

Shutesbury Planning Board Meeting Minutes
Included public hearing on new bylaw amendments
June 2, 2021 Virtual Meeting Platform

Planning Board members present: Deacon Bonnar/Chair, Michael DeChiara, Robert Raymond, Linda Rotondi, Jeff Lacy, Steven Bressler, and Nathan Murphy
Staff present: Tessa Dowling/Land Use Clerk

Guests: Donna McNicol/Town Counsel, Becky Torres/Town Administrator, Henry Geddes/Historical Commission Chair, Francis Parisi/ Vertex Tower representative, Mary Lou Conca/Historical Commission member, Miriam DeFant/ Historical Commission member, Don Wakoluk, Andrew Chabot, Jenny Kallick, Penny Jaques, Kenneth Holt, Michael Vinskey, Leslie Cerier, Tammy Pelletier, Lisa Saunders, Eric Bachrach, Laurel Facey, Jean Meister, Genny Beemyn, Lulu Fontes, Karen Tarlow, Nan Dill, Renee Moss

Bonnar calls the meeting to order at 6:33pm.

Statement relative to conducting virtual meetings following the Governor's restrictions on public meetings is read into the record by Bonnar.

Meet with Francis Parisi about extending cell tower permit

Francis Parisi attended the meeting as the Vertex Tower Assets, LLC representative. The Planning Board issued Vertex Tower Assets a special permit in 2019 to construct a cell tower on Locks Pond Rd. The permit is set to expire at the end of June 2021. Due to the COVID-19 pandemic, the company has not started the project and wanted to know whether the permit could be extended or whether, under the Governor's Orders under the pandemic state of emergency, the project already had an extension. Per Parisi, Vertex Tower Assets is looking for a year extension to complete the project either with permission by the Board or because of the Governor's Orders. They would like to start next spring in order to complete the work before winter.

Per Lacy, there are no provisions in the town bylaws to extend a special permit. Under the Zoning Act, the Board can prevent a special permit from lapsing for good cause. What constitutes good cause is at the discretion of the Board.

There are no guidelines in the town zoning bylaws on how to publicly address a request for an extension. After discussion between the Board, Town Counsel, and Parisi, the Board asked that decision on the extension be moved to the June 14, 2021 meeting and that abutters to the project are notified about the discussion. The notice would clarify that the project itself is not under discussion as it is not changing, only the timeline.

Dowling will draft a notice, and after approval by the Chair and Parisi, will mail it out.

At 6:57pm, Lacy moves and Raymond seconds a motion to hold a meeting prior to the lapse of the Vertex Tower Assets special permit and that, prior to the meeting, the parties of interest notified for the special permit are notified of the meeting.

Public comment

Bonnar asks if there are any public comments, and, hearing none, asks the Historical Commission if they would like to speak.

Per DeFant, the Historical Commission wants clarification on who could join the Commission in an executive session to discuss the locations of historical features on potential solar array project sites.

Per Town Counsel, the Planning Board and any state Historic Preservation Officers, Tribal members, applicants, and solar company employees could join the executive session. The Planning Board can join the Commission on a site visit to the property and will make any final determinations if there are disagreement between the other groups on what is a historical feature.

Minutes 4/26

DeChiara screen shares edits to the drafted 4/26 Minutes for review by the rest of the Board.

At 7:24pm, DeChiara moved and Lacy seconds a motion to approve the 4/26 meeting minutes as amended by DeChiara and with one edit from Lacy and one grammatical edit from Murphy. Roll Call Vote: DeChiara: aye, Murphy: aye, Lacy: aye, Bressler: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

Brad Spry - West Pelham Road ANR

This agenda item was withdrawn by the request of Brad Spry who was not able to attend the meeting.

Public Hearing on access and associate member amendments

At 7:32pm, Bonnar opens the bylaw amendment hearing and read the hearing notice outlining the two bylaw amendments that will be voted on at town meeting on June 12, 2021.

The hearing is held to fulfill MA Zoning Act requirements under MGL Chapter 40A, Section 5.

The proposed bylaw amendments and full explanations can be found on the Planning Board town webpage (https://shutesbury.org/planning_board) and copies can be obtained by contacting the town clerk (townclerk@shutesbury.org).

DeChiara screen shares the access road bylaw amendment and explanation.

Discussions with Amp Energy, a solar company, prompted the Planning Board to review the access road bylaw for the Forest Conservation (FC) District, but the bylaw is neutral in regards to solar projects and other developments in the FC District.

Lacy reads the amendment and then reviews the explanation for the amendment.

Bonnar asks for public questions and comments.

Wakoluk endorses the amendment as written and asks about fees or back taxes owed to the town if a Chapter 61 forest lot changes its use. The Chapter 61 program taxes forested land at a lower rate than wood lots outside of the program with some requirements, such as an active forest management plan.

The Chapter 61 state designation lasts 10 years. If at least five years have passed since a landowner withdrew their property from the Chapter 61 program, then they can change the use of the land without paying back taxes on the property.

DeChiara screen shares the associate member bylaw amendment and explanation.

The bylaw would allow for the appointment of associate members to the Planning Board.

The Planning Board was concerned that if multiple special permits are submitted at the same time, requirements for Planning Board member recusals (example: conflict of interest due to abutter status) could lead to a board that could not meet quorum. A vote of a supermajority (five members) are required to make a decision on a special permit project. Associate members do not

vote on projects unless approved by the Chair to fill the spot of a recused full-voting member. MGL Chapter 40A, section 9 allows the Planning Board to appoint two associate members to the Board. The Wheelock solar special permit hearing lasted more than two years and members are only allowed to miss one meeting or there are not allowed to vote on the project.

The Board and Town Counsel clarify that “conflict of interest” has a very specific legal definition (MGL Chapter 268A Section 20) and only applies if a project would change the appraised value of a property owned by a board member, an associate member, or their immediate family.

The Board and Town Counsel discuss with the public why the associate members are appointed and not elected. Two main reasons are that 1) fewer people might come forward to join the Board if they have to go through the nomination process, and 2) elections happen only once a year and if conflicts arise so that the Planning Board does not have the membership to vote on a project that project could be constructively granted, that is, automatically approved, in favor of the applicant without any conditions placed on the project by the Planning Board.

Members of the public ask if there can be a conditional model that would involve appointing and electing associate members. Per Town Counsel, conditional models would not be approved by the Attorney General.

Board members will read a report regarding the bylaw amendments at town meeting.

At 8:27pm. Lacy moved and DeChiara seconds a motion to endorse the access amendment and utilize the three paragraph description as the favorable report at Town Meeting. Roll Call Vote: Murphy: aye, DeChiara: aye, Lacy: aye, Bressler: aye, Raymond: aye, Rotondi: aye, and Bonnar: aye; the motion carries.

At 8:28pm. Lacy moved and DeChiara seconds a motion that the associate amendment as written be endorsed and that DeChiara shall write the amendment report and make it available on the town website to be available at Town Meeting. Roll Call Vote: DeChiara: aye, Murphy: aye, Lacy: aye, Bressler: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

At 8:32pm. Lacy moved and Murphy seconds a motion to close the hearing for both bylaw amendments. Roll Call Vote: DeChiara: aye, Murphy: aye, Lacy: aye, Bressler: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

Minutes 5/10

At 8:33pm, DeChiara moved and Murphy seconds a motion to approve the 5/10 meeting minutes with the edit that that word “setback” is removed from the last sentence on page 3 so the sentence only says “frontage.” Roll Call Vote: Murphy: aye, DeChiara: aye, Lacy: aye, Bressler: aye, Raymond: aye, Rotondi: aye, and Bonnar: aye; the motion carries.

At 8:35pm, Bonnar moves and Bressler seconds a motion to adjourn the meeting. Roll Call Vote: DeChiara: aye, Lacy: aye, Bressler: aye, Murphy: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

Respectfully submitted,
Tessa Dowling
Land Use Clerk