

Shutesbury Planning Board Meeting Minutes
June 10, 2019 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Jeff Lacy, Steve Bressler, Michael DeChiara, Linda Rotondi, Robert Raymond and Jim Aaron
Staff present: Linda Avis Scott/Land Use Clerk

Guests: Attorney Fran Parisi and Stephen Kelleher/Vertex Tower Assets, LLC, Hilda Greenbaum, Joel Greenbaum, and Tom Williams

Bonnar calls the meeting to order at 7:08pm.

Public Comment: None offered.

Unanticipated Topic:

ANR 25 Stowell Road/Historical Enterprises LLC: Joel Greenbaum/Historical Enterprises LLC: the parcel (Lot L17) is 121 acres; the proposal is to breakout 3 acres for the house and sell the remaining acres to the Department of Conservation and Recreation (DCR) for Quabbin watershed protection. Lacy confirms that Stowell Road is a Town road; the frontage for the parcel on which the circa 1807 house is located is derived from Stowell Road. Lacy moves that as the house parcel meets frontage requirements and is located on a paved Town road in good shape, the “Subdivision Approval Not Required Plan of Land for Historical Enterprises, LLC” by Harold L. Eaton & Associates, Inc., dated 5.9.19, meets all the ANR tests. DeChiara seconds the motion that passes unanimously. The document is duly signed by the members of the Board (see file).

Status of New Zoning Amendments: Bonnar: the Department of Housing and Community Development, Franklin Regional Council of Governments and the abutting towns were not properly noticed about the proposed zoning amendments public hearing and the Town Clerk was not able to submit the zoning amendments to the Attorney General within the proper time frame; the usual time frame is to provide the changes to the Attorney General’s office within 30 days of annual town meeting. Lacy: per Attorney Bob Ritchie, this is a common problem and the work around is a waiver process; Susie Mosher/Town Clerk is expecting to receive a waiver document to sent to those who should have been noticed; the document requests each party to waive the notice; the issue is that the Planning Board has an active case. Lacy: the Board is still in the 90-day period from the time of submittal to the Attorney General’s office and their approval of the zoning bylaw amendments. Board members agree that it will be helpful to have a “Bylaw Amendment” check list based on the “Form 7” utilized by the Town Clerk; Lacy agrees to draft such a list.

Wheelock Solar Project Update: Lacy reads the 6.10.19 email from Kevin Sullivan/Lodestar into the record: “Things are very stable; there has been zero construction activity since March, we anticipate a crew returning in late June to remove the silt fence so that wildlife can establish a wider range of travel and a bigger habitat to nest in”. Lacy expects reseeding will be needed in some areas; the plan is to conduct a site visit and have a report and photos for the next Planning Board meeting.

Lot O32 Landscape Design Study Update: Lacy: on 6.5.19, the Conway School of Landscape Design students made a presentation and held a conversation with stakeholders including representation from the Conservation Commission, Council on Aging, library and an interested resident; the students presented different scenarios for a library and cottage style senior housing on Lot O32 which is a narrow long lot. Per Lacy, the students identified areas that may affect where housing could be developed; the least constrained area is in the rear of the parcel which is remote, however, has potential access through a lot on West Pelham Road. Lacy: the final scenarios will be presented in bound booklets which are anticipated to become part of the knowledge base for Lot O32. Lacy to Raymond's question about contamination on the site: the Town has a separate contract for development of a clean-up plan for the site.

Continue Public Hearing for Case PB SP Case 19.01/Vertex Tower Assets, LLC:

At 7:41pm, Bonnar calls the public hearing continuation to order and notes that the hearing is being recorded for an absent member. The recording is not needed as Steve Bressler arrives within minutes after the topic begins. Planning Board member Robert Raymond has listened to the audiotape and read the minutes for the 5.13.19 session of the public hearing that he missed and the Public Hearing Evidence Affidavit has been signed. Fran Parisi/Vertex Tower Assets LLC notes that property owners Hilda and Joel Greenbaum/Historical Enterprises and Stephen Kelleher, the principal of Vertex Tower Assets are present. Parisi: the bylaw is effective as of the date of annual town meeting; concurs that the notice can be rectified and waived; if the Attorney General's office overturns the bylaw, it will revert to the bylaw in existence before annual town meeting; if for some reason the Attorney General's office overturns the bylaw, notwithstanding the notice and timing that can be rectified, the burden is on the applicant. Parisi: there are Federal regulations that must be complied with including a "shot clock" regulation requiring the Planning Board to make a decision within 150 days of the application submission date; the delays and continuances have all been reasonable but, at some point, there needs to be a decision; the "shot clock" will allow me to go to federal court and force a decision. Parisi recognizes the delay for the zoning amendment and notes that if the Attorney General's office does not approve the bylaw amendment, the Building Inspector will not issue the building permit, therefore Vertex is willing to move forward. Lacy notes that one of the continuances within the "shot clock" period was requested by the applicant for the bylaw amendment; should this delay count toward the 150 days? Parisi: the zoning amendment put us into a limbo period; per the federal government, notwithstanding your normal process, there is an expedited process; from submission of the application on 2.7.19, 150 days ends on ~7.7.19 which is before the next regularly scheduled Planning Board meeting. Parisi: we respect that boards are moving reasonably, though, at some point they have to move on. Parisi refers to the "Excerpt from FCC's Twentieth Report to Congress on the State of Competition in the Commercial Mobile Radio Services Marketplace re Wireless Infrastructure" included in "Supplement No. 1" submitted to the Planning Board 6.10.19: carriers are out of the telecommunications tower industry; tower builders work with communities. Per Parisi: he walked the site with Lacy and the site engineer; one thing that has changed (since the balloon test) is the fill in of foliage; the base of the facility will not be visible and there will be no visibility of the tower from the public way. DeChiara: was there any discussion about tweaking the location? Parisi: yes, the site is about 20-35' below the hill making it virtually impossible to see from abutting properties; the location is

designed to meet all setbacks; regarding the two vantage points – the site is over 500’ away from the residential house and several hundred feet away from the high point (Summit Rock).

Lacy: the tower site was confirmed during the site visit and, from there, one could not see the house or Summit Rock; in the winter, you could pick out the house from the tower site; with the vegetation and without a balloon, you could not micro-adjust the site; when there was no vegetation, you could not see the site from the house though a little bit was visible from the rock.

Parisi: we could not decide if Summit Rock is on the subject’s property, however, in any event, it is on private property.

Lacy: the Planning Board is charged with taking cultural resources into account.

Parisi: the application included a written request for waivers – a waiver from the 100’ height limitation, a waiver from the requirement the applicant be a telecommunications provider and a waiver that the applicant provide evidence of a valid telecommunications license (page 2 Special Permit Application); at the time of the application the bylaw included a waiver for height; the amendment now allows waivers for the other two.

Parisi refers to the “Request for Waivers” section of the 6.10.19 document: as requested, he went through the bylaw and noted the waivers; Vertex meets all the requirements under the bylaw except height, being a provider and having a valid telecommunications license and meets all the special permit criteria; we are at a point where the Board could make a decision.

Lacy to Parisi’s question: the height waiver language was removed with the new general waiver provision.

Parisi reads the Wireless Communication Facilities Section 8.7-8 C.1-4 from the *Shutesbury Zoning Bylaw* into the record and asks the Planning Board to make the required findings and grant any necessary waivers.

Parisi notes that Vertex has other due diligence to carry out including re-engaging the engineers to obtain geotechnical data for the Building Inspector, obtain a licensed carrier for which Vertex is in discussions and complete Federal requirements.

Parisi respectfully requests the Board make the necessary findings, grant the requested waivers and move forward with a decision to grant a special permit.

DeChiara: the Board needs to go through the waivers to see which need granting;

Town Council Donna MacNicol cautioned against writing a condition that a provider be found.

DeChiara reads from the 5.23.19 meeting minutes: “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.”

DeChiara notes that the Board was going to confer with MacNicol about the special permit conditions.

Bonnar: the Board was at the point where a signed telecommunications carrier lease agreement would be presented to the Building Inspector.

Parisi notes that he agreed with MacNicol in that, pre-amendment, the Board could not condition that a carrier be found; now, given the bylaw amendment, the Board can write a “subsequent condition”.

Lacy: the Board can waive the requirement and condition for a carrier lease; when writing the draft decision, he will confer with MacNicol.

Lacy: is the height waiver for engineering necessitated spacing?

Parisi: the tower is a vertical totem pole; the lowest location needs to be viable; the tower height is relative to tree height/canopy, topography and the physical spacing of carriers; the coverage objective is the lake area and “downtown” Shutesbury.

Parisi: the submitted application goes through the bylaw, includes comments, and asked for several waivers.

DeChiara: the general waiver provision amendment requires the applicant to request the waiver in writing.

Parisi: waivers for height, being a telecommunications provider, and having a valid license were requested.

Lacy: per Tom Williams’ comments (dated 2.7.19), the data could not be submitted because the applicant is not a wireless telecommunications provider.

Parisi: Vertex engages the same engineers and utilizes the same software as telecommunications

providers therefore he does not believe any additional data is needed. Parisi: Vertex was asked to come to Shutesbury and has spent time and money to do so; the basic premise is whether the Board thinks we need to provide any additional data; if yes, Vertex will request a waiver because we have provided all of the necessary data. DeChiara: if the Board waives the provider requirement, we are not requiring any additional data. Lacy, referring to "Excerpt from FCC's Twentieth Report to Congress on the State of Competition in the Commercial Mobile Radio Services Marketplace re Wireless Infrastructure": page 32 paragraph #44 seems to describe the Vertex business model. Parisi to Lacy's question: "DAS" is a system developed to operate in densely utilized areas, i.e. Gillette Stadium. Parisi to DeChiara's question: the National Environmental Policy Act Report (NEPA) due diligence includes the environment, historical Native American sites and endangered species; consultants go out to the site and do data base research; Vertex notifies the relevant local agencies and native tribes; we are quite confident that there is nothing that will impede our process. DeChiara: in the recent past, the Board has had a lot of conversation about sacred landscapes. Parisi: if a tribe has historic knowledge about a site, they will be on site during construction and an archeologist may need to be engaged. DeChiara wants Parisi to provide evidence that the federal process has been followed. Parisi suggests a condition requiring submission of the NEPA report. Stephen Kelleher: Vertex hires a company to complete the federal diligence and cannot do anything without the NEPA report. Parisi to Lacy's question: the NEPA is triggered because the tower is regulated and licensed by the FCC. Kelleher to Lacy's question: the access is a 12' wide gravel drive with power going in on the side; the swale noted on the site plan will be filled with rip-rap or crushed stone – a grade level pit with crushed stone. Parisi: there are no flagged wetlands; erosion and runoff controls will be installed as sited on the plan. Parisi to Raymonds question: three waivers have been requested – height, telecommunications provider and having a valid license; Vertex has submitted all the required data. Parisi to DeChiara's question about sequencing: Vertex does not start the federal process until the special permit is issued. Parisi to DeChiara's question about potential impact to historic and scenic structures: a letter is sent to the State historic preservation office which then sends a letter to the local historic office; this is an easy site as there is not much development in the area. Kelleher: coordinates go into a data base and then a notice is sent to the relevant tribes; the trigger for who Vertex will have to contact is automatic. Tom Williams: it is clear the applicant is being proactive on the elements of the bylaw that require scrutiny; it is evident that there is no single correct answer; providers should be the dictates of the action however the Town voted for the amendment to the bylaw. Williams, noting that the Board has his written comments, recommends the Board carefully review when they can waive. DeChiara recommends the Board waive any language requiring the applicant be a telecommunications provider. Bonnar: MacNicol will have guidance for the Board. Raymond to Williams: are you suggesting this applicant has not done due diligence regarding the site and needs a waiver? Williams: no, providers have interests that the applicant does not have; this applicant chose the highest point in Shutesbury, an area that is not being used, and that may not be the optimal site for Verizon, AT&T or other providers; if 5G comes, the infrastructure will be different. Williams continues: when Verizon and AT&T came to town, they wanted different spots; this location is not right or wrong, it is not what we have seen in the past; the current site is 1305' above sea level. Kelleher: AT&T's main objective was the gap on Route 202; Vertex decided to provide maximum benefit to Shutesbury. DeChiara: from the perspective of town residents, when you have zero, it would be good to have one tower with some coverage. Kelleher: in 15-20 years, there will be some enhancement necessary for 5G. The Board concurs that no further information

is needed. At 8:55pm, Bressler moves to close the public hearing for PB SP Case 19.01 special permit application for Vertex Tower Assets LLC; Raymond seconds the motion that passes unanimously.

Lacy: the “shot clock” expires on 7.8.19. The Board will meet on 6.24.19. Conditions are considered: a signed agreement with a licensed provider is to be presented to the Building Inspector; if there is finding of Native American structures, the report is to be submitted to the town. Parisi: it would be appropriate for the Board to request that the National Environmental Policy Act Report (NEPA) be submitted as part of the building permit application. Bonnar: there needs to be a condition regarding bonding for deconstruction. Parisi recommends using special permit condition language such that if it is not complied with, the matter becomes an enforcement issue; suggests a condition ensuring that the posted bond be equal to the cost of removal of the tower as determined by an engineer as surety for the bond. Lacy: does the Board want a condition for how close a new house could be built to the tower; the Board has a certain responsibility to the future which is why we plan and regulate. Bressler and Rotondi: what does it matter to the Planning Board if someone wants to build within the fall zone of the tower. Williams: this application cannot possibly be constrained by future development; the Board has to constrain the builder not the tower. Bressler: has Vertex gone into the lot selling business? Parisi: no; any future development would have the same constraints. Raymond: if the land were to be developed and trees cut down, it would affect the visibility of the tower. Parisi suggests a condition requiring the maintenance of a sufficient vegetative buffer around the tower, i.e. 1x tower height. Lacy: should there be condition that if the lot is subdivided in any way the tower will still have room to fall on its own land? Bressler states this has some rationale. Parisi: any subdivision of the lot would need Planning Board approval so that could be dealt with then. Lacy: it is better to deal with it now. Raymond suggests “no development shall make the tower more visible”. Bonnar: logging could make the tower more visible. Parisi restates his suggested requirement to maintain a vegetative buffer equal to the height of the tower. Lacy: keep the fall zone on the tower’s property and maintain a vegetative buffer. Parisi suggests a condition that the applicant provide reasonable space for public safety antennae and that a satisfactory free lease agreement with the Town is accomplished. Lacy: other Board members can provide direct communication about conditions to Lacy. Parisi disagrees with this arrangement. DeChiara clarifies that members can communicate to Lacy one directionally and that Lacy cannot write back. DeChiara asks for the opportunity to review the draft decision prior to the next meeting.

DeChiara moves and Lacy seconds a motion to approve the 5.13.19 meeting minutes; the minutes are unanimously approved as presented.

Complete Streets: DeChiara: if the Select Board is interested in Complete Streets technical and construction awards, they will have to adopt language recommended by DOT then attend training in order for the town to become eligible to apply for funding. DeChiara explains that he raised the availability of Complete Streets funding because walkability and bike-ability came up during the Master Plan visioning process. Aaron: could any of the funds be used for Chapter 90 work? DeChiara: it could be part of the construction/Tier 3 portion of the funding; suggests Shutesbury get into the “rolling category”. DeChiara asks if the Planning Board would like to recommend the Select Board adopt the DOT policy. Lacy: what needs to be agreed to in the policy? DeChiara will send members the suggested policy language; there is no financial

requirement. Lacy: Shutesbury has low density roads and some implementation could create radical changes; if would be a real effort to create a walkway from the school to town hall.
Web Page: DeChiara, noting that the Planning Board webpage needs updating, offers to make recommendations to make information more accessible. All members accept DeChiara's offer. The topic will be discussed further at a future meeting.

Unanticipated Business: None offered.

At 9:25pm, Raymond moves and Aaron seconds a motion to adjourn the meeting; motion passes unanimously.

Documents and Other Items Used at the Meeting:

1. Subdivision Approval Not Required Plan of Land for Historical Enterprises, LLC” by Harold L. Eaton & Associates, Inc., dated 5.9.19
2. 6.10.19 email from Kevin Sullivan “Re: Inspection”
3. Vertex Tower Assets, LLC 6.10.19 “Supplement No. 1” by Attorney Francis Parisi
4. Town of Shutesbury Zoning Bylaws
5. Mass DOT “Complete Streets” Information

Respectfully submitted,
Linda Avis Scott
Land Use Clerk