



# CITY OF BELFAST

131 Church Street  
Belfast, Maine 04915

**Joseph J. Slocum**  
City Manager

**E-mail:** jslocum@cityofbelfast.org

**Tel:** (207) 338-3370 ext. 10

**Fax:** (207) 338-2419

## MANAGER'S REPORT

Belfast City Council Meeting  
Tuesday, November 3, 2015  
7:00 p.m.

**TO: Mayor Walter Ash Jr. and Honorable Members of Belfast City Council**

**FROM:** Joseph J. Slocum, City Manager

**DATE:** Friday, October 30, 2015

### Agenda Items:

**10-A** Request to remove a tree in the City right-of-way on Congress Street between CMP poles 15 and 16.

In your packet is both a photograph of this tree and a memo from CMP indicating that the terminal leader had no appreciable foliage this season, there is considerable die-back in the crown and also very large open cavity with stress fractures above and below it. We will not give permission to cut this tree down without Council authority. We have posted it for two weeks and have not received any calls or complaints about its potential removal.

**10-B** Request to authorize the CMP pole permit for a new pole on Pitcher Road for the Solar Project at the landfill.

As part of the Solar Project at the landfill we need to install pole to transmit electricity generated. It would be installed on Pitcher Road next to the old landfill.

**10-C** Request from the Economic Development Director to authorize a \$400,000 grant application to the US EPA Brownfield Assessment Program.

If we are lucky this will be our third grant. Economic Development Director Thomas Kittredge has successfully secured two previous grants which have been largely used to help private property owners evaluate the environmental conditions on their property so that they can be prepared for redevelopment. This federal program first identifies, through a phase 1 and phase 2 process, the type of contamination that is present. There are loans and low risk grants to different types of property owners to help deal with the cleanup. The City itself was successful in getting a \$200,000 grant to cleanup 45 Front Street which is currently in progress.

**10-D** Request to authorize an application to Maine DEP Brownfield Revolving Loan Fund for grant assistance in the cleanup of 45 Front Street.

45 Front Street is the site of the former rail warehouse building we just tore down. We've identified some petroleum based contamination on the site and we would like to apply to the State to get some of their Brownfield funding to help pay and take care the cleanup of this petroleum based contamination.

**10-E** Request to transfer \$4,700 to account 730 – 823 from the Airport Runway Reserve for additional survey work related to the Parallel Taxiway Project.

The City is currently working with its consultant to undertake an environmental assessment, permitting and preliminary design in support of a future construction of a parallel taxiway at the Belfast Municipal Airport. This is entirely and exclusively a safety issue.

As part of that effort our consultant needs to design a storm water management system that will meet DEP storm water quality standards. Because of the shallow bedrock conditions and other properties of the soil we now need to acquire additional topographic survey data in an area outside the area we originally surveyed. This additional survey and topographic data will cost \$4,700. We need to spend this now and hope to be reimbursed 95% of this amount of money in 2017 as part of the construction project itself.

**10-F** Request to transfer up to \$15,786.67 from the Airport Runway Reserve Account to be used as a local match for the acquisition of avigation easements on private properties near the Airport.

The community will recall that the City is involved in the removal of certain vegetative growth from various approach areas to the existing Belfast Airport runway. The FAA requires certain airspaces to be maintained and this effort is designed to enable us to

do this. We currently have many easements over private property which allows us to trim trees when they grow beyond a certain height and to make sure that artificial structures do not penetrate the required airspace.

The alternative to removing some of this vegetation would be to reduce the size of the Airport and we do not see that as a viable option for this important resource. Accordingly the City is preparing to pursue the negotiation of easements across some private properties in the neighborhood of the Airport that will enable us to trim or remove vegetation that challenges required airspace.

This is an awkward process because at this point in time we have to guesstimate what we think just might be the value of these easements even though no federally required appraisals have been done. We actually have to apply for the grant first and then use that grant to pay for the appraisals and eventually compensate the property owners for this intrusion. There is a memo in your packet from Economic Development Director Thomas Kittredge explaining this.

We should note that we are proceeding to secure fewer easements than we would like to which is the direct result of the amount of funding we will have available. Currently the City only has \$215,733 in available funds and this money would represent our 5% match. If additional funding becomes available we will be back to discuss this with the Council.

**10-G** Request from the City Manager to take lease payments received from the Low Hanger at the Belfast Municipal Airport and deposit them in a Capital Projects Fund to maintain that Hanger.

We have recently leased this facility for three years. It is an older facility that was privately built. It will need upkeep as time and circumstance warrant and I recommend that we take the rent from this lease and set it aside in a special Capital Project Account to make sure that we can take of this building over time.

**10-H** Discussion on the 2016 – 2017 budget and any and all Council requested budget analysis.

Taxes and budget challenges are a big issue. We finished this year's budget just three months ago and the next budget year starts July 1, 2016. This is the beginning of the budget process, and an opportunity for Council members to ask for certain information or analyses that will help them prepare for and approve an eventual budget. We also have various committees that would like to discuss their Capital needs for various projects that they would like Council to support.

**10-I** Discussion on a request to add equipment to a phone tower on the East Side that revealed a conflict between Belfast Zoning Ordinance and Federal Regulation.

Under our current City Zoning Ordinance there are specific rules which prohibit any additional equipment being placed on the cell phone towers on the East Side. We have an applicant who was originally denied access to add equipment to this tower. Further research has indicated that the issue is now preempted by federal law and the Code Enforcement Officer may have to issue a permit to conduct an activity that is not authorized under our local law. Many residents of the East Side of Belfast were not excited about the cell tower being expanded in function. We thought it would be appropriate to have a public discussion to identify why we are unable to enforce this local ordinance.

We hope to have a letter discussing this issue from City Attorney William Kelly.

**10-J** Request to schedule Work Sessions on Council Goals and the Manager Evaluation.

**10-K** Request from the City Manager to go into Executive Session to discuss a legal matter involving real estate pursuant to 1 MRSA 405 (6) C.

**10-L** Discussion and possible action on certain lien rights belonging to the City.

The City is a holder of a lien on a piece of real estate in Belfast and may entertain the release of that lien under certain conditions.

**10-M** Request from the City Manager to go into Executive Session to discuss a personnel issue pursuant to 1 MRSA 405 (6) A.

## **10-N Signing of Council Orders**

That's about it for now.

Don't forget that Tuesday, November 3<sup>rd</sup> is also Election Day. The City's polls are located at the Boathouse for Wards 1, 2, 3 and 4 ----and at the Methodist Church on the East Side for Ward 5 and are open from 7 AM to 8 PM.

Halloween is tomorrow night; please watch out for the kids particularly those who are dressed in dark costumes. Thanks to the local groups individuals and institutions that help make this a special night every year in Belfast.

**City of Belfast  
Consent Agenda  
Tuesday, November 3, 2015  
Meeting #9**

The following items are proposed as our Consent Agenda. As in the past the items are voted on in one blanket motion to the affirmative. One Councilor makes a motion to approve the items as stated, and then another Councilor will second that motion and the whole Council votes. If a Councilor requests an item be removed from the consent agenda, they do so during the adoption of the agenda. If a member of the public requests that an item be removed from the consent agenda, they can do so in the open to the public section. Suggested motions are listed and supporting material is enclosed.

**9) Permits, Petitions and Licenses - Consent Agenda**

**A. Request to approve a license for coin-operated machines for Capital Pizza Huts d/b/a Pizza Hut located at 15 Belmont Avenue, Belfast, Maine.**

Motion to approve a license for coin-operated machines for Capital Pizza Huts d/b/a Pizza Hut located at 15 Belmont Avenue, Belfast, Maine.

**B. Request to approve a license for coin-operated machines for Lafayette Belfast LLC d/b/a Fireside Inn located at 159 Searsport Avenue, Belfast, Maine.**

Motion to approve license for coin-operated machines for Lafayette Belfast LLC d/b/a Fireside Inn located at 159 Searsport Avenue, Belfast, Maine.

**C. Request to approve an off premises catering permit for the Crusty Crab LLC d/b/a The Front Street Pub for a Halloween Party from 11:00 a.m. on October 30<sup>th</sup> to 1:00 a.m. on October 31<sup>st</sup>, 2015 located at The Front Street Pub, 37 Front Street, Belfast, Maine, interior and exterior (parking lot of premise).**

Motion to approve an off premises catering permit for the Crusty Crab LLC d/b/a The Front Street Pub for a Halloween Party from 11:00 a.m. on October 30<sup>th</sup> to 1:00 a.m. on October 31<sup>st</sup>, 2015 located at The Front Street Pub, 37 Front Street, Belfast, Maine, interior and exterior (parking lot of premise).

**D. Request to approve an off premises catering permit for the Otis Group Inc. d/b/a Rollie's Bar & Grill for the Chamber of Commerce Business After Hours event on October 28, 2015 from 5:00 p.m. to 7:00 p.m. located at the Belfast Boathouse, 34 Commercial Street, Belfast, Maine.**

Motion to approve an off premises catering permit for the Otis Group Inc. d/b/a Rollie's Bar & Grill for the Chamber of Commerce Business After Hours event on October 28, 2015 from 5:00 p.m. to 7:00 p.m. located at the Belfast Boathouse, 34 Commercial Street, Belfast, Maine.



**City of  
Belfast**

10.A

Manda Cushman <managersasst@cityofbelfast.org>

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## Tree Removal on Congress Street

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Spiegel, Kristyon C <Kristyon.Spiegel@cmpco.com>

Tue, Oct 27, 2015 at  
4:36 PM

To: Manda Cushman <managersasst@cityofbelfast.org>

Manda,

As we discussed at our chance meeting on Congress St. today, there are a number of factors that necessitate the removal of this tree. The large, terminal leader that faces the street had **no appreciable** foliage on it this season. There was considerable die-back in the crown, which is indicative that the tree is in trouble. There is also a very large open cavity with stress fractures above and below. I suspect that this cavity extends into a column of rot, higher than what can be seen from the ground.

In addition, if we were to prune off just the dying portion of the tree, that would leave only the small leader on the back, which is not enough to sustain the tree. I don't think that the end result would be aesthetically pleasing to the homeowner nor the City, if three quarters of the tree were cut down.

Thanks-

Kris

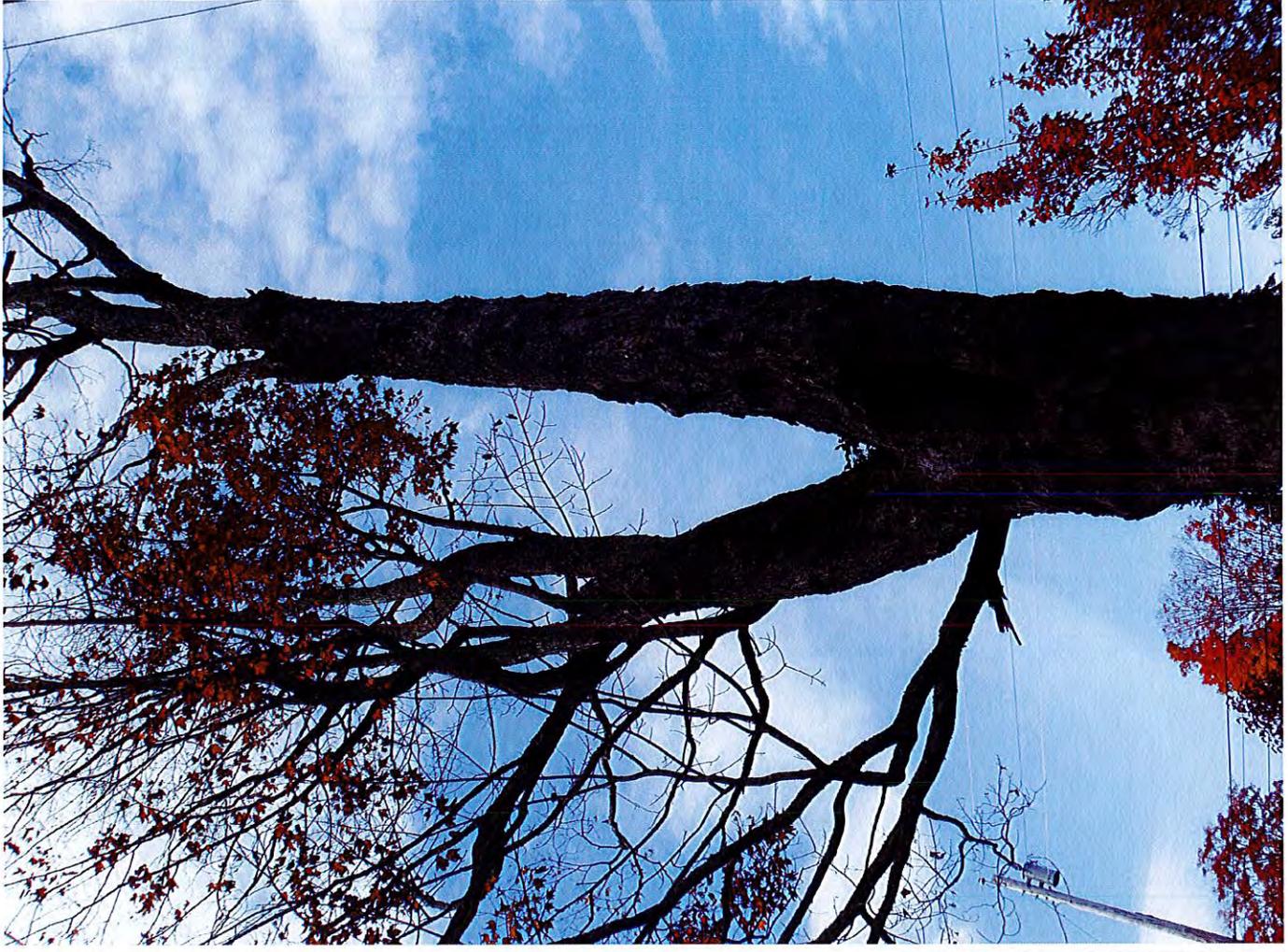
**From:** Manda Cushman [mailto:[managersasst@cityofbelfast.org](mailto:managersasst@cityofbelfast.org)]

**Sent:** Monday, October 26, 2015 9:33 AM

[Quoted text hidden]

[Quoted text hidden]

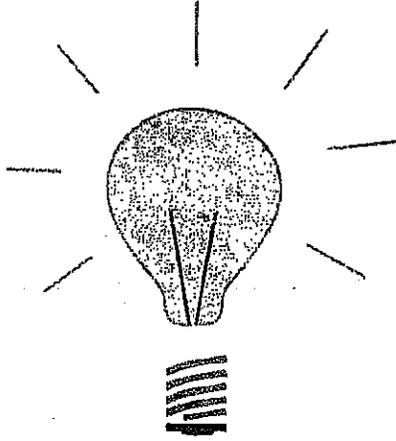
[Quoted text hidden]



Congress Street – between CMP poles #15 & 16

OK  
B.B.

10.B



# CENTRAL MAINE POWER COMPANY

## Line Clerks New Service

205 Center Rd  
Fairfield, ME 04937  
Fax: (207) 629-4752

Date: 10-7-15

To: Belfast

Fax #: 338-6222

Sender: Quinta

Pole Permit

You should receive 4 page(s), including this cover sheet. If you do not receive all the pages, please call the sender.

2076949696

01:16:28 p.m.

10-05-2016

4/4

Form 4503

Notification: 10300146255

Work Order: 801000062256

### LOCATION PERMIT

Upon the Application of Center Maine Power Company and Northern New England Telephone Operations LLC ,  
 dated Oct 5, 2015 , asking for permission, in accordance with law, to construct and  
 maintain poles, buried cables, conduits, and transformers, together with attached facilities and appurtenances  
 over, under, along or across certain highways and public roads in the location described in said application,  
 permission is hereby given to construct, reconstruct, maintain and relocate in substantially the same location,  
 said facilities and appurtenances in the City / Town of BELFAST  
 approximately located as follows:

1. Starting Point: ROUTE 3
2. Road (State & CMP): PITCHER ROAD/ PITCHER ROAD
3. Direction: NORTH EAST
4. Distance: 5027 feet
5. Number of Poles: 1

Facilities shall consist of wood poles and appurtenances with a minimum of wire and cable not less than 18 feet over the public highway and/or buried cables or conduit and appurtenances placed a minimum depth of 36 inches under pavement and 30 inches elsewhere, all in a manner conforming to the National Electric Safety Code.

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Municipal Officers

Office of the \_\_\_\_\_

Received and Recorded in Book \_\_\_\_\_, Page \_\_\_\_\_

Attest: \_\_\_\_\_

Clerk

2075949696

01:14:55 p.m.

10-05-2015

2/4

Form 4501

Notification: 10300146255

Work Order: 801000062256

CENTRAL MAINE POWER COMPANY  
APPLICATION FOR POLE LOCATION OR UNDERGROUND LOCATION

In the City/Town of: BELFAST, Maine

To the:  City

Town

County of: Waldo, Maine

Central Maine Power hereby applies for permission to:

Construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.

Construct and maintain buried cables, conduits, manholes and handholes, together with wire and cables, transformers, cutouts, and other equipment therein, under, along, and across certain streets and highways in said City/Town as described below.

Central Maine Power Company and

Northern New England Telephone Operations LLC

jointly apply for permission to construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.

1. Starting Point: ROUTE 3

2. Road (State & CMP): PITCHER ROAD/ PITCHER ROAD

3. Direction: NORTH EAST

4. Distance: 5027 feet

5. Number of Poles: 1

Overhead wires shall have a minimum clearance of 18 feet over the public highway and be constructed to conform with the requirements of the National Electric Safety Code.

Buried cable facilities shall be placed at a minimum depth of 36 inches under pavement and 30 inches elsewhere and be constructed to conform with the requirements of the National Electric Safety Code.

Any person, firm, or corporation to be adversely affected by this proposed location shall file a written objection with the State Department of Transportation, City, Town or County stating the cause of said objection within fourteen (14) days after the publication of this notice or ninety (90) days after installation of facilities without publication.

Public Notice of this application has been given by publishing the text of the same

Not Published

In:

On:

CENTRAL MAINE POWER COMPANY

Northern New England Telephone Operations LLC

By: RICHARD LEACH

Date: Oct 5, 2015

By:

*Daniel G. Galt* Date: 10/7/15  
*for Stephen Polych*  
*Acting ROW Manager - Maine*



10.C

Request by the Economic Development Director to have the City Council authorize the submission of a \$400,000 grant application to the U.S. EPA Brownfields Assessment Program.

The City of Belfast has previously secured (in 2011 and in 2013) two grants from the U.S. Environmental Protection Agency (EPA) totaling \$600,000. For owners, developers, and/or prospective purchasers of commercial and industrial properties in Belfast that have redevelopment potential, but are currently vacant or underutilized due to known or perceived contamination from by petroleum or other potential hazardous materials (or just the perception of contamination), the City can provide the owner or future purchaser with an environmental assessment and/or cleanup plan for that property at no charge, in order to provide environmental due diligence in support of bank financing, to document the environmental liabilities and associated cleanup costs, to help revitalize these properties, and/or to protect the environment and public health. The City has used this grant funding to perform environmental assessments on approximately 20 different sites in Belfast, with most sites going through more than one stage of the environmental assessment process (i.e. Phase I environmental site assessments, Phase II environmental site assessments, Analysis of Brownfields Cleanup Alternatives, etc.).

However, the City expended all of its funds in the fall of 2015, and must now reapply to the EPA if it wishes to continue this program. City staff is recommending applying for \$400,000 in grant funding during the upcoming grant cycle. The due date for this application is December 18th, 2015. Grant awards would be expected to be made during the 2nd quarter of 2016. There is no match requirement for this grant. Time spent by City staff on the managing and implementation of this grant is reimbursable under the grant.

10. D

Request by the Economic Development Director to have the City Council authorize submission of an application to MEDEP's Brownfields Revolving Loan Fund for grant funding to assist in the cleanup of the Maskers' Property (45 Front Street)

The City has recently completed a portion of the cleanup of the City-owned parcel located at 45 Front Street (known as the Maskers' Property) during the week of October 19<sup>th</sup>, namely the abatement and demolition of the two buildings (Maskers' Theater, and the 'Storage Building') that were located upon it.

In the course of the cleanup operation, the contractor discovered an area (approximately 100-125 cubic yards) of a petroleum-based tar-like substance underneath the center of the Maskers' Theater. This was likely caused by a former railroad car that was parked along the Belfast and Moosehead Lake Railroad tracks adjacent to the northern side of the building. The tank car released an unknown amount of this petroleum-based tar from a leaking valve, sometime in the 1950s or the 1960s. Reportedly, the tar migrated beneath the Maskers' Theater, which impeded its full cleanup. The petroleum/tar-like substance appears to have remained in surficial soils beneath the building since that time.

This substance only poses a health risk from direct contact; the area has been covered with clean fill and geotextile fabric to prevent direct contact for the time being. The entire footprint of the Maskers' Theater has been cordoned off and parking is currently not allowed there.

City staff and Ransom Consulting are recommending that this particular area of contamination be addressed (via targeted removal and off-site disposal) at the earliest possible opportunity (as opposed to waiting until the rest of the soil contamination is addressed at some point in the future prior to redevelopment of the site). An extremely rough estimate for this work is \$25,000 (cost estimates are currently being sourced from a number of firms which may differ from this figure). Once this work is done, the contractor would also compress the clean fill with a rolling machine, which would make it usable for automobile parking going forward.

While the City could use its existing U.S. Environmental Protection Agency (EPA) Brownfields Cleanup grant to pay for this estimated \$25,000 cost, the Maine Department of Environmental Protection (MEDEP) has informed us that it currently has petroleum grant funding through its Brownfields Revolving Loan Fund that we can apply for and potentially secure. This would allow the City to hold onto more of our grant funding for the remaining phases of the cleanup.

Applying for these grant funds would not cause any delay to this task, as we have been informed by the head of MEDEP's Brownfields Program that we could be reimbursed for project costs incurred as of the application date. Were the City not to receive these grant funds from MEDEP, the City could still go ahead and use its existing EPA Brownfields Cleanup Grant to pay those costs (just leaving less funds for the rest of the cleanup).

10.E

Request by the Economic Development Director to have the City Council transfer \$4,700.00 to account 730-823 from the City's Airport Runway Capital Reserve account, for additional survey work related to Belfast Municipal Airport's parallel taxiway project.

Airport Solutions Group (ASG), the City's airport consultant, is currently undertaking an environmental assessment, permitting, and preliminary design project in support of the future construction of a parallel taxiway at Belfast Municipal Airport. ASG (via its subconsultant, Plisga & Day) has collected both survey and geotechnical information to assist their design efforts; the geotechnical information they have collected indicates that the area of the future parallel taxiway along the runway 15 side is mostly shallow ledge, ranging anywhere from 2' to 10' below the surface.

As part of this permitting effort, ASG needs to design a stormwater management system that will attain Maine Department of Environmental Protection (MEDEP) stormwater quality standards. However, this is proving difficult, due to shallow bedrock conditions and to other properties of the soil. ASG and Plisga & Day now need to acquire additional topographic survey data in an area located outside of the original 30-acre project area; this is additional work which could not have been estimated in the original scope of services. This additional survey work is necessary for the City to be able to proceed with the design, and ultimately the construction, of its parallel taxiway project.

The cost of this additional, unanticipated work is \$3,700.00. The Federal Aviation Administration (FAA) agrees that the scope of work of the original contract has been modified and that these additional costs are reimbursable. While the City would be expected to be reimbursed for 95% of this \$4,700.00 cost (\$4,465.00), it would not be until 2017, as part of its parallel taxiway construction project.

10.F

Request by the Economic Development Director to authorize the City Council to transfer up to \$15,786.67 from the City's Airport Runway Capital Reserve account, as the required local match for an aviation easement acquisition project for Belfast Municipal Airport.

The City of Belfast has owned and maintained the Belfast Municipal Airport since its creation in 1940. Since the earliest days of the Airport, the City has periodically acquired aviation (aerial navigation) easements over privately-owned properties, to establish the right for the City to manage/remove obstructions (usually due to the natural growth of vegetation over time, but also due to man-made structures) whenever they pose a threat to the relevant airspace surfaces.

In 2013, the City undertook an airspace obstruction analysis and federal environmental assessment project for the Airport at the request of the Federal Aviation Administration (FAA). The goals of this project were to: 1) determine the extent of existing obstructions (largely vegetative in nature) to the Airport's relevant airspace surfaces; and 2) acquire the permits necessary to remove those obstructions in the future. (It should be noted that this work was entirely based on the Airport's existing runway length of 4,000 feet, and not on an extended runway length.) Obstructions were identified both within existing aviation easements as well as in areas where the City does not currently possess aviation easements.

The City is now preparing to undertake a project to be able to acquire those easements to be able to effectively deal with obstructions going forward. City staff has been working with the City's airport consultant to develop a scope of work and an overall budget for this project.

However, this is challenging because the City cannot go through the appraisal process to accurately determine the price for any given aviation easement that it wishes to acquire prior to submitting this scope of work and budget to the FAA and the Maine Department of Transportation (MDOT); this introduces an element of uncertainty or variance in the project budget.

The City would like to acquire as many easements as it needs to, but it may not have the funds to do so. Two scenarios have been developed for acquiring 8 easements off of the end of runway 33 (Lower Congress Street), which have overall budgets of \$216,882.72 and \$285,011.00 (depending on assumptions/formulas used). Currently the City only has \$215,733.33 in available funds (90% of that amount being FAA funds, 5% MDOT funds, and 5% City funds) for this project, however.

At the suggestion of MDOT, City staff has recently reached out to the Town of Carrabassett Valley/Sugarloaf Regional Airport to ask if they have any expiring FAA funds that the City of Belfast could be given and/or loaned. We have received a favorable initial response from them,

and believe that there is approximately \$90,000 that could be called upon if it was deemed necessary to be able to complete the City's project.

With this \$90,000 in FAA funds included, there is now the possibility of calling upon \$315,733.33 in total potential funds for this project. Of this \$315,733.33 total amount, 5% (or \$15,786.67) would represent the City's required 5% match. While City staff is optimistic that the final project budget will end up being less than this amount, they would like the City Council at this time, to authorize this \$15,786.67 from the City's Airport Capital Reserve Account, to ensure that the City has the ability to complete the easement acquisition project.

# AGENDA TOPIC 10.I

TO: Mayor & City Council  
FROM: Wayne Marshall, City Planner  
DATE: October 30, 2015  
RE: TILSON TECHNOLOGY REQUEST to ADD EQUIPMENT to the EXISTING  
TELCOMMUNICATION TOWER on PATTERSON HILL and CONFLICT with  
CITY ORDINANES and new FEDERAL REGULATIONS

## **REQUESTED COUNCIL ACTION**

Pursuant to the recommendation identified in a letter dated October 30, 2015 from William Kelly, City Attorney, copy attached, the Code and Planning Department requests that the City Council authorize the City Code Enforcement Officer to issue a building permit submitted by Tilson Technology to install additional telecommunication equipment for redZone Wireless on the existing telecommunication tower located on Patterson Hill. Our Department seeks authorization from the Council because current City Ordinances for this zoning district (Protection Rural - 2) prohibit the installation of any new equipment on this tower, however, federal regulations which govern telecommunication towers were amended in 2012 to prohibit a municipality from adopting or enforcing Ordinance provisions such as those adopted by the City in 2001 for this zoning district. In short, federal regulations supersede City Ordinances, and City Attorney believes the most prudent action for the City is to issue the requested permit.

At an upcoming Council meeting, likely in December, I propose to submit amendments to City Ordinances for First Reading, Chapter 102, Zoning, that address the new federal regulations.

## **BACKGROUND INFORMATION**

In February 1998, Robert Temple, City Code Enforcement Officer (CEO) at the time, issued a building permit to Unicel to allow the company to construct a telecommunication tower on Patterson Hill. Unicel constructed the current tower that is located on Patterson Hill (reference attached map). In 1997, this area was in the General Purpose A zoning district, and a telecommunication tower was considered the equivalent of an essential service and was thus found to be a permitted use by the CEO.

In 1998, after issuance of the permit to Unicel, the City adopted new Ordinance provisions to establish more definitive standards that regulated where and how a telecommunication structure could be built in Belfast. A telecommunication tower was now identified as a specific use, and was no longer considered an essential service.

In July 2000, in response to a petition submitted by residents on Patterson Hill, and pursuant to a process identified in the City Comprehensive Plan, the City Council approved the establishment of the Protection Rural 2 zoning district for the Patterson Hill area. This new zoning district

prohibited the construction of a new telecommunication tower, which resulted in the existing tower becoming a nonconforming use of record. In 2001, the City Council, at the request of area residents, adopted amendments to the Protection Rural 2 zoning district to prohibit any expansion of the existing nonconforming telecommunication tower. This prohibition included the installation of any additional equipment on the tower. The 2001 zoning amendment remains in effect today; reference attached excerpt for the Protection Rural 2 zoning district.

In July 2003, the Belfast Planning Board denied a request from Unicef to install additional equipment on the tower. The Board's denial was based on amendments adopted to the zoning ordinance in both 1998 and more specifically, in 2001. Unicef chose not to appeal the Planning Board decision.

Also, one of the main reasons that U.S. Cellular, in 2006, chose to construct a new telecommunication tower near Swan Lake Avenue, is because the 2001 Ordinance amendment prohibited any new equipment from being located on the Patterson Hill tower. The City worked with U.S. Cellular to amend City Zoning Ordinances to allow this new location.

While our Department has periodically received inquiries from firms that asked about locating additional equipment on the Patterson Hill tower, until 2 weeks ago, our Department had never received a building permit application formally requesting such.

In mid-October 2015, Tilson Technology, on behalf of redZone Wireless submitted a building permit application to add 3 new antennas (see attached sketch) to the existing tower on Patterson Hill. Tod Rosenberg, CEO, and I discussed the application, and Tod, pursuant to the City Zoning Ordinance for the Protection Rural 2 zoning district, issued a letter dated October 22, 2015 to deny the building permit application; reference enclosed letter. Tilson Technology submitted an email dated October 29 to Mr. Rosenberg in which they requested he reconsider his decision to deny the permit application, citing current federal regulations; reference attached email.

I discussed this issue and potential options which the City could consider with City Attorney Kelly on October 29. City Attorney Kelly is now recommending the course of action outlined in his October 30 letter to the City Council. I concur with his recommendations. I also note that the Planning Board's adopted Conditions of Approval for other existing telecommunication towers in Belfast (U.S. Cellular at Swan Lake Avenue and tower at State Sand and Gravel) routinely allow the CEO to issue a permit for the installation of new equipment, and that the City has not required Planning Board review for such work.

Lastly, the 2012 changes to federal regulations regarding telecommunication towers underscore the need for the City to amend any existing language in our City Ordinances which are not consistent with current federal standards. I intend to submit proposed amendments to the Council in December to both the Protection Rural 2 zoning district standards, and the Chapter 102, Zoning, Article VIII Supplementary District Standards, Division 5, Telecommunication Facilities.

I would be happy to address any questions.

William S. Kelly, Esq.  
Kristin Collins, Esq.

**KELLY & COLLINS, LLC**  
**96 High Street**  
**Belfast, Maine**  
kellylaw@bluestreakme.com

(207) 338-2702  
(207) 338-0328 (fax)

October 30, 2015

Wayne Marshall, City Planner  
City of Belfast  
173 Church Street  
Belfast, Maine 04915

RE: Collocation Permit for cell tower

Dear Wayne:

You have asked us to address the relationship between federally mandated collocation on cell towers and certain provisions in the city Ordinance which conflict with several aspects of federal law. The short answer is that the City, through the Code Enforcement Office, is required to follow the federal law. To the extent that the City's Ordinance impermissibly prohibits collocation of additional equipment on cell existing cell towers, those provisions of the Ordinance may not be enforced or relied upon to deny a permit request.

In this instance, an application to add equipment to the cell tower located on Lot 94 of Tax Map 8 has been denied to Tilson Technology per letter of the Code Enforcement Officer dated October 22, 2015. This letter cites the fact that the cell tower is a legally non-conforming use, which cannot be expanded under the City Ordinance. The Code Enforcement Officer cited that the Planning Board, in a decision dated July 9, 2003, specifically found that the cell tower was a legally nonconforming use as well. The Tower was constructed in 1998.

Additionally, section 102-712.5 of the Belfast Code, adopted in 2006, in part provides that the height of the tower may not be increased and provides the following conditional requirement for the continued operation of cell towers constructed after July 5, 2000:

- (i) There is no increase in the number of carriers and no increase in the number of frequencies received or broadcast from said telecommunication tower, except that equipment on the tower may be maintained, replaced, and/or updated. The owner shall be required to demonstrate to the Planning Board that any proposal to replace or update the equipment is warranted, that the tower can structurally support this equipment, and that all such equipment complies with federal requirements.

In response to the denial letter, Terry Turner from Tilson Technologies provided the following citation to federal law: *On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 (Tax Act) became law. Section 6409(a) of the Tax Act provides that a state or local government "may not deny, and shall approve" any request for collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station, provided this action does not substantially change the physical*

*dimensions of the tower or base station.*<sup>2</sup> *The full text of Section 6409(a) is reproduced in the Appendix to this Public Notice.*

This citation to section 6409(a) as controlling law is accurate. These provisions do serve the function argued by Mr. Turner, and must be respected by the City. In 2012, the federal government approved Section 6409(a) of the so-called "Spectrum Act," which provides that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." An "eligible facilities request" refers to collocation, removal or replacement of transmission equipment.

The term "substantial change" was not defined in Section 6409(a), but the FCC issued Declaratory Rulings in 2014 which provide that a substantial change includes an increase in height of 10% or 20' (whichever is greater), or an increase of more than 20' in width or the width of the structure at the location (whichever is greater). The FCC also clarified that this "substantial change" standard is the only space, bulk or location standard a municipality may consider when dealing with a collocation permit, even if the initial structure is nonconforming. The FCC does, however, allow local building, structural, electrical and safety codes to be applied.

Additionally, 47 U.S.C. 322(c)(7) provides:

***(7) Preservation of local zoning authority***

***(A) General authority***

*Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.*

***(B) Limitations***

***(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—***

***(I) shall not unreasonably discriminate among providers of functionally equivalent services; and***

***(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.***

***(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.***

***(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.***

***(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.***

Subsection (B)(II) above has been relied upon repeatedly by the Courts for invalidating local ordinance criteria which have been deemed to "prohibit or have the effect of prohibiting the provision of personal wireless service". This is very broad and very effective language when it comes to striking down local regulation. In short, cell towers are like highways and deemed critical to the economic growth and stability of the country, and as such local zoning authority is limited.

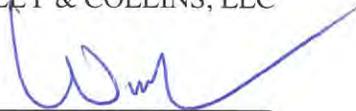
Additionally, the FCC has issued Declaratory Rulings further interpreting the above cited C.F.R., all of which recognize the proliferation and importance of wireless service on a national level. These Rulings in recent years have further protected the expansion of wireless service and instituted a "shot clock" to presumptively limit the duration of the permit approval process at the municipal level (60 days for collocation and 150 days for new cell towers). Thus, even the process is now federally mandated as to time for review.

With this very brief overview I would suggest that the best advice is for the CEO to review the application on the "substantial change" standard as well as any other applicable building code standards, and to issue the permit in short order (if said standards are met) since the federal regulations require a permit to be granted within 60 days of application. The fact that the existing tower is nonconforming should not be considered.

Moving forward, we should also look at amending the ordinance so that it does not conflict with Section 6409 and the recent rules. One thing to consider is whether the existing height limits need to be reevaluated given that this law would allow height to creep beyond the original limit through the addition of successive collocations that aren't individually "substantial." It appears that the "substantial increase" to height is a one-time expansion, but there is no controlling law to interpret this provision yet.

Thank you for your consideration. I have not identified this letter as privileged or confidential, and it may be shared with others as you wish. Please let me know if you have any additional questions.

KELLY & COLLINS, LLC



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William S. Kelly



# CITY OF BELFAST, MAINE 04915

131 Church Street

## CODE & PLANNING DEPARTMENT

City Planner (207) 338-1417 Ext. 25  
Assistant Planner (207) 338-1417 Ext. 25  
Code Enforcement (207) 338-1417 Ext. 25  
Fax (207) 338-1605

October 22, 2015

RE: Tilson Technology Management Inc.  
Mr. Benjamin Madden  
Denial of building permit application  
Map 8 Lot 94

Dear Mr. Madden,

This letter is to inform you that the submitted building permit for the above referenced project has been denied. The reason for denial is based on a Planning Board Hearing on July 9, 2003 that the cell tower located on Map 8 Lot 94 is a legally nonconforming use and as such cannot be expanded. I have attached the findings of fact and the conditions of approval from that hearing for your review.

This is the final decision of the Code Enforcement Officer. Any person directly affected by any notice which has been issued in connection with the enforcement of the Belfast City Code may request a hearing before the Zoning Board of Appeals. A written petition shall be filed with the Code Enforcement Officer at 131 Church Street, Belfast, Maine 04915, requesting such hearing and setting forth a brief statement of the grounds therefore, within 30 days after the decision, notice, or order was served.

Feel free to contact me with any questions. My email address is [ceo@cityofbelfast.org](mailto:ceo@cityofbelfast.org) and my phone is (207) 338-1417 ext 25.

Sincerely,

Tod Rosenberg, CEO

**CITY OF BELFAST PLANNING BOARD  
ADOPTED FINDINGS OF FACT  
& CONDITIONS OF APPROVAL**

**CHANGE OF NONCONFORMING USE  
UNICEL TELECOMMUNICATION TOWER  
MAP 8 – LOT 94 PATTERSON HILL**

1. **APPLICANT:** Unicel  
Attn: Ray McCormack  
Six Telecom Drive  
Bangor, ME 04401  
207-945-9979
  
2. **DESCRIPTION OF PROJECT:** Unicel proposes to replace the existing antennas they own on their telecommunication tower in Belfast that is located on Patterson Hill, Map 8 Lot 94. Less efficient omni-directional antennas will be replaced by new directional cellular antennas. The proposal does not result in any changes to the height or size of the existing telecommunication tower. Unicel constructed the tower in February 1998.
  
3. **DESCRIPTION OF ZONING (Past and Current):** Unicel obtained a City permit in February 1998 to construct the telecommunication tower. In February 1998, this area was located in the General Purpose A zoning district. The General Purpose A zone, in 1998, allowed essential services, and a tower such as the one constructed by Unicel, was then considered an essential service.

On February 26, 1998, the City adopted new Ordinance provisions to specifically regulate telecommunication towers. A telecommunication tower was no longer considered an essential service. The General Purpose A zoning district did not allow telecommunication towers. Thus, the Unicel telecommunication tower became a legally established nonconforming use.

In July 2000, the City changed the zoning district for this area from General Purpose A to Protection Rural-2. A telecommunication tower is a prohibited use in the Protection Rural-2 zoning district, thus the Unicel telecommunication tower remained

a legally established nonconforming use. The Protection Rural-2 zone was in effect at the time of the June 2003 UniceL application.

**4. DESCRIPTION OF PLANNING BOARD ACTIONS:** The City of Belfast Planning Board performed the following reviews of this project, and took the following significant actions:

- 4.1** The City Department of Planning and Community Development, on behalf of the Planning Board, provided notification to project abutters of the Planning Board meeting and public hearing of July 9, 2003. The Department also posted notice of the meeting at City Hall. Copies of all notices and the list of persons to whom notices were sent are on file at the Department offices.
- 4.2** The Board, at its meeting of July 9, 2003, conducted a public hearing regarding the application. Several abutters to the project spoke at the hearing, including Robert Hughes, James Roberts and Bruce Clarke. In addition, Gerald and Mary Brand submitted a letter dated July 9, 2003 regarding the proposal. The Board's meeting minutes provide a synopsis of public comments that were received.
- 4.3** The Board, at its meeting of July 9, 2003, reviewed the project, determined the application was complete, and found that it was a legally established nonconforming use in the Protection Rural-2 zoning district. The Board determined that the proposal should be considered a change to a nonconforming use, Section 102-219 of the City Code of Ordinances.
- 4.4** The Board, at its meeting of July 9, 2003, determined that the project satisfied all applicable Ordinance requirements. The Board found that the requested change was not an expansion of a nonconforming use, because the change in UniceL's equipment did not change any of the characteristics of the tower, such as an increase in height or footprint, and was similar to normal maintenance and upkeep of the facility. The Board noted that UniceL was the owner of the tower and that they had obtained all required permits to erect the tower and install their telecommunication equipment. Further, the Board found that the proposed change did not raise any issues regarding the standards identified in Sec. 102-1031 et seq, Telecommunications Facilities. Therefore, the Board found that the request did not constitute any changes to the original tower as it was permitted by the Planning Board and Code Enforcement Officer in 1998, and as it was constructed by UniceL.
- 4.5** The Board, in considering this request, also received comments from project abutters that there is a second carrier currently located on the tower. Ray McCormack, UniceL representative, confirmed at the meeting that Northeast Pager is located on the tower. The applicant, Planning Board members, and Department of Planning and Community Development staff could not recall if a City permit had been issued to allow Northeast Pager to locate on the tower. The Board considered this issue and decided that if a permit was not obtained,

that the installation of Northeast Pager's equipment likely constituted an expansion of a nonconforming use, and that such expansion, in their opinion, was prohibited by City Ordinance. The Board adopted Condition of Approval number 4 (reference below) to address this issue.

### **DECISION OF PLANNING BOARD**

The Planning Board, at its meeting of July 9, 2003, approved the applicant's request to change the antennas on its telecommunication tower as described above, and authorized the Code Enforcement Officer to issue the required building permit subject to following Conditions of Approval, attached, adopted by the Board. The Board determined that the applicant proposal constituted a change, but not an expansion of a nonconforming use, and that this type of change in a nonconforming use is permitted by City Ordinances, Section 102-219.

This decision of the Board is subject to appeal to the Belfast Zoning Board of Appeals in accordance with the procedures identified in the City Zoning Ordinance. Any appeal must be filed within 15 days of the date the Chair of the Planning Board signs these Findings of Fact.

### **CONDITIONS OF APPROVAL**

1. The applicant shall provide the City Code Enforcement Officer a copy of the applicant's Federal Communications Commission permit to operate the replacement equipment that will be installed on this tower.
2. The applicant shall conduct an on-site test that identifies potential levels of "interference" from Unicel's equipment if requested by any abutter to the project. Unicel shall inform the City Code Enforcement Officer of a request for a test and the results from such test.
3. The applicant shall provide the City Code Enforcement Officer copies of Site Data reports prepared by a qualified engineering firm that identify the amount of Effective Radiated Power associated with operation of all equipment located on the tower. These reports must quantify that Unicel's operations are within accepted regulatory standards.
4. The applicant shall provide the City Code Enforcement Officer evidence that a valid City permit was issued to co-locate Northeast Pager's equipment on the Unicel telecommunication tower. If no evidence is available to verify that Northeast Pager obtained a City permit, Unicel must terminate its lease with Northeast Pager and remove their equipment from the tower. The termination of this lease and removal of the Northeast Pager equipment is a specific condition of Unicel obtaining Planning Board authority to perform the change in telecommunication equipment requested in this permit.

5. The applicant shall be permitted a reasonable period of time to phase-in the new (replacement) equipment. This phase-in period will result in both the existing Unicel equipment and the replacement Unicel equipment being located on the tower at the same time. Unicel shall remove the existing equipment at the end of the phase-in period. The applicant shall work with the Code Enforcement Officer to determine an appropriate length of time for this phase-in period.
6. Any amendments to this proposal, as approved by the Board, or to make any other changes to the telecommunication tower as permitted by the City in February 1998 shall require the review and approval of the Belfast Planning Board.

**ON THE BEHALF OF THE PLANNING BOARD**

\_\_\_\_\_  
Roger Pickering, Chair

\_\_\_\_\_  
Date

**ON THE BEHALF OF THE APPLICANT**

\_\_\_\_\_  
Unicel, Applicant

\_\_\_\_\_  
Date

EMAIL FROM TILSON TECHNOLOGY TO TOD ROSENBERG  
OCTOBER 29, 2015

From: **Terry Turner** <[tturner@tilsontech.com](mailto:tturner@tilsontech.com)>  
Date: Thu, Oct 29, 2015 at 10:29 AM  
Subject: Belfast rejected BP  
To: "Tod Rosenberg ([ceo@cityofbelfast.org](mailto:ceo@cityofbelfast.org))" <[ceo@cityofbelfast.org](mailto:ceo@cityofbelfast.org)>  
Cc: Ryan Rodel <[rrodel@tilsontech.com](mailto:rrodel@tilsontech.com)>, Maureen Hopkins <[mhopkins@tilsontech.com](mailto:mhopkins@tilsontech.com)>

Tod;

You recently sent a letter to Ben Madden at Tilson rejecting a building permit application to co-locate wireless equipment on an existing wireless tower on Map 8 Lot 94. Federal law 6409(a) prohibits state and local governments from denying applications to co-locate wireless equipment on an existing permitted structure, which includes towers and buildings. The only requirement is that the co-location does not "substantially change" the physical dimensions of the tower or base station. The FCC has determined that "substantial change" means increasing the height of the structure by more than 20' or 10% or the attachments protrude more than 20' from the tower at the point of attachment. The proposal before you does not create "substantial change" according to Federal Law. Many municipalities are unfamiliar with this Federal statute. Please consider this the formal petition requesting that the denial of a building permit be reconsidered and a building permit issued promptly. If the building permit is not issued, please consider this a request for a hearing. I would strongly suggest that you confer with the city attorney so that time and expense is not spent on this non-issue.

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 (Tax Act)<sup>1</sup> became law. Section 6409(a) of the Tax Act provides that a state or local government "may not deny, and shall approve" any request for collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station, provided this action does not substantially change the physical dimensions of the tower or base station.<sup>2</sup> The full text of Section 6409(a) is reproduced in the Appendix to this Public Notice.

Terry

**Terry Turner, CCIM**  
Manager, Site Acquisition  
245 Commercial Street – Suite 203  
Portland, ME 04110  
[207-358-7461](tel:207-358-7461) (O) | [207-956-3440](tel:207-956-3440) (M)  
[tturner@tilsontech.com](mailto:tturner@tilsontech.com) | [www.tilsontech.com](http://www.tilsontech.com)

*City of Belfast, ME  
Thursday, October 29, 2015*

## Chapter 102. ZONING

### ARTICLE V. District Regulations

#### DIVISION 20.5. Protection Rural-2 District

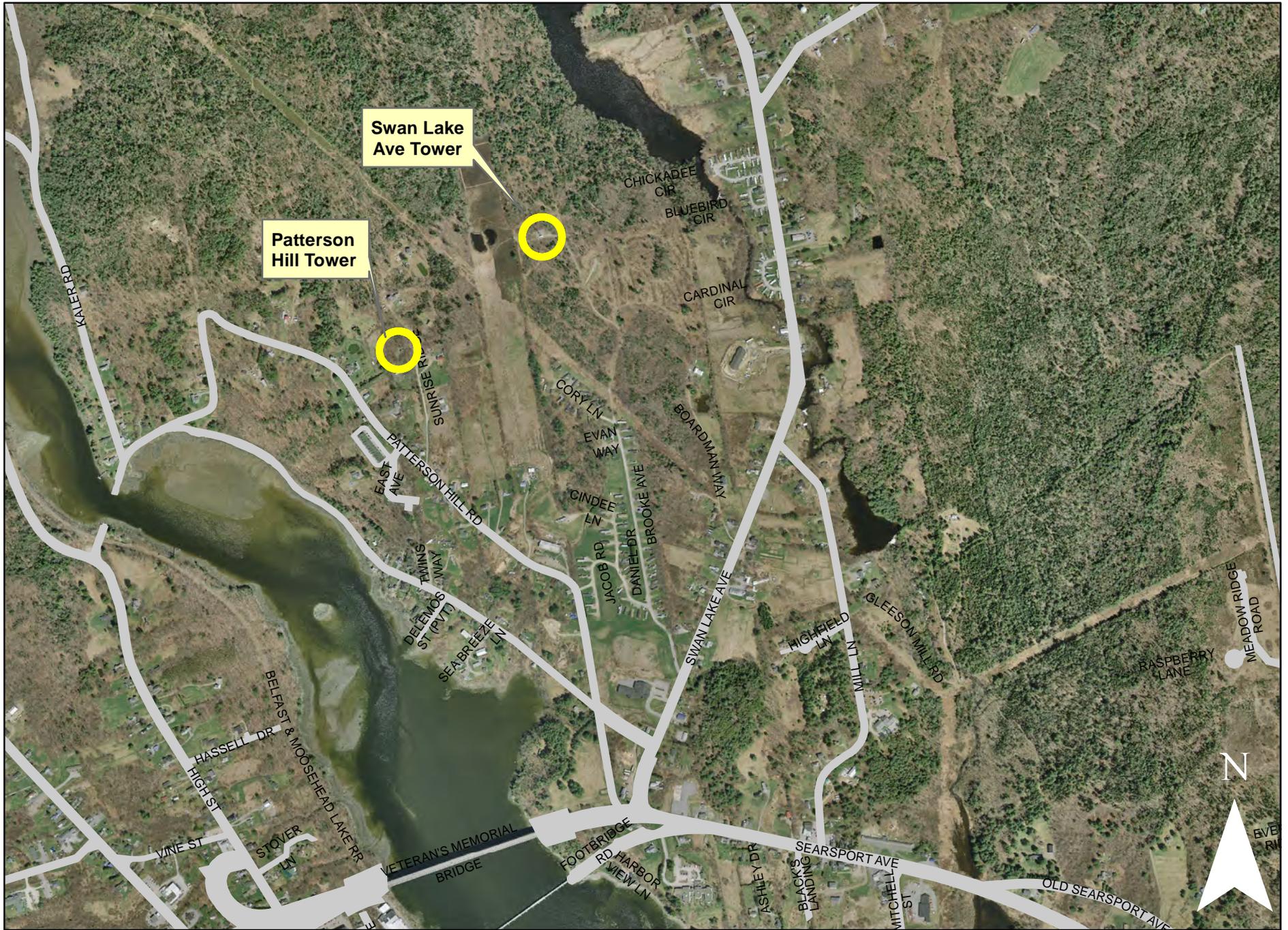
#### Sec. 102-712.5. Use of nonconforming telecommunication tower requiring Planning Board review.

[Ord. No. 40-2006, 6-6-2006]

A telecommunication tower constructed prior to July 5, 2000, which is the date of establishment of the Protection Rural-2 zoning district, may continue to operate as a nonconforming use, provided that the owner of the tower complies with all of the following requirements:

- (1) There is no increase in the number of carriers and no increase in the number of frequencies received or broadcast from said telecommunication tower, except that equipment on the tower may be maintained, replaced, and/or updated. The owner shall be required to demonstrate to the Planning Board that any proposal to replace or update the equipment is warranted, that the tower can structurally support this equipment, and that all such equipment complies with federal requirements.
- (2) The maximum height of the tower shall be the height of the tower as it existed on July 5, 2000.
- (3) The telecommunication carrier which has equipment on the tower may make necessary changes to on-site accessory buildings and equipment which is located on the ground and which is used to support operation of the tower.

# Patterson Hill Telecommunication Tower



750 375 0 750 1,500 2,250 3,000 Feet

