not used the “alternative tower structure” term in its ordinance, the concept is the same—in zoning districts where new towers are prohibited, the only option to improve service is to identify a structure “alternative” to a tower for mounting the antennas. Further, because Orono requires such antennas to be located inside the existing structure, other structures considered ATs in the cities and towns noted above (light poles, water towers, electric transmission line towers, smokestacks, or existing buildings) cannot be used. In Orono, therefore, church steeples become one of the only alternative tower structures a carrier can use, further evidencing the fact that the town is directing carriers to use a structure that now commonly is found to contain cell phone antennas.

Finally, for this site we have been working with a firm called “SteepleCom,” which promotes itself as “advocates for churches in the wireless age” (please see [www.steeplecom.com](http://www.steeplecom.com) for more information). This company works exclusively to partner wireless carriers with churches on steeple installations. Steeple antenna installations are increasingly providing revenue to churches while allowing carriers to meet strict siting guidelines that prohibit new towers. The existence of an actual company working to encourage use of church steeples for wireless installations is an indication that such use of church steeples is now “customary” in downtown areas.

In sum, the use of church steeples in Maine, New England, and across the United States, as an alternative to new towers is now “customary and incidental” to the use of these structures as houses of worship. These facilities allow companies to significantly improve cell service in downtown areas without the need to construct new towers. We believe that was the intent of this change to Orono’s wireless ordinance, and provides a “win win” scenario for the town and the church. As such, we respectfully suggest that Verizon Wireless’s proposed installation in the United Orono Methodist Church is an “accessory use” and is permitted at this site.

#### Revised Site Plan

As discussed at the last Planning Board meeting, we have revised the site plan to show the installation of the outside equipment on a portion of the existing parking lot. This allows us to avoid any further impacts to existing vegetative surfaces on site.

Thank you for your attention to this information and we look forward to discussing this project with you at your next meeting.

Very truly yours,



Scott D. Anderson

SDA/mtt

Enclosure

cc: Steven Delsonno