

**Minutes**  
**Bar Harbor Planning Board**  
**Wednesday, July 10, 2019**  
**Council Chambers – Municipal Building**  
**93 Cottage Street in Bar Harbor**  
**4:00 PM**

**I. CALL TO ORDER**

Chair St. Germain called the meeting to order at 4:00 PM.

Call to order

Members present were Chair Tom St. Germain, Secretary Basil Eleftheriou, Jr., Member John Fitzpatrick and Member Erica Brooks. Vice-chair Joe Cough was not in attendance.

Four members present,  
Cough absent

Town staff present were Planning Director Michele Gagnon and Code Enforcement Officer Angela Chamberlain. Town Attorney Ed Bearor was also present.

CEO and Planning  
Director present for  
town staff, as well as  
attorney Ed Bearor

**II. ADOPTION OF THE AGENDA**

Chair St. Germain asked for a motion to adopt the agenda for the meeting. **Mr. Fitzpatrick made the motion, seconded by Mr. Eleftheriou.** There was discussion of where an update from Planning Director Gagnon on the dormitory issue should go, and it was agreed it could be heard under Other Business. **The motion to adopt the agenda then carried unanimously (4-0).**

Agenda adopted

**III. EXCUSED ABSENCES**

There was no discussion of excused absences although Mr. Cough had informed the board via email of his absence with the expectation to be excused.

Mr. Cough excused  
absence was omitted

**IV. PUBLIC COMMENT PERIOD**

Chair St. Germain opened the public comment period at 4:03 PM. No one came forward to speak, and the public comment period was closed.

No one speaks during  
public comment period

**V. ELECTION OF OFFICERS**

- a. Chairperson
- b. Vice-chairperson
- c. Secretary

Chair St. Germain noted the board needs to elect officers annually in July. **Ms. Brooks moved to “keep it the same as it is,” which Mr. Fitzpatrick seconded.** The motion entails Mr. St. Germain serving as chairperson, Mr. Cough serving as vice-chairperson and Mr. Eleftheriou serving as secretary. **Without debate or discussion, the motion was then approved unanimously.**

FY 2020 Officers  
elected

## VI. APPROVAL OF MINUTES

Chair St. Germain referred to the draft minutes from the June 19 meeting, and offered one correction: that the attorney for the Jordans spells his last name Reiff, rather than with one F as it was written in the minutes. Chair St. Germain asked if there were any other corrections, and no one offered any. **Mr. Fitzpatrick then made a motion to adopt the June 19 minutes, as corrected. Mr. Eleftheriou seconded the motion, and it then passed unanimously (4-0).**

Minutes from June 19 meeting, as corrected, approved

## VII. REGULAR BUSINESS

### a.) Completeness Review for CU-19-02 — Emera Maine Substation on Eagle Lake Road (Young's Corner Switching Station)

**Project Location:** Tax Map 237 Lot 19, off the Eagle Lake Road (west of Norway Dr.) in the McFarland Hill Residential District

**Applicant/Owner:** Emera Maine, 970 Illinois Avenue, Bangor, Maine 04401

**Application:** To upgrade the existing pole-mounted recloser switching station to a modern, traditional switching station. This project consists of earthwork, a retaining wall to protect wetland features, concrete foundations, fencing, a control house, steel bus-work, three breakers, high speed relays, a back-up battery system and communications equipment.

Completeness Review for CU-19-02, Emera Maine Substation on Eagle Lake Road (Young's Corner Switching Station)

Steve Sloan, manager of transmission development, and Kevin Webber, right-of-way agent in the property department, were present to represent Emera. Mr. Sloan offered to give background on the project and put it in perspective of what the company is trying to do to improve reliability and service to the town. He said it is one part of a larger, overall effort.

Steve Sloan and Kevin Webber present for Emera

Mr. Sloan said the effort to improve reliability has been underway for more than a decade, and he then recounted that history. He spoke about what future steps need to be taken to complete that effort. He said the current facility at Young's Corner includes an older switching station. It used to include diesel generators, but the other work that has been done previously allowed for the removal of that equipment. The switching station began to reach the end of its useful life 10 years ago, Mr. Sloan said, and temporary equipment was brought in to supplement it.

Sloan offers history of efforts to improve reliability

Without modernizing the facility, customers might experience short-term outages when power switches from one supply line to another. The equipment that is there does not allow for automated switchovers, Mr. Sloan explained. It is old and needs to be upgraded. He called this project a key final step in the overall effort to upgrade electric service. He said it can be seen that that overall effort is working. Mr. Sloan said what is proposed for Young's Corner is similar to what can be seen in Somesville, albeit with a much smaller footprint. He said the structure would barely be visible. He said the structure currently on the front side of the property would later be removed and replaced with landscaping.

Why modernizing the facility is important, and what it will look like when finished

Chair St. Germain invited public comment. No one came forward to speak. Chair St. Germain asked if any board members had questions. He asked the applicant about height of the infrastructure on site. Mr. Webber noted the application says 39 feet, but said that includes 11 feet for lightning rods on top of the structure. He said the steel structure itself is about 28 feet high. Chair St. Germain asked about the location of the structure within the site itself, and the applicant responded.

Question about height of structure

Lightning rods higher than top of actual structure

Mr. Fitzpatrick asked staff if lighting rods were exempt from height requirements. He asked questions about original mean grade and proposed final mean grade. Mr. Webber said he had been speaking about structure in relation to final grade, but Mr. Fitzpatrick said the board would be looking at height above original mean grade. Returning to the question of whether lightning rods are exempt, CEO Chamberlain read from a list of exemptions which included many similar structures (i.e., antennas and transmission towers). Mr. Fitzpatrick said he would assume lighting rods would be exempt. He asked the applicant to show original mean grade when working with elevation, and to specify the height of the steel structure and then the height of the lightning rods.

Original mean grade vs. final mean grade

Discussion of whether lightning rods are exempt from height requirements

Mr. Fitzpatrick then addressed setbacks. He noted there is a 25-foot side setback in that district, but that fences are exempt from that setback (town staff noted there is an 18-inch setback requirement for fences).

Setbacks, and how fences relate to those

Mr. Fitzpatrick referred to a narrative for Section 125-67 in the application, and said the board will want to see on the plan where the battery storage location is because it is classified as hazardous waste.

Battery location needs to be shown

Mr. Fitzpatrick said it appears the lot coverage is being increased by 4.5 percent under this proposal. He noted the lot is already non-compliant for lot coverage, citing the specific numbers (currently at 27% lot coverage). Mr. Sloan asked how coverage is defined and Mr. Fitzpatrick explained it is impervious surface. Mr. Fitzpatrick noted an increase in non-conformity would not be allowed by the ordinance.

Discussion of lot coverage and non-conformity, which cannot be increased

Mr. Eleftheriou asked if the pads for the generators will be removed (Mr. Sloan said they will be) and whether that had been factored into lot coverage calculations (Mr. Sloan said it had not been, but he noted they will not be removed at the same time as this development is taking place). Mr. Fitzpatrick asked the applicant if there was anything else they could do to reduce impervious surface by 6,650 square feet. He said that would keep them from increasing the nonconformity. Mr. Sloan said it is possible the 6,650 square feet is already considered impervious, and he said they would check into it.

Applicant needs to reduce amount of impervious proposed

Chair St. Germain asked staff whether the applicant could ask for a modification of standards, or if that could not be modified. There was agreement the latter was true. Discussion continued on the overall subject. Planning Director Gagnon

Agreement that lot coverage standard cannot be modified

asked if the applicant could link work on the lower level (this project) and upper level (future landscaping) together, and if so, how long they would have to complete the work. CEO Chamberlain said it was possible the Planning Board could perhaps make that a condition of approval. Discussion continued, and there was general agreement that a solution could be found.

Mr. Eleftheriou asked about signage. Mr. Sloan said the only signage will be the typical safety signs on the fence, and signage identifying the name of the station (all of which are required).

Chair St. Germain asked about how the applicant will deal with runoff. Planning Director Gagnon explained part of her concern was the concentration of runoff, more than the difference between pre- and post-development quantity of runoff. Mr. Sloan said most of the area involved in this project is already compacted gravel with a gentle slope toward wetland. He said the development will level off that area, and that the gravel surface will absorb water. He elaborated on this, noting there is also a grass buffer and concrete retaining wall between the developed area and the wetlands. Mr. Fitzpatrick asked a follow-up question on this.

Mr. Fitzpatrick asked the applicant for the following: a 7.5-minute USGS map for location map purposes, tax map and lot numbers on the site plan, clarification on the site plan what is happening to existing structures on the site with regard to both this project and future work (Phase II), a FEMA flood map, lot line and wetland setbacks on the site plan, to make sure all copies of the application have information about the floor plan and elevations for the control house, and a lighting schedule and photometric plan overlaid on the site.

Planning Director Gagnon asked about a waiver request tied to Section 125-66 D(3), relating to performance and live plant maintenance guarantees. Discussion ensued between her and Mr. Fitzpatrick. Mr. Sloan reiterated the applicant's commitment: to do screening, either within three years as part of the removal of the existing station; or, if that doesn't happen within three years, to do the screening anyway. There was discussion of Emera providing a letter on this subject. Planning Director Gagnon explained the background of the landscaping/screening matter: that it was a way to ensure that the landscaping gets done at some point, and to preserve Bar Harbor's aesthetic calling card.

Board members commended Mr. Fitzpatrick for his thorough treatment of waivers and encouraged him to make a motion. **Mr. Fitzpatrick moved to grant the waivers requested by the applicant as listed in the checklist, as such waivers will not unduly restrict the review process as they are inapplicable, unnecessary or inappropriate for complete review, with the following exceptions [numbers refer to a checklist provided to the board by staff]: 4C (provide a proposed performance and plant maintenance guarantee), 8 (provide a USGS 7.5-minute map with all the items outlined in the checklist**

Discussion about runoff

Fitzpatrick offers a list of things applicant will need to include in application before next meeting

Further discussion of landscaping

Motion to grant waivers, with the following exceptions: 4C, 8, 9B, 9AA, 9GG, 9N, 20A, 20B, 20C, 21A, 21C and 9Y

noted), 9B (modify the site plan to include tax map and lot numbers), 9AA (denote lot line and waterbody setbacks on the site plan), 9GG (denote solid/industrial/chemical/explosive or hazardous waste locations on the site plan), 9N (fully denote location of existing and proposed buildings and structures on the site plan), 20A (resubmit floor plans for all levels of all structures for inclusion in the final package for approval), 20B (resubmit elevations including height and proposed exterior materials and colors for inclusion in the final package for approval), 20C (resubmit proposed use of all floors for inclusion in the final package for approval), 21A (include exterior lighting details for existing and proposed features), 21C (provide a photometric diagram showing radius of intensity of illumination), and 9Y (submit a FEMA 100-year flood elevation plan showing this parcel). After brief discussion about possibly including other items in the motion, Mr. Eleftheriou seconded the motion as Mr. Fitzpatrick made it. With no further discussion, the motion carried unanimously (4-0).

Chair St. Germain steered the discussion to whether the application could be found complete so that a public hearing could be scheduled at the board’s next meeting. Planning Director Gagnon said staff was satisfied with what has been submitted at this point, along with what the board has asked for. Mr. Eleftheriou asked about the original discussion about grade from earlier in the meeting. Mr. Fitzpatrick said it was “highly encouraged” that it be addressed for the next meeting, along with lot coverage (as commented by Chair St. Germain).

Mr. Fitzpatrick moved to find, per the Bar Harbor Land Use Ordinance 125-66, the application CU-19-02 (Emera Maine Substation on the Eagle Lake Road) complete, with items to be submitted as outlined in the recently granted waiver discussion, in time for review before a public hearing to be scheduled at the next Planning Board meeting [Planning Director Gagnon noted this would be Wednesday, August 7]. Ms. Brooks seconded the motion, and without further discussion the motion carried unanimously (4-0).

**b. Public Hearing, Deliberations, and Decision for SP-2018-07 — TA-1**  
**Project Location:** 81 Ledgeawn Avenue, Tax Map 107, Lot 078-000, Downtown Residential District  
**Applicant:** Robert and Kathleen Jordan  
**Application:** To operate a TA-1 (Bed & Breakfast accommodations in the private, year-round residence of the host family who live on the premises. Breakfast is the only meal provided).

The Jordans were both present, along with their attorney, William Reiff. Mr. Reiff recapped where things stood from the applicants’ perspective: the board could not grant permission as long as the Jordans were still not in compliance with the rules. He said they have done no advertising since June 5 and have not

Board encourages applicant to address grades and lot coverage for next meeting

Motion to find application CU-19-02, Emera Maine Substation on the Eagle Lake Road, complete

Public Hearing, Deliberations and Decision for SP-2018-07, TA-1 for Robert and Kathleen Jordan

Jordans present along with their attorney, William Reiff

made any new rentals, and generally “ceased the activities to the extent that [they] could.” He said the problem is that before Mr. Jordan stopped at that point, he had made several rentals and the space was occupied on June 16. Mr. Reiff said Mr. Jordan has refunded money and does not have anyone in there paying rent at this time. He reiterated that his client has not entered into any new rental agreements. Mr. Reiff told the board the way the rules are worded it “kind of deprives you of the ability to cure this thing on the run.” Mr. Reiff said the Jordans have stopped doing what was incorrect but are trying to honor their other commitments.

Reiff recounts history, also recaps what has happened since last meeting, says there is no violation at present

Mr. Reiff said his clients hoped that perhaps a permit might be issued today, subject to him working out an agreement with the code enforcement officer as far as a fine. He said CEO Chamberlain told him previously she did not feel she has the authority to set the amount of a fine. Mr. Reiff said his client is amenable to whatever fine might be appropriate.

Jordans hopeful for resolution, agreeable to whatever fine might be appropriate

Chair St. German asked town staff for input. Attorney Bearor said at the last meeting in June, there was an ongoing violation. He asked Mr. Reiff for confirmation, in his opinion, that there is no longer an ongoing violation because it is not being advertised, and that even though there are guests there, there is no compensation being received. Mr. Reiff agreed. Attorney Bearor recapped: there was no violation when the application was submitted, that it began after that point, and as such it was not improper for the board to process the application. He cited the road block from last time: Section 125-67 JJ, Violations, which reads, “No plan shall be approved as long as the applicant is in violation of this chapter or of any previously approved subdivision or site plan in the Town of Bar Harbor.”

§125-67 JJ, Violations, remains an issue

Attorney Bearor said the violation was not resolved immediately, but that the applicant was stating it was resolved now. He said it is not for the board to decide whether there is a violation, and that is a matter for CEO Chamberlain (working with Attorney Bearor as needed) to resolve. He said the board could still grant a conditional approval, upon official resolution of the violation. Attorney Bearor said he did not believe there was a violation at the moment, but said he did not know what would happen in the future. He said he would want any approval from the board conditional upon there being an agreement between the parties involved and it being fulfilled. He reiterated that is not the board’s job to determine whether there is a violation or not.

Applicant is stating violation has been resolved, but town officials need to be in agreement with that and have verification that is the case

Not board’s job to make judgment on status of violation

Chair St. Germain noted there was no written confirmation that a violation no longer exists. Attorney Bearor said CEO Chamberlain would need a certain amount of documentation or evidence to sustain that position. “We have not come to agreement that there isn’t a violation,” he said, though he said he had no reason to think Mr. Reiff was incorrect. Chair St. Germain invited comment from other board members. Mr. Reiff reiterated that the board could make its approval conditional upon resolution of the violation.

Mr. Fitzpatrick asked if there were other outstanding reservations; the answer was yes, although the applicants were quick to say they don't plan on charging those guests until the matter is resolved. Mr. Reiff said those reservations were made before June 5. Mr. Fitzpatrick noted the most recent written information the board had from staff (dated July 9) which said the violation had not been resolved. Mr. Reiff asked what violation staff said was in existence on July 9. Ms. Brooks said she did not think it had been made clear that there was no compensation, and Mr. Bearor agreed (that it was not known the day before the meeting). Mr. Jordan said reimbursements were made on July 7.

**Discussion of when the violation was resolved, what was communicated to town staff, when that was communicated, what information board has before them tonight**

Mr. Eleftheriou asked what the applicant had done since the June meeting to resolve the situation; he said if he were in that position, he would have made every effort to resolve the situation as soon as possible.

Mr. Jordan said if reservations were outright cancelled (instead of reimbursed), he would lose his rating on Airbnb. That is why he said he was reimbursing guests their money when they arrived, rather than cancelling the reservations.

**Jordan explains why reimbursement is preferable to cancelling**

Chair St. Germain said until CEO Chamberlain is satisfied that the situation has been resolved, he did not see how the board could move forward. Mr. Fitzpatrick said he agreed. Mr. Reiff asked if an agreement could be made that night. "I don't think 5:30 on a Wednesday night asking staff to make a phone call to a renter is appropriate," said Mr. Fitzpatrick. Ms. Brooks said the information should have been presented ahead of time, or, at the latest, at the start of the meeting. The applicant said it was a difficult matter to resolve. Ms. Brooks said the board's hands are tied without proof that the situation is resolved. Mr. Eleftheriou said he would not do anything counter to what he has been told by town staff, and that he would work to support staff. He said he would not go against advice from legal counsel and town staff.

**Reiff asks if matter can be resolved tonight, board does not see that as appropriate**

**Board says more information should have been presented to town earlier**

Attorney Bearor said he was supportive of what he was hearing from the board: that staff and the applicant need to sit down and reach and a final, official agreement.

Mr. Eleftheriou asked if a future rental agreement, even without money changing hands yet, is defined as compensation. Attorney Bearor said it was possible it could be seen that way.

**Discussion of whether future rentals are seen as compensation**

Ms. Brooks said if the applicant's position is that there is no compensation, it would have been good for them to provide proof of that at this point. Chair St. Germain said because the violation has not been resolved to the satisfaction of town staff, the board could not approve it. "I just don't believe that this board can approve something... based on a hoped-for resolution in the future," he said.

**More comments from board members**

Mr. Reiff said one issue the applicant had encountered was who had authority to

officially resolve the matter. Mr. Fitzpatrick drew a distinction between a violation of the consent agreement (which he said he did not think CEO Chamberlain had authority to resolve, without instructions from the town council) and a violation of the Land Use Ordinance. He said the board was focused on the latter. Chair St. Germain said the subject was addressed at the last meeting (June 19), and read from that meeting's minutes. Attorney Bearor spoke of what had happened since the last meeting, including reaching agreement with the town manager that a motion for contempt would be filed because the consent judgment was being violated.

Chair St. Germain asked for a motion to continue the review of the application. **Mr. Eleftheriou made a motion to continue application SP-2018-07 until the board's August 7 meeting.** Chair St. Germain asked if there should be anything in the motion about a resolution between all parties is being sought, or if it was self-evident to all involved. No one pushed for additional information, Ms. Brooks seconded the motion and it then carried unanimously (4-0).

Motion to continue application SP-2018-07 until August 7 meeting

### VIII. OTHER BUSINESS

Planning Director Gagnon said at the June 19 public hearing, the board heard comments from residents who felt rooming houses and workforce dormitories were uses that did not belong in the Downtown Residential Zone. She said in consultation with the town manager, she sought an opinion from Attorney Bearor on whether the Town Council could remove the Downtown Residential Zone from the employee dormitory proposal without going back to Planning Board. She said the question is whether that is considered a substantial change. She said she had just sent that inquiry to Attorney Bearor that day, and was sharing it with the board to keep them updated.

Planning Director Gagnon offers update on employee dormitory proposal, and concerns about the Downtown Residential Zone

Attorney Bearor asked if the proposed amendment originated with the Planning Board or the Town Council, and he was told it started with the Planning Board.

Mr. Eleftheriou asked if staff had begun working on licensing procedure for dormitories. Planning Director Gagnon said it is one of the highest priorities for the coming fiscal year: vacation rentals, a housing plan and related matters. Mr. Eleftheriou asked about procedure for getting licensing requirements in place. Planning Director Gagnon said she did not know exactly how it would unfold, but that she would look to find ways to keep the Planning Board involved and informed.

Question about licensing procedures

Discussion returned to the issue of the Downtown Residential Zone, and the different types of housing, and the time frame requirements of the procedure for making a land use amendment.

### IX. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

Mr. Fitzpatrick asked if there was a date in mind for the joint Town

Joint PB and Town Council workshop eyed for Wednesday, August



Council/Planning Board workshop. Planning Director Gagnon said the tentative date is Wednesday, August 21.

21

Mr. Eleftheriou asked if the board might hold a workshop in lieu of a second business meeting in July (after having gone to a one-meeting a month schedule). Planning Director Gagnon said she would prefer to hold off and wait for a workshop, at this point.

Chair St. Germain asked Planning Director Gagnon if she goes to Harbor Committee meetings, and she said no, that she goes to Cruise Ship Committee meetings. He said he had heard that a committee (he thought it was the Harbor Committee) had come up with a proposal for 121 Eden Street (ferry terminal site) that might be at odds with one of the recently passed citizen initiatives. He asked Planning Director Gagnon if that was the case, and she indicated it was. He asked if members of that committee could come to the Planning Board to talk about what the plan is; Planning Director Gagnon asked what the goal was. Chair St. Germain said if there is conflict, the proposal would either have to go through site plan review and get a modification or there would need to be another amendment to allow their proposal to meet the ordinance. He said it seemed a discussion with the Planning Board might be in order. He said he found it odd that a proposal was being formulated that would not meet the current land use ordinance. Planning Director Gagnon said she thought it would be waste of time and resources to pursue a proposal that would not comply with the land use ordinance, and board members agreed.

Board would like update from the Harbor Committee

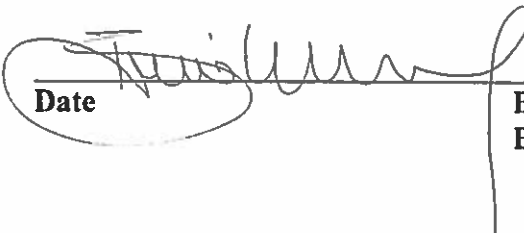
There was general discussion of board workshops and a housing study.

**X. ADJOURNMENT**

**Mr. Eleftheriou motioned to adjourn the meeting. Mr. Fitzpatrick seconded the motion. Without discussion, the motion carried unanimously (4-0) and the meeting adjourned at 5:57 PM.**

Meeting adjourns

Minutes approved by the Bar Harbor Planning Board on August 7, 2019:

Date	 Basil Eleftheriou Jr., Secretary Bar Harbor Planning Board
------	------------------------------------------------------------------------------------------------------------------------------------------------------

8-7-19