**Approved 1/24 subject to edits**

**Town of Lenox**

**Planning Board**

**Meeting Minutes**

**November 15, 2022**

**Hybrid Meeting**

**Documents available for meeting:**

* Form A/Approval Not Required Plans:

Survey of Land for Caroline Roche Pratt, Justin Pratt and Ellen Roche dated 11/11/22

Survey of Land for Darren and Carol Campili dated 11/2/22

* Proposed Wireless Communications Facilities zoning bylaw for Special Town Meeting on 12/8
* Suggested revisions from Courtney Gilardi
* Notice of Public Hearing
* Meeting minutes—10/25

**Present in-person**: Planning Board members Tom Delasco, Sue Lyman, Jim Harwood, Kate McNulty-Vaughan; Gwen Miller (staff), Deanna Garner (staff), Susan May, Scott Barrow, Amy Judd, Pat McColgan (Taconic Land Surveyors)

**Present via-Zoom:** Planning Board member Pam Kueber, Town Counsel Joel Bard, Consultant David Maxson, Paul Gee

The meeting began shortly after 6 p.m.

1. **Form A:**

a. 379 Housatonic Street: Pat McColgan explained he was representing the Pratt-Roche family, and they owned two parcels at the intersection of East and Housatonic Street. The kids would like to sell their lot but want to give some of the land back to their parents to create a buffer between the lots. Land from lot 2b will be given to lot 1. Then lot 2A can be sold. JH made a motion to approve Form A as submitted. KMV seconded. KMV, JH, SL and TD approved. PK abstained.

b. 70 Bramble Lane: Pat McColgan explained that two neighbors (69 and 70 Bramble Lane) were going to change the end of the road so that the new home can be better sited relative to the Wetlands Protection Act. The new lot lines will not create a new nonconformity. JH made a motion to approve. TD and PM provided another explanation. PK abstained. SL, KMV, TD and JH voted aye.

1. **Wireless Communications Facilities Zoning Bylaw:**

At this point, it became evident that not everybody trying to access the meeting via Zoom was having success. Some asked via e-mail to staff that the meeting be postponed. Town Counsel Joel Bard opined that the Planning Board would have the public hearing in the near future; the meeting for tonight could be a working meeting for the Planning Board.

TD said he hoped to get Joel Bard’s opinion on the zoning bylaw. GM suggested they will also meet the following week, so they could discuss the zoning bylaw then too. PK suggested future meetings not be hybrid as the technological glitches are disruptive. JH said the hybrid model was most inclusive; Sue Lyman agreed the genie was out of the bottle. Pam said notice of meetings should have more instruction as to how to use Zoom.

Joel opined on a perceived open meeting law complaint forwarded by Scott Barrow, that was written by somebody named Paul G. Joel said the issue raised that the OML was incomplete because it did not attach the bylaw under discussion. Joel read from the OML that lists what is required to be in notice of the meeting. There is no requirement that attachments of meeting content need to be included.

Tom Delasco recognized Paul Gee from Sausalito, California, who had raised his hand via Zoom. Paul Gee expressed frustration with how the Town had posted meeting notice and when the Planning Board meeting material had been posted on the website. JH pointed out they will have two weeks to review the bylaw in advance of the scheduled Public Hearing.

1. **Finalize draft zoning bylaw for public hearing date of November 29th to bring to Special Town Meeting of December 8, 2022. Discuss zoning bylaw with Town Counsel, and Consultant.**

TD asked Joel Bard to go through his reading of the proposed wireless zoning bylaw. Joel thought the zoning bylaw language as proposed was very good. His suggested edits were to provide clarity and consistency.

There was discussion about how to treat repetitive terms—those defined within the bylaw and those in the Telecommunications Act. The group agreed it should be capitalized.

Went through abutters notice requirement—ZBL would require 600’; Zoning Act requires 300’.

Also discussed setback requirement—had at first thought it was overly restrictive; but had grown comfortable with language after discussion w/ David Maxson, Pam Kueber and Gwen Miller.

Highlighted tower replacement—pointed out that some existing facilities will qualify as pre-existing non-conforming.

Discussed eligible facilities request section—back and forth about what level of information to require from applicants. Pam suggested the language in the application section provides discretion and flexibility. -

JH was glad to see the employment of outside consultant included in the language, asked for explanation of the state statute cited. Joel Bard said he helped write it over 35 years ago. The provision means that funds used by the Planning Board can be paid by applicant, and then used by the Planning Board without needing to go to Town Meeting for the appropriation through a revolving fund. JH wanted confirmation that “shall” meant that ZBA would \*have\* to hire an outside consultant. Joel Bard confirmed it meant they would have to.

TD pointed out another section in the proposed language that uses “may” instead of “shall”. This was for evaluating compliance—David Maxson stated that when you measure emissions, it is a snapshot in time, and the calculations are used for worst-case scenario. This is why he had suggested the protocol in the recommended language. The measurements on the ground are usually below the sensitivity of a broadband safety measurement instrument. He said the language as is allows for flexibility and case by case basis. PK asked if it could be “shall” instead of “may”. The group changed it to “shall”.

Group moved on to abandonment/discontinued use. Joel suggested language to be more flexible in terms of amount, found $50,000 to be random, suggested they ask consultant to determine cost and have consultant weigh in on amount and then ask for that amount.

Next item was the temporary provision of wireless or communications equipment. GM said an example was when Pleasant Valley had a BSO performance broadcast for the BBC, they used a temporary truck to boost signal. Pam pointed out these would be temporary and would not need any Zoning review or approval.

Pam asked Joel if the Planning Board had missed anything, pointing to the wealth of experience Joel and KPLaw bring to the work. Joel Bard said he felt it was a good zoning bylaw, they didn’t miss anything and he explained that the old bylaw was not in sync with the newer requirements of the Telecommunications Act, and that the new one gave them more control and meets the goal of the Town to try and attract better wireless service. Pam also asked if this would cover infrastructure in the Right of Way. Joel said this would not cover those; there is a separate law that will cover wireless facilities in the Right of Way. This will be another bylaw and process.

Kate McNulty Vaughan wanted to go over the height limitations. There was discussion with David Maxson about the back and forth the language will allow in the review process.

Jim Harwood and Kate McNulty Vaughan discussed next steps—they discussed their consultant, and the feedback and input received to date from concerned community members. KMV noted she had reviewed the materials, and knows other board members have as well. In her review of the materials, it seems that the senders have not fully read them themselves. She had found 18 of the 20 things send to the Board to read about health effects were actually about personal cell phones and devices, not the wireless facilities.

She said the Board needed to do something—they had to comply with the FCC rules, and they needed to provide coverage in Town. She felt the board needed to move on to other things and they had done good work with competent consultants. She also noted that in correspondence with suggested revisions to the proposed zoning bylaw, it seemed the sender ad not actually read the proposed zoning bylaw since more than half her suggestions were already incorporated into the bylaw language. KMV was doubtful hearing from another consultant or another attorney would be productive.

Pam reiterated that KPLaw is impartial—they work for the Town with ample experience. Like Kate, Pam said she read all the correspondence and had ready many of the zoning bylaws suggested by community members.

The group discussed the value of hearing from other attorneys/consultants. Sue Lyman said that a member of the Bar, in her experience, there is always something in it for attorneys such as those recommended by concerned community members. She felt the Board, its consultants and staff had one the best they could to craft a good zoning bylaw meeting the requirements needing to be met. KMV felt confident in David Maxsons’ qualifications and experience. TD agreed. The group agreed they did not wish to entertain additional outside input from suggested consultants/attorneys.

1. **Public comment/questions**

Susan May of Turnure Terrace, Old Stockbridge Road—expressed concern about content of Zoning Bylaw, worried about cell antennae on roof of Curtis (Lenox Housing Authority building on Main Street). Requested PB to prohibit antennae on residential buildings.

Amy Judd of Main Street expressed concern about the proposed zoning bylaw—she stated it was too friendly to the wireless industry, complained that PB and Town had not taken up offer of her group(s) to hear from “independent” attorneys/consultants of their choosing.

Pam asked Joel to weigh in again on the proposed zoning bylaw and to talk a little bit more about his experience in reviewing this.

The group discussed whether to prohibit wireless facilities in higher density residential and mixed-use neighborhoods.

1. **Adjourn—**PK moved to adjourn the meeting at 9:15 p.m. Paul Gee interrupted; he was removed from the Zoom. SL voted to continue the meeting until the following Tuesday at 6 p.m.; PK seconded. GM pointed out they would also need to convene to vote to include the zoning bylaw on the Special Town Meeting warrant.

Prepared by Gwen Miller

January 2023