

Shutesbury Planning Board Meeting Minutes  
March 25, 2019 Shutesbury Town Hall

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

Guests: Attorney Francis Parisi/Vertex Tower Assets, LLC, Leslie Bracebridge, Nancy Matthews, Karen Czerwonka, Bill Czerwonka, John Puffer, Mike Hallworth, Tom Williams, Marlon Depaz/Radio Frequency Engineer MOD Data Tech Inc., Jeremy Kellogg, Walter Tibbetts/Fire Chief, Mark LeLacheur, Dan Hayes, Dan Lass, Diane Adams, Melissa Makepeace-O'Neil/Select Board, Jesse Moreno/Civil Engineer ProTerra Design Group LLC, Joel Greenbaum, Hilda Greenbaum, Peter Gees, Laura Dupont, Donald Perreault, Leonard Czerwonka, Neil McNeill, Graeme Sephton, and Stephen Sullivan.

Bonnar calls the meeting to order at 7:00pm.

Public Comment: None offered.

Review of Proposed Amendments: Bonnar: the final text for the marijuana bylaw needs to be completed by the end of the 4.8.19 meeting. Lacy and DeChiara agree that this timeline is doable. Bonnar: the public hearing schedule, for zoning bylaw amendments, will be confirmed 4.8.19. All members agree; Lacy and DeChiara will continue to work on the draft marijuana bylaw.

DeChiara moves and Raymond seconds a motion to approve the 3.11.19 meeting minutes. Lacy: subsequent to review of the 3.11.19 minutes, for clarification purposes, there is only one waiver in the telecommunications bylaw and that waiver is for height only.

Vote: four in favor, one abstention to approve the minutes as amended; motion carries.

Marijuana Bylaw: DeChiara reviews the 3.22.19 draft "Marijuana Zoning Bylaw" noting the addition of "Marijuana Establishment Agent" and "Visitor" to the definitions; Section x4. B. distance of 250 feet and adding back "or State-approved day care center"; add to x4.C: "within 100 feet from any existing residential use if there is a closed loop water system for the establishment's operations or not within 250 feet from any existing residential use if there is no closed water loop for the establishment's operations."; x5: addition of "PGA" here and in other sections where indicated; x5. A: "Site Plan Review" added; x5. F: addition of "To preserve and protect reasonably sufficient access to water resource for abutters and neighboring land owners, all Marijuana Establishments involved in cultivation, manufacture and research/testing shall submit information regarding estimated use of water for regular and peak operation. Wellheads for Marijuana Establishments involved in cultivation, manufacture and research/testing must be located at least 250 feet from the nearest wellhead. The distance between the wellhead of the Marijuana Establishment and the wellhead of an abutting property shall be measured in a straight line, without regard to intervening structures. No Marijuana Establishment shall establish a reasonable risk that groundwater on abutting land becomes significantly diminished such that an existing water well on an abutting property is no longer sufficient to reasonably meet current

use.”; the addition of x5. I “Solid Waste: For all Marijuana Establishments, waste shall be managed in accordance with 935 CMR 500.105, section 12.”; x.5 J (was I) distance of “125 feet” and add “The distance between a residential use and a driveway or parking lot shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential property to the driveway or parking lot whichever is closest.”; x5. L (was K) add “that support the purpose and intent of this section.”; x5. O (was N) add “solid waste management”; x5. P (was O) shorten to “In no event shall a Marijuana Establishment ‘operate between the hour of 7:00pm and 8:00am. The hours shall be set by the SPGA/PGA.’”; x5. Q (former P “Retailer Limits”) has been deleted – to Q add “All such contact information shall be annually submitted to keep it current and accurate, or more frequently if significant staffing changes are made. The Town Administrator may distribute or publicize this information for purposes of public safety, to notify other marijuana or hemp growers to minimize occurrences of cross-pollination, or for other purposes that the Select Board sees fit and directs the Town Administrator to act upon.” DeChiara regarding proposed changes to the new section of the use table: consider prohibiting Tier 3-6 in Rural Residential and requiring a Planning Board special permit for Tier 3-6 in Forest Conservation. DeChiara recommends considering the addition of two sections from the telecommunications bylaw - reasons for denial of an application and the Planning Board’s right to reserve expertise for review. Lacy: “home occupations” are apparently not part of other towns’ bylaws; per the CCC attorney, the Planning Board can write bylaws however these bylaws still need to meet the state regulations. Lacy reads a proposed amendment to section x2. “Special Permit Granting Authority & Site Plan Review”: “Marijuana establishments are prohibited as a customary home occupation under Section 8.5-1A, but may be proposed as a major home occupation under Section 8.5-1B if otherwise allowed in the district. The Zoning Board of Appeals shall be the SPGA presiding over a consolidated special permit review under this section and Section 8.5-1B. In such cases, the marijuana establishment shall be within buildings or on land distinctly separate from the residence and its immediately yard area and not operated within the residence. The portion of the lot operated as a marijuana establishment shall comply with all applicable state regulations. The residence and its immediate yard area shall not be considered to be a marijuana establishment.” Per Lacy, the parcel needs to be divided in order to separate the marijuana establishment from the home specifically to keep people under 21 years of age separate from the marijuana establishment. Lacy: Section 53G allows the Board to seek guidance from a particular expert. DeChiara cites the 3.22.19 email from Sanford Lewis/Sustainable Cannabis Development Advisory Committee noting the Committee’s concern regarding the “potential transfer of cannabis operations to different owners and operators after an HCA (host community agreement) is reached without some level of town review”. DeChiara cites his 3.14.19 email “Hemp recommendations from Planning Board to SB”. Melissa Makepeace-O’Neil/Select Board Chair acknowledges that Select Board members have individually received this email. DeChiara is willing to attend a Select Board meeting to discuss the Planning Board's request. Bonnar notes that Lewis, in his 3.22.19 email, notes the Committee’s concern about the need to protect backyard growers as well as commercial growers from “incompatible mixed gender hemp cultivation.” DeChiara and Lacy will work on a draft for review during the 4.8.19 meeting.

7:30pm: Special Permit Public Hearing/Vertex Tower Assets LLC: Bonnar calls the public hearing to order at 7:35pm. DeChiara reads the public hearing notice into the record (see attached). The public hearing is for the zoning special permit application and waiver requests of

Vertex Tower Assets, LLC to construct a Wireless Communication Facility including a 150-foot-tall lattice style tower (160' to the top of the highest appurtenance) on land owned by Historical Enterprises, LLC located on Locks Pond Road, Shutesbury Ma, Tax Assessor's Map D, Lot 35. Bonnar requests Attorney Parisi to present the proposal. Attorney Francis Parisi/Vertex Tower Assets introduces Marlon Depaz/Radio Frequency Engineer MOD Data Tech Inc. and Jesse Moreno/Civil Engineer ProTerra Design Group LLC. Per Parisi, Lot D35 is undeveloped and is located at the intersection of Wendell and Locks Pond Roads; on 7.9.18, Vertex Tower Assets had a pre-application meeting with the Planning Board and the special permit application was filed 2.7.19; the applicant, Vertex Tower Assets, LLC is a wireless infrastructure developer; telecommunication providers partner with developers who work with cities and towns to site towers; developers can be more sensitive to the community by identifying an appropriate site for the community. Parisi to Lacy's question: Vertex will own and manage the tower and will lease space on the tower to telecommunication companies. Parisi continues: Vertex is in the process of purchasing the lot and will do so once the permit is granted; the statistics indicate the need for telecommunication services, i.e. more than 70% of 911 calls are made from cell phones and telecommunication providers can locate the source of the 911 call; better signals are required and need to be robust enough to penetrate buildings; poor quality cell service is becoming a public safety concern; there is a long stretch of Locks Pond Road and Wendell Road where coverage is completely lacking. Parisi notes the large recreational facility at Lake Wyola and cites maps, included in the application, that depict existing and proposed coverage; existing infrastructure cannot get over the ridge to provide coverage; the new tower will provide a robust signal in the Wendell-Locks Pond Roads area; the maps identify the strength of signals for "in building", "in-vehicle" and "outdoor" use. Per Parisi, there will be reliable coverage in the uncovered area; extensive analysis using topography and height is done; different providers operate in different megahertz ranges. Parisi to Bressler's question: 700 MHz travels farther and is the best these towers can do; dense foliage and diverse terrain interferes with the signal. Parisi continues: the site is in a densely forested area; it is a large parcel and setback distances are amply met; a small access driveway will be created. Moreno to Lacy's question: flags have been placed in the general location of the proposed driveway. Parisi, referring to the "Compound Plan & Elevation" (sheet A-2): the site is unmanned; there will not be a significant increase in impermeable surface in the 60'x60' compound; construction will take 4-6 weeks; there will be no FCC required lighting and the site will not generate any traffic, noise, dust, heat, glare, or discharge of noxious substances or pollute waterways or groundwater (page 21 project narrative); the tower is designed for multiple telecommunications antenna with room for public safety whip, omni-directional antenna offered free of charge; there is a small lightning rod on top; the tower will be 150' to the top + 10' for public safety antenna. Parisi: there is an extensive report in the application; the proposed tower exceeds all safety requirements under FCC regulations; the antenna are designed to broadcast for a couple of square miles; with full build-out at full capacity, it does not go above 0.26% of the applicable radio frequency (RF) FCC limits (see report in application from Marlon Depaz/Radio Frequency Engineer MOD Data Tech Inc); this is no different than the RF emissions from an AM/FM radio or cordless phone; utilizing different radio frequencies, we are exposed to RFs on a daily basis. Parisi: the best that could be done was accomplished during the 3.18.19 visibility demonstration; there were very few places where the balloon was visible and there will be no visibility in the summer; it was an unusual situation in that the balloon could not be seen; the balloon's string was 150' therefore the balloon was higher than the tower. Lacy: by a little after 10am, a couple of balloons had already popped

and they were struggling to get up a third, however, the balloon was not anywhere near straight; wasn't there a need for two balloons? Parisi: they did struggle; a string was placed at 100'. Lacy: the complete test did not happen from 9am-12noon. Parisi: the bylaw did not state the test had to be up for three hours. Lacy: the notice said 9am-12noon; this was the time period for folks to see the balloon. Parisi: this was a visibility test versus a site visit. Lacy notes that the balloon was visible from the highest house on Carver Road. Parisi: the balloon was 4' in diameter; the only other option is to put a crane up requiring the use of a bull-dozer and the need for tree removal; the balloon test can be repeated, however, the wind is a problem. Parisi refers to the application narrative: all components of the telecommunications bylaw and special permit criteria have been met except for the height waiver and carrier license requirement; this is a minimal installation compared to the size of the lot and surrounding area; the bylaw allows a height waiver and the FCC has adopted regulations that encourage the development of telecommunications infrastructure; local boards cannot "say no". Parisi cites caselaw indicating that the applicant only needs to show the absence of existing structures. DeChiara refers to the Telecommunications Act noting that the 1996 amendment provides for local zoning authority with limitations in section 7(B)(i)(I): "shall not unreasonably discriminate among providers of functionally equivalent services"; Vertex is not a provider so there is no protection for developers. Parisi: there is ample case law that shows the Act extends to wireless infrastructure; there is federal case law demonstrating that the Board cannot say no without good reason. Parisi: the bylaw requires the applicant to be a carrier; the Town has poor cell service; the providers have gotten out of infrastructure development and Vertex was contacted last year, by the Town, to help and is trying to help; the Board could condition the special permit so that Vertex does not build until a provider signs on. DeChiara: you are correct that the Town has poor coverage; providing the relevant federal caselaw will be helpful. Parisi: the Planning Board is a SPGA; the question is whether the Board can grant a waiver and condition; the Act is designed to prevent boards from saying no; the height waiver is easy; there is ample demonstration in the application that the special permit criteria are met. Lacy: what would prevent Vertex from getting a carrier now? Parisi: carriers are looking to go where there is the best commercial value, Vertex goes into the more rural areas; there is also a federal permitting process and more engineering to be done after the special permit is issued; a carrier isn't going to look at Vertex until we are further into the process; by developing the infrastructure, we make it more viable for a carrier; the carriers do not want to come on site until the structure is approved. Parisi assures the Board that Vertex will not build the tower until it makes sense to do so; Shutesbury's bylaw is unusual because it has the carrier requirement - this is an impediment to building and solving your service problem. Lacy: per Town Counsel Donna MacNicol, this requirement is in other towns' bylaws; are you aware of other towns that have conditioned the carrier requirement? Parisi: currently in Conway, Vertex will need go to the ZBA for a variance. Lacy notes that the cell tower off of Buffam Road in Pelham has nothing on it. Parisi: that tower is noted as existing infrastructure in the application; Vertex will be building three towers to cover the Monterey area; this proposal is not done on speculation. Bressler notes the lack of user density in the area; is this worthwhile for providers? Parisi: the federal government wants to develop a national public safety network, "FirstNet", that forces providers to go into more rural areas; this changes the dynamic from population to geography. Lacy notes the Towair results indicating the tower does not need to be registered with the FAA. Parisi: in addition to local requirements, Vertex is subject to a larger federal impact statement; because Vertex is federally licensed, a MEPA (Massachusetts Environmental Policy Act review), including notifying the local Tribal Historic Preservation

Officer, needs to be completed; the balloon analysis was done, however, the historical analysis is pending. Tom Williams, 37 Carver Road, notes that he is the nearest resident and is located 540' from the site: the balloon is clearly shown in the photos, taken from his kitchen window, included in the report he submits for the record "Comments on Vertex Tower Assets, LLC Application for Special Permit and Waivers". Williams reads the summary into record (see attached). A digital version of Williams' report is also received for the record. Williams notes that we definitely want coverage in town and that AT&T and Sprint withdrew their previous applications; Vertex does not provide service, however, in New Hampshire, Vertex came with a provider. Don Perreault, 14 Lady Slipper Lane, notes that he attended the demonstration and that the balloon did not reach 160'; the test was not done properly therefore he demands it be redone accurately. Laura DuPont: people who have to work could not attend the test. Peter Gees, 31 Highland Drive, states he is a proponent of coverage in town though understands the concern about a visual disturbance; it is a great idea to build though we need to guarantee that there will be coverage with carriers; telephone/electric poles disturb the view however there is a benefit of this disturbance; does not think the tower will be abstruse; six months out of the year it will not be visible due to foliage; appreciates the Planning Board; we need to get what we need; Vertex will be landlords and will not let the tower sit vacant; he is strongly in favor as a resident in town for getting some kind of coverage, whatever it takes, and would agree to having the tower on his property. Karen Czerwonka/40 Carver Road West: telephone poles blend in; there is the expense of putting the tower in without an antenna; she is worried about microwave radiation and does not know enough about it; notes the non-functioning tower in Pelham. Walter Tibbetts/Fire Chief notes that he is considerate of the concerns about look, etc., however, the lack of cell function is a safety concern, i.e. there was time period when phones were out, there were life threatening emergencies and people had to work together to get messages out; we need to find a way to get cell coverage to the most densely populated area of town, the Lake Community, that has a longer response time due to its distance from the center of Town; once we get broadband, more people will let go of their landlines; we need to find a way to make this work; there is no charge for public safety equipment on the tower and more cell towers are needed to make the proposed Franklin County emergency communication work and this is a perfect location for that as well. DeChiara: the introduction of broadband and in-home access to Wi-Fi will be transformative. Tibbetts: when the power is out, the voice over internet protocol (VOIP) phone system will not work; the providers, on the tower, will have back-up batteries. Parisi: the telecommunications companies will bring in their own generators; Vertex will also maintain a generator so there will be traditional power into the site with backup batteries and a generator. Parisi to Bressler's question: Vertex maintains the site. Jeremy Kellogg/194 Montague Road: who will maintain the access road? Parisi: there will be a short access driveway; in the winter, it will be snowplowed or accessed by snowmobile; the road will be maintained periodically but not after every snow storm. Diane Adams/151 Locks Pond Road: cell coverage is important for hikers and snowmobilers; worries about this as well as the accidents that happen on our roadways therefore having coverage is very important. Dan Hayes/194 Wendell Road: relative to the balloon test not going well, would you consider doing another test? It is noted the bylaw requires three-week advance notice for the balloon test. Bonnar: the initial balloon test timing was to coordinate with the public hearing; a three-week notice for a retest is probably not necessary. Parisi: the test is done in the early morning because the wind is less at that time of the day; Town Announce could be used as well as notifying interested abutters. DeChiara: Town Counsel stated that a special permit cannot be approved with a future condition, how would you respond to this? Parisi: agrees

with town counsel, Vertex would go to the Zoning Board of Appeals for a variance; suggests the Planning Board continue the public hearing so this can be done; Vertex came to the Planning Board first as it has the most jurisdiction; the ZBA would only have to grant a variance. DeChiara: if the ZBA grants a variance for not being a carrier, could a special permit be conditioned? Parisi: yes, if a variance is granted, the Planning Board could grant a conditioned special permit. Parisi to Bonnar's question: federal caselaw has interpreted that infrastructure builders are protected. Lacy: the ZBA is highly constrained in the granting of variances. Parisi: the ZBA can only grant a dimensional variance; even though the ZBA cannot grant a "use" variance per state statute; because there is nothing else in town to put an antenna on, federal authority gives the ZBA the ability to grant a "use" variance. Parisi agrees to provide relative caselaw to the Board. Parisi to Bressler's question: we are getting to rural America as fast as we can; given the need in Shutesbury, the Town Hall asked us to come here. Bressler: why can you not ask AT&T to commit? Parisi: we have tried that, however, Shutesbury did not make the cut this year; I can assure you that the tower will not sit empty, we will not build until we have commercial activity. Rotondi: can our permit say construction cannot happen without a provider? Lacy: MacNicol advised against this; the Board will need to consult with MacNicol more on this issue. DeChiara: could there be an affidavit with a provider acknowledging the gap? Parisi: I cannot get such an affidavit in advance; we are trying as best we can; time and effort has been invested to get to this point. Lacy: can the town be construed as a carrier? Parisi: Vertex will not build without a paying customer. DeChiara: the Municipal Light Plant will be a telecommunication provider; notes the Section 8.7-3 Exemptions allowed "by right". Lacy notes the need for more conversation with MacNicol; if Vertex builds with one carrier and it leaves, could the town antenna still go on? Parisi: Vertex will not build without a rent paying customer; if the tower is abandoned by a carrier, the town can still have access; there will be a standard agreement with the town. Tibbetts: there is wording in the application that if the tower is not used for a certain amount of time, it will be removed; there is a monthly expense to keep the tower operating therefore the Town would need to pay some rent if there is no other carrier; this tower will also benefit the Highway Department as well; this location is a perfectly well-suited site for public safety communications. DeChiara notes Williams' observation about insufficient information about the proposed coverage area. Marlon Depaz/Radio Frequency Engineer MOD Data Tech Inc states that he has designed towers and worked with providers; he uses the same software as AT&T and Verizon and FCC data to create the coverage area maps; improved coverage will be attained using the same power antenna and LTE settings. Depaz to DeChiara's question: there is adequate coverage with an antenna at 100'. Bressler: how accurate is your simulation? Depaz: we improve maps with additional data. DeChiara confirms that 100' is viable for one carrier on the tower; confirms with Parisi that the need for additional height is for more than one carrier. Parisi: the bylaw requires co-location which limits the proliferation of towers; we design to accommodate the future; a single tenant tower does not comply with the bylaw. Gees asks about the lifespan of a tower and how it will stand up to unusual storms. Jesse Moreno/Civil Engineer ProTerra Design Group LLC: the tower will be constructed per Mass building code; the tower construction is governed by TIA (Telecommunications Industry Association) tower design code and guidelines; TIA has minimum standards. Moreno confirms for Gees that the FCCIP (Franklin County Cooperative Inspection Program) is aware of this code which includes how much wind and ice a tower can withstand; there are towers built in the late 1980s/90s that are still in use and are updated as code changes; this type of tower is very strong. Parisi refers to the elevation plan to show how additional antennas are added; this facility is

flexible for future enhancement and more structural members can be added to make it stronger. Moreno to DeChiara's question: the tower has to be built to the minimum standard. Parisi: this tower is designed for five carriers and we project what antenna equipment the carriers might put on it. Bressler: are there any Vertex towers in rural areas without carriers? Parisi: no and he has been doing this work for 20 years; here, in Shutesbury, the need is so great, we know carriers are coming; we would not spend the money otherwise. Parisi to Williams' question: the steel is galvanized. Williams notes the need for re-galvanization after a period of time. Moreno: we do are best to anticipate the lifetime of the tower; each piece can be replaced and regalvanized. Raymond requests a larger copy of the coverage area. Gees: any there any Vertex projects in surrounding towns? Parisi: there are 5-6 projects west of Route 91 and in southern New Hampshire also in Rowe MA. Gees states he is surprised that more people did not come out; if polled, you would get an overwhelming response to do whatever it takes to get cell coverage; address concerns and find a way to make this work; we are paying a lot for fiber. Lacy suggests the applicant and Board agree to continue the public hearing while the Planning Board explores with Town Counsel the means for approving; re-advertise and repeat the balloon test and use the Town Announce communication system so that interested parties can keep abreast of the timing of the test. DeChiara suggests MacNicol attend the next meeting; the applicant has already fulfilled the public notice for the balloon; the retest can be noticed by the Town Announce system. Lacy: the test was not adequate; per Section 8.7-8 of the bylaw: "The date and location of the demonstration shall be advertised at least 14 days and not more than 21 days before the demonstration" therefore another properly advertised test is needed; if we fail to advertise adequately there is grounds for appeal. Parisi states that he has no issue with putting up the balloon; we properly advertised the first time and we can notify three days in advance depending on wind conditions. Lacy reviews the appeal period. Parisi acknowledges willingness to have the Town Announce system used to announce the retest. Parisi: we can agree on parameters for the retest; a Saturday is preferred. DeChiara: we were told by Town Counsel that the Board can only waive height; there is no "off ramp". Parisi concurs with MacNicol's opinion; a variance will be faster than a zoning bylaw change; he will start the ZBA process therefore suggests continuing the public hearing for 90-120 days however he is willing to come to the next Planning Board meeting. Lacy would like to explore with MacNicol the condition that nothing can be built without a carrier therefore recommends this be done before Parisi applies to the ZBA. DeChiara: at the next meeting, with MacNicol present, it will be clear whether there is a need to apply for a variance with the ZBA. Dates are considered and Parisi agrees with 4.8.19 and, weather permitting, will try to put up a balloon prior to 4.8.19. Parisi will confer with Scott about the date of the test and Scott will post the Town Announcement. DeChiara asks Tibbetts whether reverse 911 could be used. Tibbetts: it could be construed as a public safety matter. Parisi: the balloon will be put up at 7 am, left up as long as possible – until noon if able to do so. Tibbetts suggests pre-notification. Lacy moves the Planning Board accept the applicant's, Vertex Tower Assets, LLC via Attorney Parisi, request for a public hearing continuation to 4.8.19 at 7:00pm in order to accomplish a second balloon test at the site prior to 4.8.19 and for the Planning Board to consult with Town Counsel MacNicol, at the 4.8.19 meeting, to discuss permitting issues and Vertex Tower Assets, LLC's eligibility to be an applicant; DeChiara seconds the motion. No further discussion occurs. The motion is passed unanimously. The Agreement to Continue Public Hearing document is signed by Bonnar and Parisi and will be delivered to the Town Clerk by Scott on 3.26.19.

At 9:58, Bressler moves and Raymond seconds a motion to adjourn the meeting; motion passes unanimously.

Documents and Other Items Used at the Meeting:

1. 3.22.19 Draft Marijuana Zoning Bylaw
2. 3.22.19 DeChiara email "Updated Marijuana Bylaw"
3. 3.24.19 DeChiara email "Planning Board Draft 3.11.19 Minutes"
4. 3.22.19 Sanford Lewis email "Follow-up from Sustainable Cannabis Development Advisory Committee"
5. 3.14.19 DeChiara email "Hemp recommendations from Planning Board to SB"
6. 3.25.19 DeChiara email "Pertinent Telecomm Act section"
7. 2.17.19 "Application for Special Permit and Waivers for Wireless Communication Facility" from Vertex Tower Assets, LLC
8. "Comments on Vertex Tower Assets, LLC Application for Special Permit and Waivers" submitted by Thomas Williams (hard and digital versions)
9. *Town of Shutesbury Zoning Bylaw Amended 5.5.18*

Respectfully submitted,  
Linda Avis Scott  
Land Use Clerk