

Shutesbury Planning Board Meeting Minutes  
April 8, 2019 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Jeff Lacy, Michael DeChiara, Linda Rotondi, and Robert Raymond

Planning Board members absent: James Aaron and Steve Bressler

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Town Counsel Donna MacNicol, Attorney Francis Parisi/Vertex Tower Assets, LLC; Don Wakoluk/Sustainable Cannabis Development Advisory Committee, Leslie Bracebridge, Fire Chief Walter Tibbetts, Hilda Greenbaum, Joel Greenbaum, Thomas Williams, Stephen Sullivan, Mark LeLacheur, Peter Gees, Becky Torres/Town Administrator, and Jim Hemingway

Bonnar calls the meeting to order at 7:02pm.

Continue the Public Hearing for Case PB SP 19.01/Vertex Tower Assets, LLC: Fran Parisi/Vertex Tower Assets: the balloon test on 4.7.19 was reasonably successful; balloons were flown at 160' and 100'. Referring to the agenda, Parisi notes that the agenda item "Amendment proposal to allow waiver of requirement that cell tower applicant be a Telecommunications Service Provider" could affect Vertex Tower's application; if it passes, the proposed bylaw amendment will give the Planning Board the opportunity to waive the requirement that the applicant be a carrier. Parisi suggests continuing the public hearing until after the 5.4.19 Shutesbury annual town meeting. Town Counsel Donna MacNicol: if in fact, all that is done is a continuance of the public hearing there is no need to use the Mullin Rule that requires absent members to review all relevant documents and the audio recording in order to continue to participate in the public hearing. Lacy: the proposed waiver provision for the Wireless Communication Facilities bylaw is in line with the other waiver provisions developed by the Board for the marijuana and solar sections. Parisi specifically requests a continuance of the special permit application public hearing. Lacy: if there is no hearing tonight, it will delay the asking of questions that the applicant could be working on. Parisi states that he understands this and is willing to reconsider issues/questions at the time of the continuation. DeChiara: it seems a benefit to there being no substance at this time; the downside is that the public will not be able to respond tonight. MacNicol: if the public hearing is postponed, it may delay public comments and the public will have to return; there may need to be two public hearings after annual town meeting, however, the applicant has essentially made a motion. Lacy agrees with the proposal to continue, however, matters of substance may be delayed. Parisi restates his understanding and notes that the whole tenor of the public hearing will change if the waiver amendment passes. MacNicol notes that, in the past, she had reason to represent the proponent property owners, the Greenbaums. DeChiara to MacNicol: can the Board get the pulse of the public? MacNicol: doing so could evolve into substance. Parisi: the public will have an opportunity to speak about cell towers, in general, during the next agenda item. Lacy moves the Planning Board continue the public hearing for Case PB SP 19.01, as per the request of Fran Parisi/Vertex Tower Assets, until 5.13.19 at 7:15pm. Tom Williams: if the proposed waiver provision is approved at annual town meeting, does the Board need to wait to continue the public hearing until the provision is approved by the Attorney General's office? MacNicol: the Board does not have to wait; if the special permit is issued, the applicant goes forward at their own risk; it takes 90 days for the

Attorney General's office to approve bylaw amendments. DeChiara seconds the motion that passes unanimously. MacNicol, for the record, notes that the hearing was continued without any substantive discussion taking place.

Proposed Amendment to Section 8.7 Wireless Telecommunications Facilities: Per Lacy, if approved, the proposed amendment will become the second paragraph of Section 8.7-7A. Lacy: waivers exist with the more complicated bylaws that have many requirements and sometimes some of the criteria are not needed; a waiver provision gives the Planning Board flexibility and the ability to tailor decisions. Lacy continues: Bonnar, DeChiara and MacNicol did sub-quorum work on the provision's language to reflect the wording of the proposed marijuana and solar bylaw waiver provisions. Lacy reads the proposed amendment into the record; the request can be #1 or #2 but must meet #3; the waiver must be proposed while the public hearing remains open. DeChiara referring to the general waiver provision initially developed for the marijuana bylaw: Lacy was looking for flexibility and he (DeChiara) was looking for codification, i.e. the waiver needs to happen before the close of the public hearing and be made in writing. DeChiara notes the need to add "by adding after the first paragraph of 8.7-4A, the following new paragraph." Rotondi: does this, in any way, affect the setbacks, i.e. change in height, and will there be new setbacks? Lacy: the setbacks remain the same; anything can be changed if it meets the test and five members vote in favor of the waiver. DeChiara: if setbacks are waived, does doing so derogate the public purpose - this is the question the Board will consider. DeChiara: the Board approved the exact same waiver for the solar bylaw which is also included in the marijuana bylaw. The topic of this agenda item is clarified. Mark LeLacheur: the proposed amendment could create a consolidation of power and decision making in fewer and fewer places; the Planning Board will be able to pass permits more easily. Tom Williams: telecommunications is different from other sections of the zoning bylaw as it is not about what someone is doing on their own property, it is an outside entity providing a service to the town. Williams states his need to have some assuredness that the telecommunication services will be provided and notes that he is not saying that the waiver provision and its flexibility are not good things; he recommends the Planning Board consider what must take place so that unfortunate consequences do not occur, specifically, it cannot be okay that an applicant is not licensed; he is leery of a blanket waiver in the telecommunications bylaw. DeChiara: the waiver in the solar section was very loose - there were no parameters and it did not include the test - this is why a better-defined waiver provision was developed - the telecommunication bylaw is detailed and the solar bylaw is similar in that an outside commercial entity brings a utility to town; the request and the waiver permission must be documented and the public will have input into the consideration of the waiver. Lacy reads the original waiver, developed in 2008, for large scale residential subdivisions into the record. Walter Tibbetts/Fire Chief: a public hearing is needed for a waiver; this allows the Planning Board to look at applications as situations and society change; instead of having to go to annual town meeting for a change to a bylaw, the waiver provision allows the Board to consider a waiver with public input; this will be controlled flexibility. Peter Gees notes that he tried to get the word out for the last meeting; it is important to get the flavor of the town to see where residents fall regarding cell service in town. Gees is cautioned that the discussion is relative only to the proposed waiver provision. DeChiara: discussion of the waiver has to stand regardless of any project. LeLacheur: the application is in process, why would it not apply to it? Lacy: if a public hearing stays open until after annual town meeting and something changes, specifically passage of the waiver provision, at annual town meeting, it could affect the open

case. Parisi: telecommunication is evolving very rapidly; having the ability to waive will allow the Board to have flexibility; the current waiver provision for height is looser than the proposed general waiver provision therefore he recommends the removal of the height waiver; the general waiver provision will require the Planning Board to do their due diligence. Parisi suggests changing the numbering in the proposed provision so that #1 and #2 are combined and #3 becomes #2. Hilda Greenbaum: is this just one amendment on the warrant for annual town meeting? DeChiara explains that the wireless communication facilities and Solar waiver provisions will have separate votes. DeChiara: the plan is that there will be only one waiver provision in the wireless communication bylaw. Lacy moves the Planning Board approve Section 8.7-5B, as amended, by deleting the wording beginning with “unless” and ending with “signal strengths” and that the general waiver provision amendment, as previously discussed and agreed, shall be added as a second paragraph to the zoning bylaw Section 8.7-4A and that the Board instructs Lacy to put this wording into an acceptable form to be relayed to the Select Board in preparation for annual town meeting; DeChiara seconds the motion. Lacy will send the final language to all, specifically, the grammatical correction so that #1 and #2 are not misunderstood from one another. The public hearing for the four proposed amendments to the *Town of Shutesbury Zoning Bylaw* will be held 4.29.19. MacNicol: because the public hearing for the amendments will be held within 21 days of annual town meeting, a report by the Planning Board will be required for annual town meeting. MacNicol suggests including an alternative date in the notice. Rotondi: will the height limit remain? Lacy: yes; only the waiver for height will be deleted; confirms that abutters will have input on any waivers being considered because the waiver request will be submitted during the public hearing process. DeChiara: the discussion for the request for a waiver needs to be consistent with the bylaw. Lacy: technically, anything could be waived. DeChiara: the Board needs to have the discussion and the argument must be consistent. Lacy: the special permit can be appealed within 20 days of issue by an aggrieved party. Vote: four members vote in favor and one abstains; motion carries. The public hearing for the amendments will be held 4.29.19 at 7:15 with a default date of 5.1.19 at 7:15pm.

#### Review Proposed Marijuana Bylaw:

MacNicol to Bonnar’s question about the impact fee referenced in the definition for Host Community Agreement (page 3): the impact fee reflects the cost of the establishment to the community; the definition may not need to be in the zoning bylaw as it is already in the law. Bonnar: the Host Community Agreement (HCA) is not defined in the Cannabis Control Commission’s (CCC) definitions. MacNicol: it is defined in the law; the HCA is not part of a zoning hearing and not within Planning Board jurisdiction. Bonnar would like to strike the last sentence of the HCA definition. MacNicol recommends retaining only the first sentence with a citation for Mass. General Law Chapter 94G, Section 3 (d). MacNicol notes that the numbering in the waiver provision needs to be changed to reflect the numbering in the proposed wireless communication bylaw waiver. MacNicol reads the definition for “marijuana retailer” from the CCC “Guidance for Municipalities” into the record: “A Marijuana Retailer is an entity authorized to purchase and deliver marijuana and marijuana products from Marijuana Establishments and to sell or otherwise transfer marijuana and marijuana products to Marijuana Establishments and to consumers.” There is no change to the definition for Marijuana Retailer in the proposed bylaw. MacNicol notes the removal of “where children congregate” in 8.11-4B. DeChiara: the Board changed the measurement to 250’ and put back in “State-approved day care center”. MacNicol notes the need to include “where children congregate” in order to change the

distance; if not addressed in the zoning bylaw, the distance defaults to the regulation distance of 500'; the language needs to be completely consistent with the regulations. DeChiara: if it is okay with the Board, he will correct the relevant language. Bonnar: the Board needs to have the bylaw complete by noon on 4.11.19. Don Wakoluk requests a review of 8.11-4C. No change is made to this section. DeChiara explains the rationale for 8.11.4D to MacNicol; no change is made. Per MacNicol, in 8.11-5, change Section "9A" to "9" and add in "hazardous waste disposal". MacNicol: in 8.11-5A, add "the most restrictive dimensional requirement controls"; in 8.11-5C, change "is occupied and in residential, business, or community use" to "whose land is not vacant", add "where children congregate" to the second paragraph of this section and change "as determined" to "as approved" in the last sentence. Per MacNicol, in the last paragraph of 8.11-5F, change "establish" to "create"; in H. add "is required" at end of the first sentence and in the last sentence of O, correct to "plans for energy use, water use" Regarding 8.11-5S. "Host Community Agreement", MacNicol notes that HCA will rarely be completed while the applicant is in the special permit process; the HCA is not the Planning Board's jurisdiction; under normal circumstances, the HCA would not be signed before the special permit decision is made. MacNicol: the Select Board will use a sample host community agreement to negotiate with the establishment; the host community agreement is the final step before the license is issued. DeChiara: the establishment would be constrained; there may be things that are of concern and need to be in the HCA. MacNicol: the Planning Board might have input into the application process; suggest hours of operation be a condition of the special permit. Wakoluk: the Police Chief wants an opportunity to assess the security lighting needs of every application. MacNicol confirms that the Police Chief has the right to do so; the HCA will state that the applicant must comply with the security review by the Police Chief. Lacy: the Board is concerned about protecting abutters from lighting while the Chief may want to increase lighting. MacNicol: regarding security, the Police Chief trumps the Planning Board. DeChiara: the Planning Board invites expert input. MacNicol: the Board has no expertise in security, the Chief does. MacNicol reaffirms that the Planning Board does not have jurisdiction over the HCA. Raymond recommends eliminating this provision. MacNicol: you do want the host community agreement to complement the special permit therefore provide the Select Board with the special permit decision/conditions and anything the Board wants to be included in the HCA; the Board has a draft agreement so will know what information is important to communicate to the Select Board. DeChiara: can the Board say that certain information needs to be provided to the Select Board. MacNicol: the Board can condition the special permit. MacNicol to DeChiara: you cannot bind the Select Board, however, the Planning Board can put conditions on the special permit and, if it is violated, the special permit can be revoked; the Board cannot say what can be in the host community agreement; communication between the Select Board and Planning Board is very important. At DeChiara's suggestion, all Board members agree to strike 8.11-5S. MacNicol recommends removing the last sentence of 8.11-6. The proposed new section to the Use Table is reviewed. DeChiara moves the Board approve the Section 8.11: Adult Use of Recreational Marijuana Establishments and the new section of the Use Table as amended and he will make the necessary changes so that the documents can be submitted to the Town Clerk by 4.11.19; Lacy seconds the motion that passes unanimously.

Proposed Referendum on Retail Marijuana Establishments: Lacy, noting that retail establishments were taken out of use table, suggests polling folks at town meeting regarding the location of retail establishments in Shutesbury. DeChiara: this seems like a question worth

asking; could retail be phased in? Lacy poses the question: “is there a place for a retail establishment in the town”. MacNicol: because Shutesbury voted yes on the statewide recreational marijuana question, a town-wide special election will be needed to ban any kind of establishment in the town. DeChiara: could Shutesbury have a moratorium on retail establishments? MacNicol: good question. Wakoluk: if you do not allow retail establishments, are you thereby supporting the black market; the spirit of the law is for retail sales to occur with regulation. MacNicol: because Shutesbury voted yes on the recreational marijuana question, you will have to have an election to prohibit retail sales; the question is, will the Attorney General’s office pass the use table with the “no, no, no” for retail. Lacy suggests changing the use table to include retail establishments in the Forest Conservation district by special permit. Bonnar: given the regulations, that cannot be done. DeChiara and Rotondi: the Town Center district is the best place for retail. Wakoluk: unregulated sales are occurring; Shutesbury will miss the boat if retail is not allowed somewhere in town. Lacy: let’s put retail back in the Town Center on the use table. Rotondi: that is logically where it would go. Wakoluk: yes, by a special permit that is highly reviewed. Lacy: if town meeting is not okay with this, the Board will explain their rationale. DeChiara: not all establishments can be co-located. Lacy moves the Board strike “N” and add “SP-Z” for retail in the Town Center district; DeChiara seconds the motion that passes unanimously. Wakoluk: although the Sustainable Cannabis Development Advisory Committee did not agree on this, he recommends not adding any wording related to hemp to the marijuana bylaw. DeChiara: Town Counsel MacNicol recommended that as well. Lacy: it is not appropriate to include wording related to hemp as doing so will affect the marijuana bylaw.

Public Comment: None offered.

Lacy moves and Raymond seconds a motion to approve the 3.25.19 meeting minutes; four members approve the 3.25.19 meeting minutes as presented and one abstains; motion carries.

At 9:39pm, Lacy moves and DeChiara seconds a motion to adjourn the meeting; motion passes unanimously.

Documents and Other Items Used at the Meeting:

1. 4.5.19 email “Visual Demonstration Balloon Test Rescheduled for Sunday April 7<sup>th</sup>”
2. 3.26.19 email from Tim McNerney “Cell Tower”
3. Proposed Zoning Bylaw Changes to Section 8.7 Wireless Communications Facilities
4. Draft “Article 8.11: Adult Use Recreational Marijuana Establishments”
5. “MFBF’s Weekly Update April 3, 2019: Hemp Effort Falls Short on Beacon Hill”

Respectfully submitted,  
Linda Avis Scott  
Land Use Clerk