

**TOWN OF BEDFORD**  
**January 8, 2018**  
**PLANNING BOARD**  
**MINUTES**

A meeting of the Bedford Planning Board was held on Monday, January 8, 2018 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Jon Levenstein (Chairman), Hal Newberry (Vice Chairman), Karen McGinley (Secretary), Chris Bandazian (Town Council), Rick Sawyer (Town Manager), Jeff Foote (Public Works Director), Mac McMahan, Randy Hawkins, Charlie Fairman (Alternate), Monique Rice (Alternate), Becky Hebert (Planning Director), and Mark Connors (Assistant Planning Director)

I. Call to Order and Roll Call:

Chairman Levenstein called the meeting to order at 7:00 p.m. Alternate Rene Pincince and Town Council Alternate Melissa Stevens were absent. Mr. Fairman was appointed to vote for the vacancy position. Mr. Connors reviewed the agenda.

II. Old Business – Continued Hearings: None

III. New Business:

1. The Southern New Hampshire Planning Commission will present on its ‘Becoming Age-Friendly’ initiative, relating to preparations communities can take to better serve the needs of a growing senior population and to attract and retain young adults.
2. The Planning Board will conduct the first public hearing on proposed zoning amendments submitted by the Planning Board and by citizens’ petition. The full text of the amendments is available in the Town Clerk’s office during normal business hours and on the Town website at [www.bedfordnh.org](http://www.bedfordnh.org).
3. Cellco Partnership d/b/a Verizon Wireless (Applicant), Swenson Trust (Owners) – Request for final site plan approval to construct a telecommunications facility within a new 75-foot tall farm silo at 5 Wallace Road, Lot 39-45, Zoned R&A.

IV. Concept Proposals and Other Business: None

Mr. Connors stated all the new applications have been reviewed by staff and are complete, the abutters have been notified; it is the opinion of Planning Staff that none of these applications pose a regional impact, and the agenda is ready for the Board’s acceptance.

**MOTION by Councilor Bandazian to approve the agenda as presented. Vice Chairman Newberry duly seconded the motion. Vote taken – all in favor. Motion carried.**

**1. The Southern New Hampshire Planning Commission will present on its ‘Becoming Age-Friendly’ initiative, relating to preparations communities can take to better serve the needs of a growing senior population and to attract and retain young adults.**

Associate Planners Cameron Prolman and Derek Shooster from Southern NH Planning Commission were present to present the ‘Becoming Age-Friendly’ program.

Mr. Prolman stated we are here in front of you tonight to talk about our ‘Becoming Age-Friendly’ program and specifically our pilot program. We are going to be brief with this presentation. Mr. Shooster is going to go over a little context about Phase 1 of the program and then I am going to wrap it up talking about our Phase 2 pilot program and talking about how we see ourselves potentially working with the Town of Bedford.

Mr. Shooster stated over the last year Southern NH Planning Commission embarked on this ‘Becoming Age-Friendly’ program that was grant funded. We worked with all 14 of the communities in our region. I and Sylvia von Aulock our executive director met with residents, businesses, and other stakeholders from the Town of Bedford. They participated in our community conversations, we surveyed several dozen residents from the municipality, and we published our findings in the reports in front of you. That was the scope of Phase 1 of the program which was really assessing each of the communities, listening to what are their concerns and challenges that communities face with regard to seniors and millennials in particular. The reason we embarked on this in the first place is because New Hampshire, as you know, is graying and at the same time young people are leaving the state and our goal was to look for overlap and opportunities in addressing concerns across four focus areas. They are: transportation, housing, recreation and engagement, and business and economic development. We found many things that Bedford does well as well as several opportunities for improvement or areas that residents would like to see improved upon, mainly transportation alternatives and things that you guys do well that I remember offhand and we shared it with a lot of our communities, which is the Bedford app. Not many other municipalities have an app for instance, and smartphone apps like that are really attractive to millennials who, like me, live on their smartphone. Phase 2 of this program is an opportunity for your municipality to build upon what we heard and kind of tailor your planning efforts to be more age-friendly.

Mr. Prolman stated Phase 2 is ultimately what we are trying to take this kind of assessment stage into strategic action plan phase, and what that means is we envision working with town staff, local organizations, volunteers, and residents, holding a few meetings and kind of crafting this strategic plan to become age-friendly. We don’t have a definite answer of what that will look like because it is going to be dependent on what the Town wants and what the Town needs. In one community an age-friendly plan might address information and outreach, another one might go for the housing question, and another one might look at transportation alternatives. Another way we can look at this is that this could be a precursor to a Master Plan update, but ultimately

this is a free planning service where we are inviting each town to send a letter of interest to the Southern NH Planning Commission by January 19<sup>th</sup>. We are looking at ending this phase by the end of May, so we will be doing this very similar presentation in front of the Town Council on Wednesday. We are here tonight to ask that you consider this and possibly make a recommendation to the Town Council to send a letter of interest to participate in this pilot program. We are happy to answer any questions that you may have.

Ms. McGinley stated I am on the Southern NH Planning Commission, recently it's Chair, and I was at the meeting for Bedford, which was at the public library. One of the things that I think that we have in our favor is that our Master Plan is coming up and I think that we should take an opportunity to be in a position to weave into the Master Plan the age-friendly information that they have put together and to build on that. I was on the last Master Plan Committee, and I think that the Commission at that time also made a presentation, they were not chosen, and that is a topic for another time. Ms. Hebert stated staff has talked with Sylvia von Aulock and we floated a similar idea of having a strategic plan done for Bedford that could be a precursor to the Master Plan and might give us some themes to weave through our Master Plan as we update it that address or highlight ways the Town can become more age-friendly for young and old residents and everybody in between. So we see there is some value to the project and the Town Council will be discussing this on Wednesday night.

Chairman Levenstein asked you would like us to give our two cents to the Town Council? Mr. Prolman replied yes, please.

Ms. McGinley stated they engage the Southern NH Planning Commission on this particular topic because we do have our Master Plan coming up and whether they are chosen for the Master Plan is a separate issue, but having this already done and in our hands and something that can be woven into the Master Plan for 2020, would be much more efficient than to start over on this topic.

**MOTION by Ms. McGinley that the Planning Board recommends that the Town Council act in favor of the Town's participation in the 'Becoming Age-Friendly' program with Southern NH Planning Commission. Mr. McMahan duly seconded the motion.**

Vice Chairman Newberry stated I think, just based on a real quick glance at some of the material we were just handed, it looks like they have already done some good research, and I think if we can partner with them, it would be a more effective way of evaluating it and coming up with some good ways of addressing the whole issue. Ms. McGinley stated I do think that we have a gap at both ends of our age group, both with the younger people and with the seniors. Those of us who are not millennials or seniors will at some point be those and our Master Plan is for a 10-year period, so I think it is important. Mr. Fairman stated I participated in the question and answer time when they were at the library and thought that the work they did at that was very good. I unfortunately haven't had a chance to look at the results of that, I never got a copy of it, but I will now. I certainly agree that we should go ahead and engage them.

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

**Chairman Levenstein called for a vote on the motion. With Councilor Bandazian abstaining, the motion carried**

- 2. The Planning Board will conduct the first public hearing on proposed zoning amendments submitted by the Planning Board and by citizens' petition. The full text of the amendments is available in the Town Clerk's office during normal business hours and on the Town website at [www.bedfordnh.org](http://www.bedfordnh.org).**

A staff report from Becky Hebert, Planning Director, and Mark Connors, Assistant Planning Director, dated January 8, 2018 as follows:

Ms. Hebert stated tonight is the first public hearing for the proposed zoning amendments and amendments submitted by citizens' petition. The second public hearing is on January 22, 2018 and at the end of the meeting on January 22, 2018 the Board will need to vote to move any and all of the amendments to the ballot and will also need to vote to support or not support the citizens' petitions.

Ms. Hebert continued we have five zoning amendments proposed by the Planning Board as listed below.

**ZONING AMENDMENTS PROPOSED BY THE PLANNING BOARD:**

- *Amendment #1 will amend the table of uses to remove certain uses from zoning districts that may no longer be appropriate, add new uses that are missing from the table, and correct typographical errors. Please see the attached staff report, which provides a detailed description of the proposed changes.*
- *Amendment #2 is intended to create a new definition for short-term rental housing and clarify that short-term rental housing is prohibited in all zoning districts.*
- *Amendment #3 is a housekeeping amendment intended to clarify that freestanding signs in all commercial districts need to be a monument style sign.*
- *Amendment #4 is also a housekeeping amendment intended to clarify the permitted sign types and sign area in the Neighborhood Commercial District.*
- *Amendment #5 is intended to reduce the setback requirements for an accessory structure of 120 square feet or less on properties in the Residential Agricultural District and General Residential District. The amendment also exempts this one accessory structure from the wetland setback provisions.*

**ZONING AMENDMENT SUBMITTED BY CITIZEN PETITION:**

- *Amendment #6 is a citizens' petition to reduce the permitted height of wireless telecommunication facilities (cell towers) from 130 feet to 75 feet in the Residential Agricultural District and General Residential District.*

- **Amendment #7** is a citizens' petition to require a setback of at least 750 feet between the nearest residentially zoned property and a proposed wireless telecommunication facility for all new cell towers in the Residential Agricultural District and the General Residential District.
- **Amendment #8** is a citizens' petition to prohibit licensed surgical centers as a permitted use within medical or dental clinics.

Additional information relating to zoning amendments 6, 7, and 8, which were submitted by citizen petition, is included below.

#### **Amendments #6 and #7**

There are eight telecommunications towers currently located in Bedford. Four are located in the Commercial District along the NH Route 101 corridor. One tower each is located in the Office, Service Industrial, Apartment Residential, and Performance Zones. All of those facilities are located proximate to major road corridors and commercial centers. After several years with no new applications for cell towers, the town has seen an increased interest from wireless providers to fill existing coverage gaps in Bedford. Three applications for telecommunications facilities were reviewed by the Zoning Board in 2017:

- American Tower Corp./T-Mobile submitted an application for a new 154-foot ground-mounted telecommunications tower (later reduced to 130-feet) at 25 Tirrell Road in the Residential Agricultural (R&A) District. The Zoning Board denied the applicant a special exception for the tower in May. The Zoning Board denied a request for rehearing in June and the applicant appealed the Zoning Board's decision to federal court. That case is currently pending.
- Eversource Energy submitted an application for a 125-foot ground mounted telecommunications facility at 12 Bellemore Drive in the Service Industrial District. The Zoning Board approved a special exception for the facility in April and the Planning Board approved the site plan in May. The facility has already been constructed.
- Cellco Partnership d/b/a Verizon Wireless submitted an application to construct a telecommunications facility within a new 75-foot tall farm silo at 5 Wallace Road in the R&A District. The Zoning Board approved a special exception for the facility in September. The Zoning Board denied a request for rehearing in November, and the site plan for the facility will be considered by the Planning Board at tonight's meeting.

In 2017, the Bedford Town Council also considered entering into a lease agreement to construct a telecommunications facility on town-owned land off of Chubbuck Road in the R&A District. The Council decided to delay consideration of a lease agreement for at least one year pending the recommendations of a Cell Tower Study Committee. The Committee held its first meeting in November. Should the Council decide to approve a lease agreement for a telecommunications facility at the Chubbuck Road site, the application would have to be approved by the Zoning and Planning Boards and the tower would need to meet all planning and zoning requirements for new facilities.

Staff researched zoning requirements related to height and setback limitations on telecommunication facilities in neighboring communities.

- **Amherst** requires telecommunication towers to project no higher than 20-feet above the average tree canopy height in the vicinity, or a maximum of 40-feet above the average tree canopy if the Planning Board finds that the additional height will result in no material visual or environmental impacts. In no case may a tower exceed 200-feet in height. Amherst requires telecommunication towers to meet the minimum setbacks of the zoning district or be set back the height of the tower from property lines, habitable dwellings, or public roads, whichever is greater. The fall zone may encroach on to neighboring property lines if the applicant secures a fall zone easement from the affected property owner.
- **Goffstown** requires telecommunications towers not to exceed 130-feet in height. Telecommunications towers must meet the minimum setbacks of the zoning districts and be set back a minimum of 125% of the height of the tower from adjacent property lines (such that a 130-foot tower would need to be set back at least 158-feet from surrounding property lines).
- **Merrimack** requires that telecommunication towers be set back the height of the tower from neighboring property lines, but permits the Planning Board to lessen the setback if alternative protections for abutting property owners are provided. Merrimack does not restrict the height of telecommunications towers, but does require that towers are disguised or screened in certain districts.
- **Londonderry** requires that new telecommunication towers not exceed 190-feet in height and be set back a minimum of two-times the tower height from abutting residential property lines (such that a 130-foot tower would need to be set back at least 260-feet from surrounding residential property lines).

*Amendment #6 would restrict the height of telecommunication towers in the Residential Agricultural and General Residential districts to no more than 75-feet. Bedford currently restricts the height of telecommunication towers to no more than 130-feet in all zoning districts. With several telecommunication towers proposed in the community this year, there is increased concern relating to the impacts towers have on the residential neighborhoods. As both the Residential Agricultural and General Residential districts are nearing buildout status, it would be difficult to site a facility 75-feet in height in either district that would not impose impacts on surrounding residential properties.*

*The current Wallace Road application before the Planning Board is evidence that providers can fill communication coverage gaps at the 75-foot height restriction, but one potential consequence of this amendment's passage is that it may result in more telecommunication facilities in Bedford, as a 75-foot tower cannot fill a coverage gap as effectively as a 130-foot tower. The Zoning Board would also likely see an increase in variance requests for tower height.*

*The FCC Section 6409 rules also requires municipalities to approve modifications to existing (previously approved) facilities provided the modification does not substantially change the physical dimensions of the structure. Under this rule, the tower may increase in height by the greater of 10% of the tower height or 20 feet and a 75-foot tower could ultimately become 95 feet tall.*

*Staff understands the concerns regarding the impact of cell towers to the community and is planning to review the zoning for wireless telecommunications facilities next year to allow time*

*to incorporate the findings of the City Council study committee. Decreasing the permitted tower height may lessen the visual impact of new towers, but the Board should be cautious that this could also increase the number of towers needed to fill service gaps in Bedford.*

*Amendment #7 would require telecommunications facilities to meet a minimum setback of 750-feet from residentially-zoned properties. In order to meet this requirement, a perfectly square-shaped lot surrounded by residentially-zoned parcels would at minimum need to be 51.65 acres, and the tower would need to be sited at the exact center of the parcel. Since there are very few, if any, perfectly geometrically-shaped large lots remaining in the Residential Agricultural and General Residential districts, a parcel would likely have to be measurably larger to meet the setback requirement. Since telecommunications towers are required to meet the Town's other dimensional requirements for structures, including a minimum 50-foot setback from wetlands, a parcel may need to be significantly larger than 51.7 acres to meet the proposed setback requirement.*

*According to the Town's Assessing Department, there are only nine privately owned parcels in Bedford that are larger than 51.6 acres in size in the R&A and GR districts, constituting 0.13% of all lots in both districts (not including lots owned by the Bedford Land Trust). Of those, only four are larger than 70 acres in size. It is likely that additional parcels, which share borders with neighboring municipalities or non-residentially zoned parcels, may be large enough to accommodate telecommunication facilities under the proposed setback, but this would include only a few additional parcels.*

*The Telecommunications Act of 1996 prohibits zoning authorities from taking actions that would ban or have the effect of banning telecommunication facilities from a particular area (<http://wireless.fcc.gov/fact1.pdf>). Since this amendment would effectively ban telecommunication towers from large areas of the Residential Agricultural and General Residential Districts and because it is far more restrictive than setback requirements in neighboring communities, staff would not recommend supporting Amendment #7.*

### **Amendment 8**

*Amendment #8 prohibits licensed surgical centers as a permitted use within medical or dental clinics. There are two state licensed ambulatory surgical centers in Bedford; the NH Eye Surgicenter at 105 Riverway Place and Bedford Ambulatory Surgical Center at 11 Washington Place. The amendment would prohibit new licensed surgical centers as an allowed use within a medical or dental office. The request is based on concerns that surgical centers are often affiliated with hospitals, which have a tax exempt status and the use could potentially have a negative impact on the tax base and affect existing surgical centers. Staff has reviewed the zoning for medical office uses in nearby communities and surgical facilities are not commonly restricted. As a comparison, the Board recommended in favor of removing automobile dealerships as a permitted use in the Performance Zone two years ago to avoid having an overabundance of automobile dealerships in the district. The decision was based on the desire to encourage the highest and best uses of land.*

- **Amendment #1** will amend the table of uses to remove certain uses from zoning districts that may no longer be appropriate, add new uses that are missing from the table, and correct typographical errors.

Mr. Connors proceeded to review the changes to the Table of Uses as proposed in **Amendment**

#1. There is a separate staff report for these recommended changes.

### **RESIDENTIAL USES Proposed Changes:**

1. Add short-term rental housing use (prohibited in all districts):

Mr. Connors stated it has been the Town's policy that we don't allow short-term rentals because it falls under our boardinghouse definition but this would clarify for the public that it is not a permitted use

Ms. McGinley stated I guess I would like you to explain to the public what period of time is required. Mr. Connors responded that is part of the issue that it is not very clear in the ordinance. I think the Town has used that if you declare residency, that is kind of when it triggers a long-term stay as opposed to a short-term rental stay. This will clarify that any stay for less than 30 consecutive days would qualify as a short-term rental and would be prohibited under the zoning.

### **COMMERCIAL USES Proposed Changes**

2. Permit Business center development use in the Office District:

Mr. Connors stated the definition is there in the handout and it is generally consistent with the uses that we see in the Office District.

3. Eliminate Tourist information center use:

Mr. Connors stated we would eliminate tourist information center use as a permitted use. Not because it is not something we want to encourage but because it is not something that we encounter and we believe it would be permitted under barter use categories.

4. Add footnote to Funeral home use indicating that a crematorium accessory use is prohibited:

Mr. Connors stated this would add a footnote to funeral home use indicating that a crematorium is not a permitted accessory use to a funeral home.

5. Change use category for 'commercial recreation facility' to 'commercial recreation facility/health club' and change definition for use:

Mr. Connors stated this change is to clarify that health clubs fall under this definition and we would also change the definition to note that health club and specialty fitness centers, like yoga studios, fall under this definition and are permitted.

6. Add footnote to Membership club use to prohibit gunning and trapping clubs in the Performance Zone:

Mr. Connors stated this proposed change would add a footnote to membership club use to prohibit gunning and trapping clubs in the Performance Zone based on the fact that there is limited space in the zone for these kinds of uses.

7. Prohibit hotel and motel use in the Highway Commercial District:

Mr. Connors stated this proposed change would prohibit hotel and motel use in the Highway Commercial District simply because they are typically for gasoline service stations and we would like to preserve the spirit of that use.

8. Add 'Event/conference center' use to the Table of Uses;

Mr. Connors stated when we had the Noah's Event Center application last year, we realized we didn't have a separate use category for uses that are not accessory to a restaurant or hotel, so this would clarify that we do permit this use in the Commercial, Commercial-2, Civic Institutional, Office, and Performance Zones.

9. Change Gasoline service station symbol in Performance Zone to clarify that use is permitted only by Conditional Use Permit:

Mr. Connors stated this proposed change is to change the service station symbol in the Performance Zone to clarify that use is permitted by Conditional Use Permit only.

10. Permit wholesaling in the Service Industrial District:

Mr. Connors stated we believe that use is generally consistent with the uses we see there.

**INDUSTRIAL USES Proposed Changes**

11. Prohibit excavation operations in the Performance Zone:

Mr. Connors stated this proposed change is on the basis that there is limited land in the Performance Zone for such uses. That is not consistent with environmentally-friendly uses.

12. Add mini-warehousing/self-storage use and add definition:

Mr. Connors stated this proposed change is to add mini-warehousing/self-storage use to the Table of Uses and add the definition for that use. Staff is recommending that we would limit that use to permitted only in the Service Industrial Zone.

13. Permit information processing use in the Office District:

Mr. Connors stated based on that definition it is consistent with uses we see in the Office District.

**PUBLIC/INSTITUTIONAL USES Proposed Changes**

14. Prohibit hospital/sanitarium use in the Residential & Agricultural and the Commercial and Commercial-2 Districts:

Mr. Connors stated staff is recommending that we would prohibit hospital and sanitarium uses in the Residential & Agricultural and the Commercial and Commercial-2 Districts based on the fact

that there are limited large land parcels left for these kinds of uses. These uses are very intensive and would likely disturb residential neighbors.

15. Prohibit nursing home and assisted living use in the Residential & Agricultural and General Residential Districts:

Mr. Connors stated this proposed change would also prohibit nursing home and assisted living facilities in the Residential & Agricultural and the General Residential Districts based on the same reasoning that there is limited availability for such options in those two districts.

16. Remove extra, unnecessary ‘P’ in day-care facility use under Residential & Agricultural and General Residential Districts:

Mr. Connors stated this change is to correct a typo in the Table of Uses by eliminating an unnecessary ‘P’ under daycare facility uses.

17. Prohibit cemeteries in Performance Zone:

Mr. Connors stated this change is proposed based on the fact that there is limited land left for this kind of use.

18. Correct minor spelling error in golf course/country club use (change from ‘golf course/country club to ‘golf course/country club’):

Mr. Connors stated this change would correct a minor spelling error to change ‘county’ to ‘country.’

19. Eliminate government facilities use:

Mr. Connors stated this proposed change is because government facilities are exempt from the Zoning Ordinance.

**AGRICULTURAL USES Proposed Changes**

20. Prohibit general farming in the Performance Zone:

Mr. Connors stated this proposed change is based on the fact that there are no longer any active farming operations in the Performance Zone and that the Town has set this area aside to improve the commercial tax base in the Town.

**ACCESSORY USES Proposed Changes**

21. Permit warehousing facilities as a permitted accessory use in the Service Industrial District:

Mr. Connors stated this is a use that is generally consistent with that district.

22. Permit business office as an accessory use in the Commercial, Commercial-2, Office, Neighborhood Commercial, Highway Commercial, Service Industrial, and Performance Zone:

Mr. Connors stated this proposed change would permit business office as an accessory use in the Commercial, Commercial-2, Office, Neighborhood Commercial, Highway Commercial, Service Industrial, and Performance Zones.

23. Eliminate commercial service facilities use category:

Mr. Connors stated this proposed change is because we don't have a definition for that use and it is unclear what the use refers to.

24. Permit light manufacturing as an accessory use in the Service Industrial District:

Mr. Connors stated this change would simply clarify that light manufacturing is a permitted accessory use in the Service Industrial District.

Chairman Levenstein asked for questions or comments from the Planning Board.

Vice Chairman Newberry stated I have a question on #13 in the definition where it says 'A building in which data and storage is stored...' I wasn't quite clear what 'and storage' was referring to. It just didn't seem to make sense in that definition. Mr. Connors responded based on the way the definition is currently, it appears to relate to kind of electronic storage. Town Manager Sawyer asked you are saying you could delete the words 'and storage' and it would make more sense? Vice Chairman Newberry replied it would to me. Mr. Connors stated okay. Ms. Hebert stated under #13 we are not proposing a definition change under that amendment. It is an existing definition in the ordinance. We were just providing the definition because it is not something that we commonly come across. Vice Chairman Newberry responded I would still question 'and storage.' Ms. Hebert replied I could check to see if we could add the amendment. Chairman Levenstein stated add the amendment or clean it up. Vice Chairman Newberry stated I would like to see that cleaned up, unless somebody can explain what 'and storage' means in that sentence. Mr. Hawkins stated it is redundant. Chairman Levenstein stated it does make sense to me. Town Manager Sawyer stated I think you would have to clean that up in a future amendment. Chairman Levenstein stated I don't know that you can do it now. Ms. Hebert stated I think we would need to clean that up in a future amendment.

**MOTION by Vice Chairman Newberry to open the public hearing on proposed Zoning Amendment #1 as discussed. Councilor Bandazian duly seconded the motion. Vote taken - all in favor. Motion carried.**

Chairman Levenstein asked for comments or questions from the audience on any of the proposed Table of Use changes discussed for Amendment #1.

Susan Tufts-Moore, 27 Bedford Center Road, stated I am concerned about the proposed Zoning Amendment #5. I can understand the accessory building being allowed to be closer to the lot

line under normal circumstances. I am very concerned about having it so close potentially to wetlands because we do have reasons to have buildings back from wetlands because of potential pollution. If you have a garden shed, for example, and you are storing some chemicals in that garden shed, I would hate to see an unexpected spill, for example, within 5 feet of the wetlands. I think that is potentially asking for some real trouble because when we pollute our wetlands, it affects everybody. That spreads through the groundwater and could be a real problem. So I am very concerned about that proposed amendment specifically as it relates to wetlands.

Angie Haenel, 3 Bartlett Drive, stated I would just like clarification on exactly what style you are referring to when you refer to signage as being monument style. Can you give me an example of an existing sign here in town that I could physically look at and know what I am voting on? Ms. Hebert stated replied sure. All of our freestanding signs are typically monument style. The maximum height is a 10-foot sign in Bedford in most districts and the monument style sign has to have two posts, the sign needs to be situated between these two posts or on a base that is the same width as the sign panel or wider. You can't have a pylon sign where you would have a sign and then a skinny post supporting the sign. Ms. Haenel asked it is not a sign that is actually on the side of a building? Ms. Hebert replied no; a monument style sign is a freestanding sign and it is a style of freestanding sign that is typically lower to the ground than tall pylon signs and is supported with a significant base material. Ms. Haenel asked will that be clarified in the amendment on the ballot so people have an understanding of what that means? Ms. Hebert replied it is. We have a sketch in the ordinance that talks about the monument style sign and it has been practice to require that sign as the standard sign type in all districts but it is not completely clear in the ordinance, so as a housekeeping amendment we wanted to make it was more clear that it is the sign type that is permitted in our other commercial districts. Ms. McGinley stated grandfathered signs do not have to comply with that. Ms. Hebert responded that is correct. A grandfathered pylon sign or sign on a skinnier post could exist and be maintained in its current condition.

**MOTION by Vice Chairman Newberry to close the public hearing on proposed Zoning Amendment #1. Ms. McGinley duly seconded the motion. Vote taken - all in favor. Motion carried.**

- **Amendment #2** is intended to create a new definition for short-term rental housing and clarify that short-term rental housing is prohibited in all zoning districts.

Ms. Hebert stated we have pulled this out from Amendment #1. This relates to the short-term rental housing. We felt like this was a significant issue and we didn't want to lump that into Amendment #1.

- **Amendment #3** is a housekeeping amendment intended to clarify that freestanding signs in all commercial districts need to be a monument style sign.

Ms. Hebert stated this is a housekeeping amendment to clarify that freestanding signs in non-residential districts need to be a monument style sign and this is an amendment to the sign ordinance to make that more clear. Right now it is very clear that monument style signs are the

permitted freestanding sign type in the Performance Zone but it is not as clear that that is the permitted sign type in our other commercial districts.

- **Amendment #4** is also a housekeeping amendment intended to clarify the permitted sign types and sign area in the Neighborhood Commercial District.

Ms. Hebert stated this is an amendment to clarify the sign types that are permitted in the Neighborhood Commercial District. Right now the ordinance reads “One projecting sign, one ground or pole sign, not to exceed 32 square feet in surface area, and one flat sign to a business unit not to exceed 32 square feet in area.” As a housekeeping amendment, we want to clarify that one projecting sign, one monument sign not to exceed 32 square feet, and one wall sign not to exceed 32 square feet would be permitted in the Neighborhood Commercial District.

- **Amendment #5** is intended to reduce the setback requirements for an accessory structure of 120 square feet or less on properties in the Residential Agricultural District and General Residential District. The amendment also exempts this one accessory structure from the wetland setback provisions.

Ms. Hebert stated this is an amendment to our section in the zoning that addresses accessory structures to permit one accessory structure 120 square feet or less in an area to be located within 5 feet of a side or rear property line provided the structure is not taller than 12 feet and not placed on a permanent foundation and the wetland setback provisions would not apply to this one permitted structure. So lots in the Residential & Agricultural District and General Residential District would be allowed to install one structure not on a permanent foundation that is 120 square feet or less and this structure could be located within 5 feet of the side and rear property lines and the 50 foot wetland provisions would not apply to this one structure. Staff was approached by the Conservation Commission and the request came from the Conservation Commission. They wanted to see the setback requirements for sheds relaxed a little bit. They review sheds frequently as variance applications and they are rarely denied, and they felt that the Town should consider relaxing the provisions to allow homeowners to install one small shed.

Chairman Levenstein asked for comments or questions from the Board on Amendments #2 through #5.

Mr. Fairman stated I too share Ms. Tufts-Moore’s concern about people storing things in these buildings, things you wouldn’t want to leak into the wetlands, including gasoline for instance, as well as fertilizers and things, so I really question that change. I understand the Conservation Commission wants it, but I think they should be approving them on a one-by-one basis depending on what is going to be in the building as they are doing now. I also wonder about the change of the setback for a structure. I am not sure any of us really wants somebody to put a shed 5 feet from our line. I don’t understand why we want to change that. It seems that we have issues today with the structures and sheds and to put them 5 feet from a line, and I think it is too close, so I would be against this amendment completely.

Ms. McGinley asked is it possible for us to amend this change to limit what can be placed in the

shed and would it be effective if we did? Ms. Hebert responded I would think that would be a very difficult thing for staff to enforce or for the Town to enforce. Chairman Levenstein stated the ironic part of it is that if it not in a shed, you can keep it right next to the wetlands now. Ms. McGinley asked you could put your lawnmower and the gasoline can right next to the line? Ms. Hebert replied yes. Councilor Bandazian added herbicides and pesticides to your heart's content. Ms. McGinley asked so it would be better to put it in a shed? Chairman Levenstein replied I don't know. It sort of strikes me as odd that you can do and you can't do it if it is in a structure. Ms. Hebert stated our 50-foot setback is not a buffer; it is just a structural setback. In Bedford there is a lot of development that occurs right up to the very edge of a wetland. Vice Chairman Newberry asked regardless of Amendment #5, they still require a permit? Ms. Hebert replied yes, a building permit. Ms. McGinley stated I have one comment that wraps together with what was just said. So you could build a shed with a prohibition against putting gasoline and other bad things and you could leave those outside? Chairman Levenstein replied yes. At least people will know what is there.

**MOTION by Ms. McGinley to reopen the public hearing on proposed Zoning Amendments #2 through #5 as discussed. Vice Chairman Newberry duly seconded the motion. Vote taken - all in favor. Motion carried.**

Ms. Tufts-Moore, 27 Bedford Center Road, stated because of the discussion on Amendment #5, 5 feet is awfully close. Could something like 25 feet be considered instead? That would get it off your neighbor's property essentially. Ms. Hebert responded it is 25 feet today. Councilor Bandazian stated except in a cluster subdivision and then it is 20 feet. Ms. Hebert stated in the General Residential District it is 5 feet today, so we were extending that leniency to the residents in the Residential & Agricultural District. Ms. Tufts-Moore stated which makes more sense in the General Residential because in general those lots are a lot smaller, but for the Residential & Agricultural of course those lots are a lot bigger, so to have somebody's shed 5 feet from your property line does seem pretty invasive, plus my concerns of the wetlands.

**MOTION by Vice Chairman Newberry to close the public hearing on proposed Zoning Amendments #2 through #5. Ms. McGinley duly seconded the motion. Vote taken - all in favor. Motion carried.**

- **Amendment #6** is a citizens' petition to reduce the permitted height of wireless telecommunication facilities (cell towers) from 130 feet to 75 feet in the Residential Agricultural District and General Residential District.

Ms. Hebert stated the petition reads as follows: "Are you in favor of the adoption of Amendment #6 as proposed by petition of Kathleen Bemis and others to amend Town of Bedford Code Chapter 275, Zoning Article 6, Wireless Telecommunications Facilities, Section 275.43, Design Requirements, for new commercial ground mounted facilities Subsection A.1 by deleting the words shown in strikethrough and adding the words in bold as follows." This is the amendment that changes the height of telecommunication facilities to limit the height to 75 feet in the General Residential & Agricultural District and the proposed ordinance would read: "The height of any such wireless telecommunication facilities must not exceed 75 feet above the average existing ground level adjoining the structure in the Residential & Agricultural District and the

General Residential District and must not exceed 130 feet above the average existing ground level adjoining the structure in all other districts.” This is proposed by petition so at the end of the public hearing on January 22, 2018, the Planning Board would need to vote whether to support or not support passage of the amendment, but being a petition, it would be listed on the Town’s ballot as described in your staff report.

- **Amendment #7** is a citizens’ petition to require a setback of at least 750 feet between the nearest residentially zoned property and a proposed wireless telecommunication facility for all new cell towers in the Residential Agricultural District and the General Residential District.

Ms. Hebert stated this amendment is also by citizens’ petition and it changes the setback requirements for cell towers in the Residential & Agricultural District and General Residential District and adds language that reads: “In the Residential & Agricultural District and the General Residential District all wireless telecommunication facilities must be set back at least 750 feet from the nearest residentially zoned property.” Again, the Planning Board would need to vote whether or not to support or not support passage of the amendment.

Ms. Hebert stated staff has done some research on telecommunications facilities and how our neighboring towns regulate these structures with regards to height and setback listed below.

- **Amherst** requires telecommunication towers to project no higher than 20-feet above the average tree canopy height in the vicinity, or a maximum of 40-feet above the average tree canopy if the Planning Board finds that the additional height will result in no material visual or environmental impacts. In no case may a tower exceed 200-feet in height. Amherst requires telecommunication towers to meet the minimum setbacks of the zoning district or be set back the height of the tower from property lines, habitable dwellings, or public roads, whichever is greater. The fall zone may encroach on to neighboring property lines if the applicant secures a fall zone easement from the affected property owner.
- **Goffstown** requires telecommunications towers not to exceed 130-feet in height. Telecommunications towers must meet the minimum setbacks of the zoning districts and be set back a minimum of 125% of the height of the tower from adjacent property lines (such that a 130-foot tower would need to be set back at least 158-feet from surrounding property lines).
- **Merrimack** requires that telecommunication towers be set back the height of the tower from neighboring property lines, but permits the Planning Board to lessen the setback if alternative protections for abutting property owners are provided. Merrimack does not restrict the height of telecommunications towers, but does require that towers are disguised or screened in certain districts.
- **Londonderry** requires that new telecommunication towers not exceed 190-feet in height and be set back a minimum of two-times the tower height from abutting residential property lines (such that a 130-foot tower would need to be set back at least 260-feet

from surrounding residential property lines).

Ms. Hebert stated something else that staff wanted to point out to the Board is when reviewing cell towers, there is a federal provision that is FCC Section 6409 Rules that allows a cell tower to be modified provided it is not considered a substantial change in the physical dimensions of the tower. Under this federal guideline a tower can increase by the greater of 10 percent of the tower height or up to 20 feet. So a tower could increase up to 20 feet under this rule that requires communities to permit changes that are not considered substantial to existing towers in the federal guidelines allows them to grow up to 20 feet provided they are not impacting any stealth requirements that the community may have specified for that particular tower. Ms. McGinley asked could you explain stealth? Ms. Hebert replied a stealth requirements would be if the tower were to be disguised in a certain manner or to look like a pine tree or to look like a flagpole or intentionally made to be less visible by placing the antennas inside the tower structure. Those would be stealth modifications, so if the proposed change increased the height and also modified the stealth provisions, that increased tower height would be considered a substantial change and would need to go back through the review process. Ms. McGinley asked expanding on that, when you talk about the way the tower looks, I have seen pine tree towers that are evidently towers because they are so tall, so would this take into account that we could look at that and say not to increase that because it is a so-called stealth, doesn't follow our guidelines or isn't covered at all. Ms. Hebert responded yes, it does leave that judgment up to the community. If there was a stealth discussion or provision around how the tower should look and how it should be disguised and the proposed modification was going to affect that stealth provision, then it would be considered a substantial change.

Mr. Fairman asked do we have any setback requirements on towers now? Ms. Hebert replied right now we do have a fall zone requirements on towers today. That is the 100 percent of the height of the tower, unless the tower can be shown to collapse upon itself. Mr. Fairman stated okay, so we do have that requirement. Ms. Hebert responded yes.

Mr. Connors stated we did receive some written comments on Amendments #6 and #7 that came in late so we didn't have time to put them in your packets, but we did print them and they should be in front of you tonight.

Ms. Hebert stated another planning thought to point out about the height of the tower is generally towers are proposed to fill coverage gaps for wireless providers. In most cases a taller tower will provide a broader range of coverage, so communities that lower their towers have one consequence and that is that you may see more towers. If you have a taller tower, you can provide coverage to a larger area and you may have fewer towers, but it is a compromise or a trade-off. Mr. Hawkins asked do we have any insight into what lowering from 130 to 75 would do for the potential number of towers that we would see in Bedford as a result? Ms. Hebert replied it is case-by-case. We really would need to know the topography of the particular tower, which provider is being proposed, it is really specific to the provider that is looking to fill a gap and what their gap is, and what the topography is of the site. I think it is something that the Zoning Board reviews in a lot of detail when they review Special Exceptions for wireless towers. Mr. Fairman stated like what the one on Tirrell Road was going to be compared to the one down at Wallace Road. Mr. Connors responded the Tirrell Road initially came in at 155 feet and they

were requesting a variance. Mr. Fairman stated I was thinking it was considerably taller. Those two towers are basically trying to cover the same gaps in Bedford and one had to be a lot taller and the other is my point. Mr. Connors stated they did reduce the size of that as they went through the process to 130 feet. Mr. Fairman stated very site dependent.

Ms. McGinley stated one thing I want to say about the fall zone is the only experience that I have had, and it was with a very old radio tower built in the 1950's, that in the ice storm a number of years ago in the middle of New Hampshire, this was located in Laconia, and even that one that was built in the 1950's fell down upon itself, it did not fall directly, so I think most of them are built that way.

Chairman Levenstein asked who came up with the figure that we adopt the 750-foot setback; the minimum lot size would need to be 51 acres? Is that right? Ms. Hebert replied yes, that is correct. If a cell tower needed to be buffered by 750 feet on all sides, it would need roughly 51.7 acres and would need to be located in the center of that box. Chairman Levenstein asked do we have any lots in Residential & Agricultural? Ms. Hebert replied we have very few, seven lots, that meet that dimensional requirement and they are not likely perfectly square and then new structures would have to meet setback requirements to wetland and there aren't that many lots that would likely qualify. They would probably have to be larger than 51.7 acres. A tower could be located immediately abutting a non-residential district and not have to provide that 750 foot setback, but again, it is unlikely that we have too many lots that qualify. So the 750 foot setback requirement effectively bans cell towers from those residential districts because we have very few lots that would qualify as potential sites.

Vice Chairman Newberry stated reading further down in the staff memo you point out that the Telecommunications Act of 1966 prohibited zoning authorities from taking actions that would ban or would have the effect of banning telecommunications facilities from a particular area. Ms. Hebert responded yes. Vice Chairman Newberry stated it sounds like even the few 51 or greater acre lots in town, because they are not perfect boxes, are probably not going to qualify either. So there is a high likelihood that we would not be able to comply with that requirement if we were to have the proposed 750 foot setbacks. Ms. Hebert responded that is true. Councilor Bandazian stated but there is a variance procedure. Ms. Hebert stated there is a variance procedure, which would actually take some of the local control away from the cell tower review because you would be under a variance discussion or maybe in court arguing over whether or not there is a ban effectively on cell towers in large areas of the Town.

**MOTION by Councilor Bandazian to open the public hearing on proposed citizens' petition Zoning Amendments #6 and #7 as discussed. Vice Chairman Newberry duly seconded the motion. Vote taken - all in favor. Motion carried.**

Kathleen Bemis and her son William Bemis, 37 Magazine Street, were present to review a PowerPoint presentation. Ms. Bemis stated please keep in mind that there is the variance process, this only applies to new cell tower construction, and the legal issues I am going to talk about in a little bit. The first thing I want you to know is that we do have a cell tower study committee that started meeting in October, and they have been given a task and a mission that will last about 18 months. During those 18 months the Planning Board and the Zoning Board are

going to continue every month to meet and discuss this same issue and the community is kind of getting tired of it as well. The two petitions that I have put forth are not to usurp the committee at all, it is kind of to give the Planning Board, the Zoning Board, and that committee some breathing room, some time to do all of the research, the leg work, the understanding of the law, and then come back to the Town probably right around the same time that the Master Plan is due, and come up with what make sense at that point in time, so these two amendments are really geared towards that. The current zoning in Bedford is probably the least restrictive of all of the towns that I have studied. I didn't look at all of them because it is overwhelming, but I will go through some of them and I think I sent them to most of you this morning. Right now there are no restrictions in terms of distance, other than the fall zone, and you can be at 130 feet. You can go through the petition process and be at 200 feet if the Zoning Board allows it by special criteria.

Ms. Bemis continued the first amendment that I am requesting is to decrease the size to 75 feet. When I go through some of the Town requirements of other neighborhood towns, they refer to mostly 20 feet above the tree canopy, but I did come across from case law that what you do if it is in a field. So giving an actual height will eliminate some of that, there is no guesswork; we are not measuring the pine trees on Mr. Smith's farm to get an average. Most of the tree canopy here in Bedford from previous cell tower discussions is at about 55 feet, so 75 feet would give you 20 feet above the average tree canopy. The other thing is the 750 distance, which is the second amendment that I have requested, and that is primarily because the research shows that you should be at least a quarter of a mile to 1,500 feet from a cell phone tower. The FCC says you cannot take into account the health risks when you are debating whether to put one in, but it doesn't say that you can't take into account when you are creating your zoning law and your zoning amendments, so that can come into play. So you would still with both amendments be able to have a 130 foot tower on a commercial property next to a residential lot, so you are not limited to 170 feet. If you want to put it at Blake's Creamery, you can still do that if there is a house next door, as long as you have your adequate fall zone.

Ms. Bemis continued what I would like to talk about are some of the legal pieces because there are two real key components that people get confused with. One is unreasonable discrimination, again, cell towers. That really comes into play with the laws that I have reviewed you can't say as a town we are only going to let Verizon in or we are only going to let Sprint in. You can't discriminate against companies; you have to apply the same laws and rules to everybody regardless. That is not what we are talking about. I think Bedford as a whole has been very fair when these proposals come in. The effective prohibition is the one that people get hung up on, and I have really done a lot of work and research on this. The Town cannot say that we are not going to have cell towers, that would be a prohibition, but in New Hampshire law RSA 12K, and there are specific sections I am not going to go into details, but it says "We should consider commercial sites first." Additionally, in the New Hampshire checklist it says "When you design your regulations, keep in mind the straightforward formula. The areas you decide that are most desirable placements for siting these towers should be the easiest for the applicant to obtain." That makes sense. These might even be granted without a Special Exception. And once again, this is in the New Hampshire guidelines, "Conversely, the placement and types of cell towers, which are least desirable according to your ordinance's purposes, should be the ones that are hardest to obtain." So right there in New Hampshire State law they are not saying that it is a

prohibition if you choose not to have it in one zone and another. They are encouraging you to make your zoning so that it is appropriate to what your town wants to accomplish. With that said, I am just going to go through some of the zoning, and I appreciate Ms. Hebert, and I am just going to keep to the basics. So most towns have it that you can't be more than 20 feet above the tree canopy, with Merrimack being an example. Merrimack also has some really specific wording prior to even getting to that that says that it can't be obnoxious, noxious, injurious, or offensive in any way, so it can't make noise, it can't make light, so it gives them a little bit more leeway when they are reviewing their Special Exceptions. In Hanover you can't be more than 60 feet tall in the Industrial Zone, you can't be more than 30 feet tall in the Forestry Zone and then they have even more restrictions, so it pretty much limits it to not being in Hanover. In Hollis you can't be more than 10 feet above the surrounding vegetation, so you could probably put one of these little things on your lawn and that might be okay. So once again, they are prohibiting it in their town by having it so restrictive. Chairman Levenstein asked is that in all zones or is that only in residential zones? Ms. Bemis replied it says 10 feet above the surrounding vegetation. Ms. McGinley stated which could be 200 feet. Ms. Bemis responded but that would mean you would have to have 200 foot tall trees. I don't have the specific regulation in front of me but it usually says within a 150-foot perimeter, so you might have one tree that is that tall. I can bring more research if you would like. In Amherst, again, Ms. Hebert had said 20 feet above the average tree canopy but I don't know if you saw this Ms. Hebert, they do say that they have to have a 150-foot very dense tree buffer and that you can't cut any trees around it. Rye only allows cell towers in the Telecommunications District, which is about five lots, and then they also say that you can't be any closer than 400 feet to a well. So in those five lots you can't be close to a well. In Warner it is once again 20 feet above the tree canopy, a 200-foot dense buffer and then they give a ridge height, which I would imagine, limits where their towers can go. In Greenfield it is the same. In Greenland I would really like you to pay special attention to because they probably had the most restrictive rules that I came across. Very few towers are allowed, you cannot have new towers at all in the Industrial, Commercial or Residential Districts. What I thought was most interesting though is that Paul Sanderson, who is a lawyer who is in most of the literature, he is referenced in the back of my packet, he is a Selectman and on the Zoning Board in Greenland, so he wrote those, and he probably has the most stringent rules for zoning.

Ms. Bemis stated with that said, I really think that it is important that we do something now to give the cell tower committee some time to work. We know that the Master Plan is coming, we know that there will be other changes, and my suggestion is we adopt these and then in 2020 when the committee has formulated a plan and we see what is going on, then we can reword them at that time. Ms. McGinley asked what do you mean we adopt these? Ms. Bemis replied these two amendments that I have proposed, the two citizens' petitions. Mr. Fairman stated if in fact you just wanted to give the committee some time, why didn't you just prohibit cell towers? Ms. Bemis replied first of all, you can't do that. Mr. Fairman stated you have effectively done that, so why didn't you just do that. Ms. Bemis responded effectively, but if you say that we are not going to, and then the cell tower would not come to the Town at all, they would just go right to court. Mr. Fairman stated well, they probably will with this, because this effectively does that. Ms. Bemis responded no, but they still have to come before the Zoning Board. No, it doesn't effectively, they can put a 75-foot tower and if they want a taller one, they can come before the Zoning Board and request a variance just like they would if they wanted a 200-foot tower. So

they are still afforded the same process but by making it less desirable, they will go in the commercial areas.

Mr. Fairman stated you selected towns all around the southern part of the state, or central part of the state, that were more restrictive than we are. In your search did you find many towns that were less restrictive and why didn't you include those in your list? Ms. Bemis replied you know what, I did not. I included every single town that I looked at, and every single town that I looked at had more restrictive zoning than we did. I looked a couple in Massachusetts. I looked at Wellesley, I looked at one in New York, and I did not find any, because I didn't include them, here in New Hampshire that had more leniency than we do.

Ms. McGinley stated I might add that I used to do cell tower work and the last cell tower that I had approved was in Manchester on Second Street near residential areas and was a permitted use and the neighbors were clamoring for it. Maybe they don't know everything that you know, but there is a flip side to this, so I think we need to consider everything when we look at these.

Ms. Hebert stated at the Board's workshop in September we talked a little bit about cell towers because it has been a challenging issue for the Town the past year, and the Town Council has a study committee that has been meeting since October-November and they have had a few meetings and their work will take about 18 months to complete. They are reviewing cell towers and their subcommittee came out of the issue of whether or not to permit a cell tower on a leased lot on Town-owned land. Staff had talked with the Board about cell towers at the workshop and had recommended that we wait for an update or a staff driven rewrite of our cell tower ordinance until we hear the results of that committee. I think Ms. Bemis' amendments are to help curb some of the pressure we have been feeling on cell towers this past year, but we do intend from a staff level to take a more comprehensive look at the zoning together with the cell tower subcommittee and hopefully have recommendations for you for next year.

Mr. Foote stated I didn't see in the packet RSA 12K that you referred to. Could you recite that once again please? Ms. Bemis replied it is in the New Hampshire zoning RSA 12K:1, III. Mr. Foote stated you referenced a few parts of that, could you do that again for me please. Ms. Bemis replied yes. It is New Hampshire checklist; the checklist for wireless telecommunications ordinance for New Hampshire in 2017 is where that specific language comes from. Would you like me to read what I said? Mr. Foote replied yes, please. Ms. Bemis stated it says "Additionally, the New Hampshire checklist states when you design your substantial regulations, keep in mind a straightforward formula. The areas that you have decided are the most desirable placements for siting your cell tower should be the easiest for an applicant to obtain approval. These uses may even be able to be granted without special review. Conversely, the placement and types of cell towers which are least desirable according to your ordinance's purposes should be the ones that are the hardest to obtain. Note the hardest to obtain is not the same as impossible. Impossibility could be interpreted as violating competitively neutral guidelines of the Telecommunications Act. Make permission for siting in those areas most in need of shelter for visually aesthetic or because of secondary effects and make it very difficult to obtain such as variances for tall towers even if well mounted smaller units would be acceptable." Mr. Foote stated thank you. Ms. McGinley stated I have a question. Are you reading from a statute or reading from a commentary about a statute? Ms. Bemis replied I am reading from commentary

which is on the New Hampshire State government website and it is the checklist for wireless telecommunications ordinance for 2017. Chairman Levenstein stated under the statute it is put out by the Office of Energy and Planning. Ms. Hebert stated it would be the model ordinance. Town Manager Sawyer stated it is not the statute. Ms. Bemis replied but the statute is the RSA 12K that it refers to. Ms. Hebert stated right.

Denise Ricciardi, 29 Magazine Street, stated first of all I concur with everything Ms. Bemis said. We have had an ongoing problem in this Town that this Board has the opportunity to approve these petitions. Your home is your castle. You are not defying the Telecommunications Act by putting this in place. There is no reason that any person in the Town of Bedford should live closer than 750 feet to a tower. On the health side that we are not supposed to discuss, I happen to know 1,500 is safe for your health, but at least with this buffer, you are protecting peoples' property values, you are protecting them from the noise and you are protecting them from the light. You have an opportunity to approve this on the ballot. I can't fathom why you would not do that when it is legally okay and these other towns have put this in place. And with all due respect, let's just be honest here and shed the light, with the cell phone tower solution committee, notes aren't taken because there has only been a quorum twice, most of the volunteers who are hand-picked don't come, so I have a little issue with there being a remedy with this because to me I don't see that. So this is a way to protect us, all of Bedford, every single resident in Bedford that lives in a residential agricultural area. Our home is our castle. Why, again, would you not put these petitions for approval? Thank you. Chairman Levenstein stated just for clarification, we don't vote on these. These are voted on by the Town, although we do vote on whether we are going to recommend approval or not. Ms. Ricciardi replied I understand, but I was told that if the Planning Board doesn't approve them, they die. So we are seeking your approval because as residents we want the buffer and we will vote for it. We want the buffer, we want to protect our homes and our families and our property values. Chairman Levenstein stated I just wanted to clarify that we can't put these on on our own volition. We can just say whether we recommend them or not. Ms. Ricciardi and I am asking you please to recommend them.

Steve Crowley, 12 Summit Road, stated I agree with what they have mentioned. To me it makes sense. We have commercial area or industrial zones where these towers can go up to the 130 feet. I am in the middle of the next case that you are going to talk about, so I am getting impacted by that which has been approved already. Again, in that situation we never heard of the lands that they looked at in the commercial zones to put the tower that they want to put up there. So I think we are just opening the door by not having restrictions where these things can go anywhere. The one that is going to be talked about later is going to be essentially right beyond my backyard. It will be in a silo but there is no restriction that they had to do that. They could have put up a 130 foot tower that I would look at out my back window all day and just see this monstrosity because there are no trees between my property and theirs. I just want to show support that I approve this, and I am looking forward to seeing the Planning Board support this as well.

Sampath Deva, 14 Summit Road, stated I fully support this, and I would appreciate if the Planning Board can put this on the ballot. We are going to talk about the next one, which is the Cellco Partnership tower. We are one of the people impacted by it; it is literally less than 200 feet from my home. If I am in my kid's bedroom, it is less than 200 feet. We are definitely

impacted by this and we would like the Town to put this on ballot and let the Town residents decide on it. Chairman Levenstein stated it will be on the ballot. It is on the ballot regardless. Mr. Deva stated I definitely recommend approving it because in the case of the Cellco tower, it is a commercial telecommunications facility disguised as an agricultural silo but we personally felt that it is kind of deceiving and we don't want any other residents to go through the pain that we went through over the last three months and the fight is still going on. By putting this on the ballot hopefully no other residents would be impacted by this. Thank you.

Dan Muskat, 49 Church Road, stated I support what Ms. Bemis has said, and I would love to see your recommendation please. Thank you.

Mike Sorvillo, 8 Summit Road, stated I support what Ms. Bemis just presented. It was an excellent presentation for you to understand this a little bit more thoroughly. There are a couple of points I want to point out: Nobody in the town as citizens are clamoring for a cell tower in their backyard. It was easy to go out and get 150+ signatures in just a couple of hours one afternoon because nobody wants this in their backyard. If we don't start putting some type of parameters, we are going to continue to have unethical lawyers working with socially irresponsible carriers to come into our town and drop there wherever they can find a spot. So we need to as a town protect our town and put some parameters in place. Thank you.

Balaji Adikesavelu, 10 Summit Road, stated I live next to some of the people that have spoken tonight. Enough said. I hope you represent us as part of the Town and do the right thing.

Lou Allam, 18 Summit Road, stated I agree with what my neighbors and my friends have said, so please make sure the one which is approved by the commission can be rejected.

Lori Cappa, 52 Tumble Road, stated I agree with exactly what Ms. Bemis said and would ask that you guys recommend this so that the Town can vote because I don't think any of us want these popping up in all of our neighborhoods and we need to start setting some criteria.

**MOTION by Mr. McMahan to close the public hearing on proposed citizens' petition Zoning Amendments #6 and #7. Councilor Bandazian duly seconded the motion. Vote taken - all in favor. Motion carried.**

- **Amendment #8** is a citizens' petition to prohibit licensed surgical centers as a permitted use within medical or dental clinics.

Ms. Hebert stated Amendment #8 is a citizens' petition to restrict licensed surgical centers as a permitted use within medical or dental clinics. This would prohibit licensed surgical centers from being allowed as a new use associated with medical or dental clinics. The existing licensed centers could continue to exist as a pre-existing non-conforming use. The petition is submitted by William Greiner and he is not available to present an overview of his petition at tonight's meeting but is planning to come to the January 22, 2018 meeting.

Chairman Levenstein asked for comments or questions from the Board on Amendment #8.

Councilor Bandazian stated I think in my research of ‘licensed surgical center’ is a term of art that is defined by statute or regulation but I am not sure. Ms. Hebert responded from what I can tell, there is a statute RSA 151 that licenses certain medical facilities in New Hampshire and ambulatory surgical centers are licensed by the State. We currently have two State licensed ambulatory surgical centers in Bedford, which are the New Hampshire Eye Surgery Center at 105 Riverway Place and the Bedford Ambulatory Surgical Center (BASC) at 11 Washington Place. There is a State license that needs to be issued for this type of use. I think there are some in-patient procedures that are permitted within medical offices that don’t rise to that level of needing a licensed surgical facility. Mr. Fairman asked how about the dental facilities? Aren’t most of them licensed surgical? Ms. Hebert replied no, not as a State licensed ambulatory surgical center. Mr. Fairman asked are there other types of licensed surgical centers other than that? Ms. Hebert replied that is the State license. In my investigation I have been able to find how the State of New Hampshire licenses surgical centers. Whether there are other health permits that need to be issued, I am not certain but the State license is for the ambulatory surgical center. Mr. McMahan asked are either one of the two that you delineated associated with a hospital therefore are tax exempt? Ms. Hebert replied yes. My understanding is these surgical centers are often associated with hospitals, which are often uses that have a tax exempt status and could potentially have a negative effect on our tax base or may affect existing facilities within town. It is not a use that we typically or is commonly regulated through zoning from what I can tell. A comparison is the Board recommended a few years ago to remove automobile dealerships as a permitted use in the Performance Zone. There was a concern that we might have an overabundance of automobile dealerships and this decision was based on the desire to encourage the highest and best uses of land within our Performance Zone. This restriction as proposed would affect medical office and dental offices within all districts where they are currently permitted, which are Commercial, Commercial-2, the Performance Zone, and the Office District. Mr. Connors stated I did receive some written comments on this amendment. We got them on Friday so we didn’t include them in your packets but we printed them out for you tonight from Jeff Larson of Hygene Capital.

Mr. McMahan asked how would it be an advantage to Bedford if an established clinic currently does not have that surgical capability and that clinic right now is not associated with a hospital and therefore we would not lose any tax revenue from it? What would be the advantage of prohibiting another clinic to do this type of work? Mr. Fairman stated there isn’t any. Mr. McMahan asked what is the purpose of it? Ms. Hebert asked are you asking staff? It is not something that is commonly regulated that I can see through zoning. Mr. Hawkins stated I agree with Mr. McMahan. I am trying to understand the spirit of the amendment. Is it directed at limiting the number of State licenses for medical procedures? Is it aimed at limiting the types of procedures that are performed townwide or is it anti-competitive in and of itself and that is the only reason for it? Hidden behind the veil of adversely affecting the tax base, because I don’t understand it unless there is somebody that can speak to the spirit of the amendment, I don’t think we can address the amendment. Ms. Hebert stated those are great questions and the petitioner is unable to be here tonight but he will be present at the next hearing.

**MOTION by Vice Chairman Newberry to open the public hearing on proposed citizens’ petition Zoning Amendment #8 as discussed. Councilor Bandazian duly seconded the motion. Vote taken - all in favor. Motion carried.**

Chris Riley, 38 Constance Street, stated I also represent a number of properties which I have interest in along South River Road, in the Performance Zone corridor, as well as in the Highway, Commercial and Office Districts. I do have a call into Mr. Greiner to get a better understanding of the intent of the ordinance as was raised by Mr. McMahan and a couple of other members on what the point of this petition is because on its surface I don't see its validity as anything other than restricting what existing businesses in Town can do to expand their business or how we as owners of real estate in the Performance Zone can future develop sites to allow for these uses. I know in the memo that was presented there are two properties identified currently with the designation of the surgical center. I wasn't under the impression that either of those was a not-for-profit organization. I do know of another, a third, that is being built out currently on South River Road for that type of use, which is not going to be exempt in any way from any property taxes. So I guess at the root of this if it is to eliminate any potential businesses in our business districts that potentially don't pay taxes, I don't see that as a valid reason to have zoning in place that would restrict the use. I think there are a lot of ancillary benefits from non-profit uses on private land, as well as for-profit uses, that can't be measured in strictly tax dollars. So I think there are a number of points that need to be addressed, made and discussed by this Board as well as with the applicant, which I plan to do before the future meeting so that we can have a more informed explanation of what the true intent is of this proposal. Mr. McMahan stated thank you.

Mr. McMahan asked has this draft Amendment #8 been given to the Town's attorney to take a look at? Ms. Hebert replied yes. It meets all the correct forms. He reviews our zoning amendments for form mainly and it met all of the required form for petition to be placed on the ballot. Mr. McMahan asked procedurally it is correct? Ms. Hebert stated he also had similar questions about what is the intent. Mr. McMahan stated thank you.

Mr. Riley stated one other point I think the Board should look at. I think the example was used, and I happened to be a member of the Planning Board when we discussed this one. Automobile dealerships were taken from the allowable uses in the Performance Zone. We were specifically looking at how an automobile dealership affects the usable land in which they occupy. Automobile dealerships tend to occupy large vast tracts of land and minimal density to that, whereas the use we are particularly looking at in this case they don't occupy as much space and have a higher density of employees and a stronger use for a site. I think the comparison between the two isn't really valid.

**MOTION by Councilor Bandazian to close the public hearing on proposed citizens' petition Zoning Amendment #8. Mr. McMahan duly seconded the motion. Vote taken - all in favor. Motion carried.**

- 3. Cellco Partnership d/b/a Verizon Wireless (Applicant), Swenson Trust (Owners) – Request for final site plan approval to construct a telecommunications facility within a new 75-foot tall farm silo at 5 Wallace Road, Lot 39-45, Zoned R&A.**

A staff report from Mark Connors, Assistant Planning Director, dated January 8, 2018 as follows:

**I. Project Statistics:**

*Applicant:* Cellco Partnership d/b/a Verizon Wireless  
*Owners:* Swenson Trust  
*Proposal:* Request for final site plan approval to construct a telecommunications facility within a new 75-foot tall farm silo  
*Location:* 5 Wallace Road (Lot 39-45)  
*Existing Zoning:* “R&A” Residential Agricultural  
*Surrounding Uses:* Residential, open space

**II. Background Information:**

*On September 19, 2017 the Zoning Board voted to grant a variance from Article III, Section 275-22.A & Table 1 in order to construct a 75-foot tall replacement silo to camouflage the antennas of a new telecommunications facility at 5 Wallace Road where a maximum height of 35-feet is permitted. At the same meeting, the Zoning Board voted to grant a special exception from Article VI, Section 275-39.B(5) in order to construct a new telecommunications facility within a 75-foot silo at the same location (see attached minutes from the ZBA meeting). The special exception was granted subject to the five following conditions:*

- 1. Submission to the Town by July 1<sup>st</sup> of every year of a radio frequency emissions test taken at the limits of the lease area and the property line to demonstrate compliance with the FCC regulations;*
- 2. Submission of the FAA determination of impact as required by Section 275-43.A(3) of the Zoning Ordinance;*
- 3. Submission of an as-built survey to verify the height and location of the silo;*
- 4. A final landscaping plan shall be submitted to the Planning Board for final approval; and*
- 5. The construction of the silo and materials used for the construction of the silo to be determined by the Planning Board.*

*At its November 21, 2017 meeting, the Zoning Board voted unanimously to deny a request for rehearing relating to its decisions on the variance and special exception applications filed by several residents residing in the nearby Greenfield Farms subdivision.*

*Ground-mounted telecommunications towers are permitted in all zoning districts of Bedford by special exception only, subject to the requirements of Article VI, Sections 275-37-45 of the Zoning Ordinance. As such, telecommunication tower proposals are somewhat unique in Bedford in that many of the site plan review functions are conducted by the Zoning Board, and the ZBA has already decided to permit the tower with the proposed tower design at the designated location. The decision to permit the facility and the placement and height of the tower cannot be revisited by the Planning Board. The Planning Board review of this application will be limited to site specific features of the site plan, including landscaping, screening, drainage, and other site requirements as noted in Section 275-42(2) of the Zoning Ordinance.*

*If approved, this facility would mark the ninth telecommunication tower in Bedford. The existing towers in town range in height from 98-feet to 187-feet and are chiefly located along the Route 101, Route 114, and South River Road corridors. This would be the first tower in the Residential*

*& Agricultural district and the lowest height facility in Bedford. It would also be the second stealth tower in town (an existing tower off Route 101 is disguised within a flagpole).*

### **III. Project Description:**

*The applicant proposes to construct a telecommunications facility at 5 Wallace Road to service an existing gap in wireless telecommunications coverage. Verizon Wireless would operate the facility and would provide two additional colocation facilities for other telecommunication providers. The site is located at the extreme southern end of Wallace Road adjacent to the Merrimack town line. The parcel is 4.1 acres in size and is sited among single-family homes and active agricultural land.*

*The parcel currently includes a single-family residence, a barn, and a farm silo. The applicant proposes to demolish the existing 55-foot tall silo and construct in its place a 75-foot tall silo to disguise the proposed telecommunications facilities. The applicant also proposes to construct an adjacent 12-foot by 26-foot equipment shelter to house mechanicals associated with the facility.*

*The silo and shelter will be located interior to the site adjacent to the existing barn and residence. The barn and residence form one large rambling structure that will completely surround the silo and shelter on the north and west sides, including from Wallace Road and the Greenfield Farms subdivision to the north. At 75-feet in height, the silo will be taller than the existing 35-foot barn and will be at least partially visible from most directions.*

*A four-foot wide gravel walkway would connect an existing gravel driveway at the site to the new farm silo and equipment shelter. A 15-foot wide access easement would allow for access between the existing gravel driveway and the site, however the applicant is not proposing an expansion of the driveway. The plan notes that the areas surrounding the silo and shelter disturbed for construction will be returned to their original conditions.*

*The 275-44 of the Zoning Ordinance requires telecommunications operators to post a removal bond to ensure that a telecommunications facility is removed and the site returned to its pre-construction condition within 90 days of the cessation of telecommunication activities (Condition #2).*

#### Architecture

*The applicant has submitted architectural elevations showing existing and proposed conditions from a number of different vantage points in the vicinity. The applicant notes that the silo will be of the same diameter of the existing silo and will mirror the existing design. The silo exterior will be clad in fiberglass and painted white. A brief architectural narrative is also included on Sheet 4 of the plans. The applicant notes that the roof will be in a fiberglass material and that the complex will be architecturally consistent with the existing buildings on the site. The plan should be updated to note the color of the roof (Condition #8). The equipment shelter will stand 14-feet tall and be clad in white vinyl siding. The structure will feature a pitched roof in asphalt shingles. Based on the information provided, it appears the silo and shelter will be reasonably consistent with the existing architecture of the buildings at the site, however, the applicant should bring samples of the exterior architectural materials and color samples to give the Board a better understanding of the architecture of the facility and its visual impacts.*

### Lighting

*The applicant proposes one motion activated exterior light mounted to the equipment shelter and facing to the south. From the lighting plan submitted, it appears as though illumination levels from the light will project as far as 60-feet and not encroach on to neighboring properties, however it is difficult to discern since the plan shows a limited area. The applicant should revise the lighting plan to include a wider scale area and display when illumination levels fall to zero (Condition #5). The applicant should also provide a detail for the exterior light so that staff can confirm it meets the Town's lighting requirements. The light will need to be fully downcast.*

### Landscaping

*A condition of the Zoning Board's approval of the special exception for the application was that the applicant submit a Landscape Plan for Planning Board approval. The applicant is proposing plantings surrounding the silo and along the eastern façade of the equipment shelter. The landscape plan includes red maple and flowering crabapple trees and several arborvitae plantings. The applicant is not proposing any fencing surrounding the compound and both the shelter and silo will be secured facilities.*

*Staff would recommend that the landscape plan be revised so that the plantings are placed in a more organic pattern, with fewer plantings surrounding the silo, as silos are not typically landscaped, and relocated to screen the equipment shelter. Staff would recommend that an additional eight evergreen trees be planted to screen the shelter and the entrance to the silo and to capture noise generated from mechanicals.*

### Utilities

*The applicant proposes to extend electricity underground from a pole located just south of the driveway. A propane tank will be sited underground between the shelter and the tower and will be protected by four bollards. All of the mechanicals associated with the facility will be fully enclosed within the proposed silo and equipment shelter.*

*The equipment shelter will house a generator that will power the facility when electric service is interrupted and HVAC facilities that will cool equipment on hot days. The generator will be operating for testing one half hour per week. The applicant submitted a noise assessment as part of its Zoning Board review that concluded noise generated from the facility would not rise above daytime ambient levels in surrounding areas. Staff would recommend a condition be added limiting testing of the generator to no more than 35 minutes per week and that the testing be conducted between the hours of 8 a.m. and 7 p.m. (Condition #9).*

### Stormwater

*There will be a minor expansion in impervious cover at the site due to the addition of the equipment shelter. The plan shows a roof infiltration basin positioned to the east of the shelter to capture and treat runoff from the structure. Since the silo will be the same diameter of the existing facility, it will not result in additional impervious cover, however the applicant is proposing to surround the facility with three-feet of crushed stone as an additional measure. The applicant submitted a Stormwater Evaluation that was reviewed by the Department of Public Works and the Town's consulting engineer, and no major issues were cited. The evaluation*

*concluded that there will be a slight reduction in peak stormwater discharge from the site under post-development conditions.*

#### **IV. Waiver Requests:**

*The Applicant has requested a waiver from the following sections of the Land Development Control Regulations (a letter from Victor Manougian will be distributed at the Planning Board meeting):*

- 1. Section 317.1.11 to waive the requirement to provide a High Intensity Soil Survey (HISS).*

*The applicant has submitted a comprehensive stormwater evaluation accounting for all runoff generated from the additional impervious surface. For this reason, and because the area of disturbance is very small, staff does not object to granting the waiver.*

#### **V. Staff Recommendations:**

*The Planning Board needs to vote on whether or not to grant the waivers from Section 317.1.11 of the Bedford Land Development Control Regulations.*

*The Planning Staff recommends that the Planning Board grant final site plan approval for the telecommunications facility to be constructed within a new 75-foot tall farm silo proposed by Cellco Partnership d/b/a Verizon Wireless, at 5 Wallace Road, Lot 39-45, as shown on the plans and architectural elevations by Hudson Design Group, LLC, last revised December 18 and December 19, 2017, with the following precedent conditions to be fulfilled within one year and prior to plan signature:*

- 1. The applicant shall address all outstanding technical review comments to the satisfaction of the Planning Director and the Director of Public Works.*
- 2. The applicant shall submit a removal bond issued to the Town to ensure the facility is removed and returned to its pre-construction condition within 90 days of a cessation of telecommunications use pursuant to the requirements of Section 275-44(1) of the Zoning Ordinance. The applicant shall provide the Planning Director with a revised cost estimate every five years pursuant to the requirements of Section 275-44(2) and provide a new bond if necessary.*
- 3. The applicant shall satisfy all conditions of the approval for the Special Exception granted by the Zoning Board on September 19, 2017.*
- 4. The applicant shall revise the landscape plan to include a minimum of eight additional evergreen trees to screen the equipment shelter and silo entrance. The landscaping plan shall also be revised such that plantings do not completely surround the silo. The revised landscape plan shall be to the satisfaction of the Planning Director.*
- 5. The applicant shall revise the lighting plan to show a larger scale area when illumination levels fall to zero. The revised plan shall be to the satisfaction of the Planning Director.*
- 6. The applicant shall provide a detail for the exterior light.*
- 7. Testing of the generator at the site shall be limited to a maximum of 35 minutes per week and shall occur between the hours of 8 a.m. and 7 p.m.*
- 8. The applicant shall update the plan to note the exterior color of the roof of the silo.*
- 9. The applicant shall pay any outstanding engineering review fees, if any, to the Town.*

10. *All waivers granted by the Planning Board shall be noted on the plan along with date of approval.*
11. *Prior to the issuance of a certificate of occupancy or use of the site, all site improvements depicted on the plan shall be completed.*

Chairman Levenstein stated before we get too far into this; we received an email on Sunday. Ms. Hebert stated we received an email last night and this afternoon regarding how the proposed zoning amendment that requires a 750 foot setback to the nearest residentially zoned property might impact this proposed cell tower, which is, I am not sure exactly what the setback is to the property. Mr. Connors stated it comes about to 85 feet. Ms. Hebert stated 85 feet to the property line and is proposed to be 65 feet tall, and how this zoning amendment may or may not impact the proposed application. The proposed tower at 5 Wallace Road has received Zoning Board approval of a Special Exception for the location and for the tower and for the use, but the application has not yet been before the Planning Board and has not received site plan approval. RSA 676:12 addresses when zoning amendments might impact a pending Planning Board application, and RSA 676:12 states that Planning Board applications that have been the subject of public notice, so our certified mailings have been sent to the required notifications to the required abutters and the notice of the public hearing has been posted in a newspaper of local distribution at least 10 days prior to the public hearing, then if the application has been the subject of public notice before the Planning Board sets the legal notice for the proposed zoning amendments, then this application is then vested from changes to the zoning. The notices for this particular application were sent on November 22, 2017 and the notices were received as certified mailings between November 22, 2017 and December 1, 2017 and the first legal notice for the proposed zoning amendments, which we just discussed, was published in the newspaper on December 22, 2017. Notice was sent before the Planning Board made notice of their zoning amendments, so the general interpretation would be that this application would not be subject to any proposed changes to the zoning. However, the residents and abutters have pointed out to staff that there is also a section in the Planning Board Rules of Procedure which states that no plats or plans shall be advertised for a public hearing until a complete application and checklist have been submitted. When the notice was sent to abutters, staff did not yet have a complete checklist. It was kind of a technical error and they submitted the wrong form but had submitted material for the public hearing. In Bedford the Planning Board typically accepts an application as complete and opens the public hearing at the same meeting. We don't set an application for acceptance and then at that meeting set it for a public hearing 30 days later, which is something that is spelled out in our Planning Board Rules of Procedure. So staff believes that when the notice was mailed, the provisions of RSA 676:12 were initiated, but we would like to review this issue with Town counsel, with our Town attorney, and get some advice on how the notification and the Planning Board's Rules of Procedure may or may not impact the proposed zoning amendment and how it may influence the application. Ms. McGinley asked you are talking about a zoning application, not a zoning amendment? Is that right? Ms. Hebert replied I am talking about a zoning amendment. Ms. McGinley stated the previous one discussed. Ms. Hebert replied yes; the zoning amendment that requires the 750 foot setback.

Attorney Victor Manougian from McLane, Middleton Professional Association was present to address this application for the applicant, Cellco Partnership d/b/a Verizon Wireless.

Attorney Manougian asked would Mr. Chairman like me to address that before I address anything else? Chairman Levenstein replied absolutely.

Attorney Manougian stated frankly I will say that is unfair to the applicant, staff and this Board to raise this issue at the 11<sup>th</sup> hour when these issues have been out there since the dates that are listed in the memo that was given to the Board today from the Planning Department staff, so this put everybody in a pressure cooker. Your Assistant Planning Director was in contact with me, he politely asked me twice to continue the hearing pending a decision from your legal counsel on the issues raised, but we felt that because of the time that has gone by that we would like to appear tonight and ask you to only find the application complete and then continue the hearing so that you can get any decisions from your legal counsel, and ultimately if that supports what we believe it should, hear the site plan review application on the merits. I will add that I have caused my own grief in this because I was the first one to continue the initial hearing from November to December. I had filed my application in hand on October 5, 2017 for site plan review, it was reviewed the next day by staff, but when I received a call from Mr. Connors indicating that the abutters had retained counsel and filed a request for rehearing with the Zoning Board, he suggested that this Board wouldn't want to hear me until that was acted on. So I agreed, I put it off, and then as it happens with all site plan review applications that I do, there is a lot of back and forth between an applicant and staff and this is not abnormal. I personally submitted the design review application, which is the form that everybody is talking about and that was my error, so we resubmitted that. Since the initial filing we have submitted a response dated November 15, 2017 from Hudson Design Group to the initial staff memo dated November 2, 2017 and then ultimately on December 20, 2017 we filed with staff revised drawings, a stormwater evaluation, revised zoning drawings, final non-residential site plan review application checklist that caused my angina, and revised photo sims to address some issues. We would like to proceed with a determination on complete lists and then request that if you do that, continue pending the two items I stated.

Attorney Manougian stated I do also want to add in the correspondence that has gone from the opponents to staff today that there are a lot of allegations that say that the Assistant Planning Director stated that the application and checklist are incomplete in his November 28, 2017 email to myself. He never stated that the application was incomplete. What he stated was "A key point is that the applicant did not submit a completed checklist for final site plan approval." This was comment six in his latest memo at that time. Without beating the issue to death, again, the memo that you have before you from staff talks about RSA 676:12 and how Section 6 exempts the situation that the opponents are drawing as a smokescreen right now, but the argument that our application is vested from the proposed changes of the Zoning Ordinance comes from that section, specifically Section 6 exempts our application because it was the subject of notice, so public notice to the public before the abutters filed their citizens' petition to amend the Zoning Ordinance. So contrary to what they have been raising to staff and through their correspondence, the status of vesting against the proposed changes to the Zoning Ordinance is based on that application being the subject of notice, not the formal acceptance of a final or complete application by this Board. For all those reasons, we would ask that you at least review it for completeness today and then defer it to our legal counsel for an opinion. Ms. Hebert stated procedurally the Board did accept this application as complete when we read the agenda at the beginning of the meeting.

Chairman Levenstein asked Ms. Hebert, when you get an opinion from the Town Attorney, can you also ask him to state what the effects of; the whole way this thing works is that we are not reviewing whether they can have a cell tower or not, the Zoning Board has already determined that, so I don't know whether even these amendments have any application role to what we are doing here today. We are just reviewing the site plan. Ms. Hebert responded we can review that with the Town Attorney. RSA 676:12 does not address Zoning Board applications, it addresses applications that are the subject of notice for the Planning Board. Chairman Levenstein stated but the fact that they already have the Special Exception doesn't mean the Zoning Ordinance, they have already been found to have gone beyond the Zoning Ordinance, the Zoning Board has already given them permission despite the fact that it wasn't within the Zoning Ordinance. Ms. McGinley asked would your question also encompass whether any petition to zoning changes also are not effective on Zoning Board of Adjustment applications which was granted? Chairman Levenstein responded right; the Special Exception.

Councilor Bandazian stated I take it it will be clear to the Town attorney what the incompleteness was because it is not clear to me. Ms. Hebert responded sure. The Planning Board's Rules of Procedure Section 7.4 states that no plats or plans shall be advertised for a public hearing until a complete application and checklist have been submitted. Now staff doesn't determine the application complete, the Planning Board determines the application complete and accepts the application for public hearing at the beginning of each meeting when we read the Planning Board agenda, and it has been Town's practice to do that at the same time as you hold the public hearing. Some towns do it in a 2-step process. It is my understanding the abutters are concerned that the application was noticed for a public hearing when we did not have the correct checklist. Councilor Bandazian asked were the items that correct checklist required filed? Ms. Hebert replied yes. It really is a technical issue. We have two checklists; we have a design checklist and a final site plan checklist. They are attached together in a single pdf and it is actually a very common mistake. We see people take the checklist that is on top and they fill it out and that is the design review checklist. It is a common mistake; I think it is also not uncommon for the Board to have items that need to be either provided as a condition of approval to staff. This application hasn't followed a different procedure or a different protocol than how we treat other applications. Mr. Fairman stated it seems like these questions really don't have any effect on the action of this Board. It more affects the overall approval perhaps, but doesn't affect the actions of this Board, so we should proceed.

Vice Chairman Newberry asked Mr. Chairman, would you like a motion to table? I think the unfortunate fact that this question came up at literally the last minute didn't allow staff to research and respond fully to it and certainly hasn't allowed time for the Board to consider the question. I think I heard staff think that they need some time to resolve this question, so I will make the motion to table.

**MOTION by Vice Chairman Newberry that the Planning Board table the application of Celco Partnership d/b/a Verizon Wireless (Applicant), Swenson Trust (Owners) for final site plan approval to construct a telecommunications facility within a new 75-foot tall farm silo at 5 Wallace Road, Lot 39-45, Zoned R&A to the January 22, 2018 Planning Board meeting. Mr. Hawkins duly seconded the**

**motion.**

Mr. Foote stated I made a comment some time ago that wasn't reflected about two driveways in Bedford on that one parcel. Is that going to be rectified/modified accordingly or is that not part of the proposal? Ms. Hebert responded right now we are talking about how the proposed zoning amendments effect the application. Mr. Foote responded I understand, but at the last meeting we were all over the place and I don't want to be that guy when they come back on January 22, 2018. I am trying to put someone on notice. Mr. Connors stated we raised the issue with the applicant; I think they are going to discuss it with the property owner, but we haven't come to a conclusion on that. Attorney Manougian stated that was raised to me and my statement to Mr. Connors at this 11<sup>th</sup> hour I don't have the authority without going to the landowner, so we would have to go to the landowner and raise that, so that was the first time that I had heard it.

Attorney Manougian stated if I may, Mr. Chairman, if I had made my opening it was going to start with it is not if the tower will be built, it is how it will be built and that is what we are here for site plan review, and I agree with you, we will do whatever this Board thinks is proper.

Town Manager Sawyer stated if we could clarify in the motion that this motion will serve as public notice, so there won't be any new notification to the public.

**Vice Chairman Newberry and Mr. Hawkins agreed to amend the motion to add at the end of the motion "and this motion will serve as public notice."**

**Chairman Levenstein called for a vote on the motion as amended. With all members voting in the affirmative, the amended motion carried.**

V. Approval of Minutes of Previous Meetings:

**MOTION by Town Manager Sawyer to approve the minutes of the December 18, 2017 Planning Board meeting as submitted. Councilor Bandazian duly seconded the motion. Vote taken; motion carried, with Mr. Hawkins and Mr. McMahan abstained.**

VI. Communications to the Board: None

VII. Reports of Committees: None

VIII. Adjournment:

**MOTION by Mr. McMahan to adjourn at 8:47 p.m. Mr. Hawkins duly seconded the motion. Vote taken – all in favor. Motion carried.**