

Shutesbury Planning Board Meeting Minutes
May 13, 2019 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Michael DeChiara, Jeff Lacy, Linda Rotondi, James Aaron and Steve Bressler

Planning Board members absent: Robert Raymond

Staff present: Linda Avis Scott/Administrative Secretary

Guests: Attorney Francis Parisi/Vertex Tower Assets, LLC, Tom Williams, Fire Chief & Emergency Management Director Walter Tibbetts, Joel Greenbaum and Hilda Greenbaum.

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

Public Comment: None offered.

DeChiara moves and Lacy seconds a motion to approve the 4.8.19 meeting minutes. The 4.8.19 meeting minutes are unanimously approved as amended.

DeChiara moves and Aaron seconds a motion to approve the 4.29.19 meeting minutes. The 4.29.19 meeting minutes are unanimously approved as amended; five members approve and one member abstains; motion carries.

7:15pm Continue the Public Hearing for Case PB SP 19.01/Vertex Tower Assets, LLC: Bonnar continues the public hearing for Case PB SP 19.01 at 7:15pm. Francis Parisi: Vertex Tower Assets is seeking a special permit and waivers for a wireless communications facility; since the last hearing, the general waiver permit was passed at annual town meeting subject to approval by the Attorney General's office; the Board now has the authority to waive the requirement that the applicant be a licensed wireless communications provider. Parisi continues: Vertex received a call from Verizon and is quite confident that, once the special permit is approved, we (Vertex) may have a telecommunications provider. At DeChiara's request, the requested waivers are reviewed: 1. Waiver "from the 100' height limitation of Section 8.7-5B to permit the construction of a 150' tall tower (160' from the highest appurtenance)". 2. Waiver "from the requirements of Section 8.7-7D that the applicant or a co-applicant be a telecommunications service provider as defined in the Bylaw and Section 8.7-7 E10 that the applicant provide evidence that a valid license has been granted to the applicant for the specific service in the location by the FCC" (page 2 of the Special Permit Application). Bonnar notes that the public hearing is being recorded for the benefit of an absent Board member. To Bressler's question, Parisi states he anticipates that the 150' height will be adequate for Verizon, however, Verizon will not write a letter of intention before the special permit is issued. Parisi: Vertex will not build the tower until there is a commitment from a provider; suggests conditioning the special permit such that the tower will not be built until a provider commitment is firm. To DeChiara's inquiry, Parisi: we will not build until we have a provider lease agreement. Bonnar: Town Counsel MacNicol may have a problem with such a condition. DeChiara: the Board can write a condition to make a special permit compliant with the bylaw; it seems that the Board can condition that there be an agreement with a telecommunications provider prior to construction. Parisi: at the time, MacNicol was uncomfortable with such a condition because a general waiver provision was not in place. Lacy states he would only be comfortable with the waiver if there is a condition stating that a building permit will not be issued on the special permit until there is evidence a lease with a carrier has been presented to the building inspector. Parisi: the special permit will

attract a carrier. Bressler: upon receiving the special permit, the building inspector will receive documentation that a carrier lease has been obtained. Parisi: the discretionary special permit is valuable. Bonnar: we are allowed a bond that would cover removal of the tower in the event of non-use for a prescribed period of time. DeChiara reads from a Citizen Planner document about the purpose of conditions to cover a deficiency in a permit application. Parisi to Lacy's question: towers are owned by tower companies; Vertex just finished a tower in Monterey where the process took about 1.5 years; once the special permit is received, there is a federal permitting process as well. Lacy: the requirement that the applicant be a telecommunications carrier still exists in most towns. Parisi: towns have been mostly concerned about the construction of "spec" towers. Fire Chief/ Emergency Management Director Walter Tibbetts states he has been in contact with major carriers regarding FirstNet (First Responder Network Authority), a national system requiring first responders to have priority; when speaking with AT&T, he learned they are no longer in the business of building towers, however, because of their FirstNet contract, AT&T has to provide 100% coverage therefore they have interest in towers being built and are interested in this tower. DeChiara supports Lacy's request that Parisi provide documentation about the change in the industry from carriers building towers to tower companies doing so. Lacy states that he witnessed both balloon tests. Parisi confirms that different people conducted each test. Lacy viewed both tests from Williams' home and Summit Rock; on the first occasion, he could easily see the balloon from Williams' but not from Summit Rock; the view was reversed for the second test. Parisi: the tests were done at the same site; the first test suffered from wind conditions. Parisi to Lacy: the balloon test site is staked and shows where the center of the tower will be located. Parisi agrees to coordinate arrangements with the property owners for a visit to the site with Lacy. Lacy: there is a large stand of conifers between the proposed tower location and Summit Rock and Williams' and he hopes the tower location will be triangulated to avoid a view of the tower from these sites. Parisi: that may be possible, however there is a lot that goes into siting a tower and, once the site is determined, a more detailed analysis is done; if the tower is moved 50', the FAA analysis will need to be redone therefore he will arrange for the engineer to attend the site visit with Lacy. Bressler and Bonnar support this plan. DeChiara: the goal of minimizing impact on the residence is important. Hilda Greenbaum states that she owns Summit Rock. Lacy notes that Summit Rock is a significant place in town. Parisi understands the concern about visibility; the bylaw does not state that the tower must be invisible; he is willing to work to do the best they can with siting the tower. Parisi: we are heavily federally regulated; an archeological analysis is done and an effort is made to avoid wetlands. Williams: it is his opinion that Summit Rock is not on private property. Hilda Greenbaum disagrees. Lacy: Summit Rock is on someone's private property. DeChiara: at the prior meeting, a concern was raised about 5G and, given that concern, he is guessing there may be some community resistance to 5G; is there a way to condition the special permit such that if there is an upgrade from 4G to 5G, the applicant must come back to the Planning Board? Parisi: 5G is coming, however, in some ways you have to defer to the federal government because they approve bandwidth; changing to 5G would result in a change in hardware; visibility is the main concern of Planning Board. DeChiara: one could assume that 5G could be a public health issue; is there a way to come back to the Town if this change comes? Parisi: per Federal law, Planning Boards cannot take health concerns into their decisions; part of the concern about 5G is in urban areas where antennas are very close to residences; there are places where there are cell towers on school property; a condition to come back to the board if there is an upgrade to 5G would be illegal; Shutesbury is unique in that there is not a tower here; public safety is saying we need this tower as it is a real health hazard to not

have telecommunication coverage. Lacy reads Section 8.7-8 C3 of the *Town of Shutesbury Zoning Bylaw* into the record: "That the proposed Wireless Communication Facility will not adversely impact historic structures or scenic views" and 8.7-9D "...the Planning Board shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences..."; these statements back up his concerns and his request to triangulate the location of the tower relative to Summit Rock and the Williams residence. DeChiara, referring to Williams' "Comments on Vertex Tower Assets, LLC Application for Special Permit and Waivers" dated 2.7.19: Williams' point is that because Vertex is not a telecommunications carrier, the application stating that a 150' tower is necessary is not valid; is there a way to obtain documentation from a carrier regarding the need for a 150' tower? Parisi: Vertex used a frequency engineer to assist in determining the height of the tower. DeChiara: the frequency engineer was paid by Vertex; is there a way to get a letter from a carrier? Parisi: we tried and could not obtain such a letter; the Board could condition the special permit that such a letter be obtained; Vertex has done a lot of analysis to show the need for a 150' tower. Bressler: do multiple carriers use the same frequency/height? Parisi: the carriers all have individual proprietary networks; to be secure, the frequency ranges are narrowed down quite specifically; the separation, physical and spatial, is done to prevent interference. Tom Williams, referring to his document, "Comments on Vertex Tower Assets, LLC Application for Special Permit and Waivers" dated 2.7.19, received by the Planning Board: there are dependent clauses in bylaw that require the applicant to be a telecommunications carrier; these clauses directly imply that a licensed carrier is the applicant; there are about 11 such clauses, and if the Board decides to waive the carrier requirement, you will need to be sure you are waiving all of these dependent clauses; the Board needs to be diligent in reviewing the bylaw in this way because the bylaw is written as if the applicant is a carrier. DeChiara cites Section 8.7-7 E3 as an example of such a clause. Williams: yes, that is an example; a good portion of the bylaw is written from this perspective; the Board needs to conduct a review to be sure you are not conflicted in granting a waiver. Williams: this may not be the best place for a cell tower in Shutesbury; other sites that provide better coverage could include near Lake Wyola, near Route 202 and in the center of the town. Lacy requests Parisi, as a response to this corollary concern, to go through the application and bylaw and note areas needing a waiver as a result of a carrier waiver. Parisi: tower siting is subject to topography and the ridge would be an impediment to coverage from a tower by the lake; the likelihood of a carrier adopting four towers is not likely; in addition to topography, willing land owners need to be identified, setback requirements met and WPA jurisdiction considered; there is another tower in the gap along Route 202. Lacy encourages Parisi to address Williams' valid ancillary concerns. Parisi to DeChiara: every carrier has a specific frequency. Parisi: we lease space; carriers are licensed to a specific frequency and we do not limit their technology. Tibbetts: to the question as to whether this is the right site, Vertex did address visibility for this site and has done a good job balancing coverage and visibility; a tower in the Lake District would be a highly visible tower. Hilda Greenbaum: only the spire may be visible and nonreflective paint will be used. Parisi: nonreflective paint will be used and there will be no lighting on the tower that will be surrounded by tree canopy. DeChiara: sequencing for public safety on tower? Parisi: whip antennas on the top of the tower are for public safety. DeChiara: timing for public safety? Parisi: once built, Tibbetts can install antennas; public safety is entitled to free space. Parisi: Vertex is a year into this process and there is another 4-5 months of work to be done; we hope to build in 2019 and will want to build as quickly as possible. Aaron asks about survivability of the tower in high velocity wind conditions noting that there is the potential

for a greater sized storm in the next 5-10 years. Parisi: the foundation will be specific for soils on the site; assessment of maximum wind speeds and ice load is done and the upgrade of standards and the building code is ongoing; this type of tower structure can be structurally enhanced; there have been few instances of towers falling – in high winds, they will bend and collapse onto themselves. DeChiara follows-up on Aaron’s question: are we allowed to have a tower built up to a certain standard for the increased frequency and intensity of climate change storms; the building code may not keep up. Parisi: we have to operate by standards that are probably more stringent than the residential building code. Bressler states he is comfortable with the standards as the tower owner will be motivated to fix/enhance the tower as soon as possible. Bonnar notes that the “fall zone” is large. Parisi: the tower setback requirement is significant. Lacy asks Parisi if he is willing to continue the public hearing. Parisi agrees to continue the public hearing and notes the tasks he will accomplish in the interim: 1. Provide documentation that the industry is now “tower owner build”; 2. Walk the site with Lacy and others; and 3. Go through the bylaw to identify provisions affected by the carrier waiver. Bonnar asks about a decommissioning bond. Parisi: typically, Vertex provides a letter from the contractor in which the cost to take down tower is adjusted to inflation; prefers this letter be in conjunction with the building permit. DeChiara asks about the need to follow-up with Town Counsel MacNicol regarding conditions for the special permit. Lacy: the building inspector will have the special permit and will ensure conditions are met before issuing the building permit. DeChiara notes that the Board needs to review the ancillary clauses. Lacy confirms with Williams that the dependent clauses are noted in his document. Parisi confirms that he has a copy of Williams’ document. DeChiara moves to continue the public hearing to 6.10.19 at 7:15pm; Rotondi seconds the motion that passes unanimously. The audio recording is discontinued at this point. Williams receives confirmation that the evidentiary portion of the public hearing remains open.

Lot O32 Landscape Design Study: Lacy: the Conway School of Landscape Design students held a stakeholder presentation on 5.9.19 that included an environmental analysis; the students will be presenting to their professors on 5.23.19 and doing another stakeholder presentation in Shutesbury on 6.5.19 at 1pm.

Bonnar suggests postponing the remaining agenda items: town meeting redux, Complete Streets, Planning Board webpage and the new EOE grant round. DeChiara notes that prior to applying, the first step is for the Select Board to develop a Complete Streets policy. DeChiara offers to prepare an update to the Planning Board webpage for consideration during the 6.10.19 meeting.

At 8:37pm, Bressler moves to adjourn the meeting; Aaron seconds the motion that passes unanimously.

Documents and Other Items Used at the Meeting:

1. *Town of Shutesbury Zoning Bylaw*
2. “Comments on Vertex Tower Assets, LLC Application for Special Permit and Waivers” dated 2.7.19 by Tom Williams

Respectfully submitted,
Linda Avis Scott
Land Use Clerk