

**Town of Cape Elizabeth
Ordinance Committee Minutes**

March 30, 2022

6:30 p.m.

Remote

Public proceedings by remote access for Town Council meetings are authorized by the Town of Cape Elizabeth's Remote Participation Policy adopted August 30, 2021 and the Order Declaring a Limited Emergency extended to June 30, 2022.

Members Present: Penny Jordan, Chair
Caitlin Jordan
Gretchen Noonan

Guests: Nicole Boucher, Tim Reiniger

Staff: Maureen O'Meara, Town Planner

Councilor Penny Jordan called the meeting to order at 6:30 p.m.

Minutes

The minutes of the February 9, 2022 and March 23, 2022 meetings were approved 3-0.

Public Comment

No one present wished to comment.

Wima

Steven Webster, Wireless Expertise LLC, has submitted his final report for the Wima study and asked the committee how it would like to proceed.

Chair Jordan said the committee ended at the last meeting with asking for more coverage to be added. She would like to hear about the fiber rings and pricing, and guidance on density of cell and how that relates to the rings. The other committee members concurred.

Mr. Webster reviewed that the purpose of the report is to improve coverage with minimal aesthetic impact. He modeled the coverage for the four existing wireless carriers, Verizon, AT&T, Sprint, and US Cellular and imagined they were all located on the existing towers. He reviewed the tower locations and noted that the closest Scarborough tower does not contribute to Cape coverage, but that South Portland does.

Good coverage is shown in green, yellow is good coverage outdoors, and white is no coverage. He has identified small cell locations, mostly on existing utility poles, where the cell would be

located within the “communication area” of the pole. In some locations, a slim pole or stealth canister will be needed in newer neighborhoods where utilities are buried. He has included an 80’ tall monopole on the school campus. He noted that height is good, but proximity is what matters and forested areas are absorbing the radio signal and killing the signal.

He referenced the table in the report with all proposed small cell sites, with approximate locations, lat/long, and number of population served by each site. He has included a new 50’ pole at the Cape Cottage Fire Station and at the old fire station in Fort Williams Park. Marginal coverage is where there are no houses, but coverage should be adequate for someone outside to call for help.

Chair Jordan asked if this density of cell sites is typical? Mr. Webster referenced his neighborhood in Oregon and concluded that the density needed to overcome foliage is “insane.” Cape is, on average, more treed than other places so coverage is harder to create. His original design had fewer cell sites to keep the cost down, and then he was directed to boost coverage so more sites were added. The sites would include a battery box and antenna, connected with a fiber grid. Once you invest in the whole town as fiber ready, there is potential for more services. He described the benefit of fiber loops over laterals to create the potential to reroute service if there is a break.

Chair Jordan asked about the cost estimate. Mr. Webster said the majority of the cost is fiber. The cost per mile for fiber on existing poles is \$26,000, and \$60,000 underground. He checked with installers and \$1.2 million is roughly on target for cost.

Chair Jordan praised the report as dense and all the data we need to make decisions. Can we use this to create an RFP? Mr. Webster agreed the information should be sufficient.

Chair Jordan asked about trends he is seeing? Mr. Webster directed the town to the state broadband office to inquire about available subsidies. He and Chair Jordan mentioned Tilson as a potential company for the town to work with.

Councilor Caitlin Jordan praised the report.

Councilor Noonan also praised the report and wanted to confirm that coverage could not be provided simply, for example, by installing 6 big towers? This is why we need fiber?

Mr. Webster confirmed that adding large towers will not give you the coverage you want because of foliage. For example, if you look at the coverage around the Portland Water District water tower, coverage for near neighbors is not good due to foliage and topography drop-off.

Chair Jordan asked how well a fiber investment will position the town? Mr. Webster feels it would be a good investment as fiber will not be replaced soon by technological improvements.

Public Comment

Francis Walsh, 51 Starboard Dr - He is calling from Florida and has questions. Does the town own the poles? He is familiar with "last mile" grants in Vermont. Are we looking into grants? He looked at the chart with the fiber costs and that is a lot of cost. Is there some way we can reduce costs with grants?

Mr. Webster said the town will need to contact the state broadband office. FCC maps show the town has coverage.

Chair Jordan said the next step for the town is looking at implementation, funding, possible RFP. Are we ready to bring it to the Town Council as a recommendation?

Councilors Noonan and Caitlin Jordan support moving it forward and a motion was made to recommend this to the Town Council by a vote of 3-0.

Food Truck Amendments Public Comment

Jamie Wagner, 30 Hannaford Cove Rd - He also has an office in the town center. He wants the number of days increased when a food truck can operate. We have limited commercial space, only 5 restaurants plus the Well and Lobster Shack in the summer. He does not want to limit food trucks in the Town Center. Two hundred people signed a petition at the Lumbery last year. The concerns seem anti-competitive.

Chair Jordan said that a food truck park requires site plan review.

Mr. Wagner was not sure and would look at the ordinance, and if site plan review is needed, so be it. Jason Williams, operating on your farm, is essentially a food truck and an asset. Chair Jordan clarified the Well is not mobile.

Francis "Dutch" Walsh, 51 Starboard Dr - He agrees with Mr. Wagner that the 5/15 number of days is too limited for the public to realize the food trucks are available. As a former planner and town manager in Vermont, he supported a Jamaican food truck which is now popular and attracts people to the area. The Town Center is nice but lacks food places. Food truck owners will obey the rules.

Chair Jordan asked what the number should be?

Dutch suggested talking to food truck owners and do a survey of those businesses.

Mike Friedland, 287 Ocean House Rd - The Town center is supposed to be boisterous. He has nothing against dentists and realtors, but he wants to increase the number of days to at least 30 days. He does not support getting a permit from the Town Council and would rather the permit be stamped by the code enforcement officer.

Chair Jordan confirmed that Mr. Friedland understood why food trucks are not unlimited, but he challenges the permit and Town Council approval process.

Mr. Friedland contacted the food truck owners of Crepe Elizabeth, Brandy Hoff and Loni Stinson, who wrote a letter he read. Cape Elizabeth has been restrictive, with hoops to go through, and they have been approached by the Lumbery and Fiddleheads. They do not support the day limits and Town Council approval requirement for more than 5 days.

Chair Jordan confirmed that Mr. Friedland wants to increase the 15 days to 30 days. The town can reassess after seeing how many commercial properties want to host a food truck.

Food truck amendments review

Councilor Noonan remains concerned with potential traffic and parking impacts. There are some places where there is already not much parking. She also noted that businesses that have gone through site plan review and food trucks may use up those spaces. She can be flexible but is also concerned with safety and competition with fixed location businesses. We have 8-9 food related businesses now, establishments that have invested in the town, beautified their properties and pay taxes. 50-60 days will impact fixed businesses. We have heard from business owners, so she likes the draft, but would be willing to increase to 20 days.

Councilor Caitlin Jordan agrees and is also flexible on the number of days. She does not support unlimited days. Food trucks can park at a site that already has a purpose. For example, food trucks at Gull Crest might also impact how some enjoy the space, so we need to balance that.

Councilor Noonan noted that a food truck park can happen, with a planning process that takes impacts into consideration.

Chair Jordan concurs. This creates an opportunity for food trucks. A food truck park is a business, noting the site plan review process undertaken in Saco for a food truck park. We are addressing the needs of neighborhoods and allowing food trucks on public and private property in the Town Center. We are balancing allowing businesses to create events. If you want a food truck park, it should be reviewed by the Planning Board as a business. We can revisit the number of days.

Chair Jordan asked if the committee wants the Town Council to be the permit authority?

Councilor Noonan observed that the same application needs to be submitted and answers are no more onerous. She wants to make sure there is adequate coordination of locations with community groups, so the Town Council should have eyes on the applications.

Chair Jordan concurred that it gives the Town Council the opportunity to monitor activity, to see if we want to grow it.

Councilor Caitlin Jordan noted that if you miss the Town Council submission deadline, you can get the application approved by the code enforcement officer faster, but applicants should plan ahead. For the first year, it should stay with the Town Council, and perhaps transition to the Code Enforcement Officer if a ½ time CEO is added.

The committee agreed it did not have to review the entire text of the amendment again. The committee agreed to increase the Food Truck special permit days from 15 to 20 days.

The committee voted 3-0 to recommend the Food Truck Amendments to the Town Council.

Technical Amendments Public comment

Julie Armstrong, 31 Lawson Rd - She noted the memo previously submitted and commented on highlights. Sec. 19-4-3 does not apply to the Shoreland Zone and Resource Protection districts. The zoning ordinance promotes conformities and the staff interpretation is wrong. She does not want the changes proposed, or at least do not make the changes until after a public hearing.

Technical Amendments discussion

Chair Jordan asked Ms. O'Meara to review a chart summarizing the three nonconforming sections.

Ms. O'Meara shared the chart and reviewed nonconforming provisions for base zoning, Shoreland Zoning and Resource Protection zoning. Other overlay zones may also apply. The Shoreland Zoning nonconforming provisions do not include all the requirements of the base zone or other overlay zones. All provisions in all the zones that apply to a lot should be met, not just the Shoreland Zoning provisions.

Chair Jordan said the revisions are changes. Might there be litigation and what options does the committee have?

Ms. O'Meara said the proposed changes are recommended by staff based on experience with the ordinance, however the committee can remove these changes from the Technical Amendments package. While the zoning ordinance promotes conformities, it also explicitly allows for nonconformities, including allowing expansions in the Shoreland Zone for structures that do not meet the current setback requirement of 75'.

Councilor Noonan noted that the town policy will not change, but the wording is different.

Chair Jordan asked about a lawsuit. Ms. O'Meara said that is likely, and would be based on the current ordinance language. Litigation is always a possibility, and staff are recommending clarifying changes.

Chair Jordan and Councilor Caitlin Jordan agreed to leave the section as is and remove the changes from the amendments package. Councilor Noonan supported changing it because the policy will not change. The committee voted 2-1 (Noonan) to remove the changes to Sec. 19-4-3.

The committee discussed the regulation of wood storage sheds. Chair Jordan noted that Councilor Caitlin Jordan earlier observed that wood stacks are not required to be set back from the property line, so why require a setback for a wood storage structure?

Ms. O'Meara shared the December 7, 2021 Planning Board amendments draft that included a wood storage shed exemption.

Councilor Noonan agreed with Councilor Garvin that she wouldn't think a permit is needed and it is common sense. Committee members agreed.

Councilor Noonan asked about possible problems. Ms. O'Meara noted that sheds do require a setback.

The committee discussed how many open sides the wood storage shelter should have and that it needs nice air circulation.

Councilor Noonan suggested that the exemption wording include that the shelter "shall only be used for the storage of wood." The committee agreed to add back in the wood storage shelter text plus the limit on wood storage only, and Chair Jordan said we should all be good neighbors.

As amended, the committee voted 3-0 to send the Technical Amendments to the Town Council.

Next meeting

Chair Jordan asked about pending items. Reef Road parking is pending, but more items may be referred after the April 11th Town Council meeting. The committee agreed that there are already a lot of meetings in April, and so scheduled the next Ordinance committee meeting for May 11th, beginning at 7:00 p.m., to be held in person.

The meeting adjourned at 8:11 p.m.