

Lenox Planning Board

Public Hearing

Minutes

Approved 4-18-23

April 4, 2023

Documents available at meeting: Agenda, powerpoint presentation, PB report to Town Meeting, special statement to Curtis/Turnure residents, postcard proof, memo from David Maxson re: Responsible Tech check list, draft application for Special Permit/AA requests

Planning Board members in-person: Tom Delasco, Susan Lyman, Jim Harwood

Planning Board members via Zoom: Kate McNulty-Vaughan, Pam Kueber

Staff, in-person: Gwen Miller

Public, in-person: Jill Dore, Linda Miller, Macaire Pace, Elaine Dowgas, Richard Dowgas, Kathryn Levin, Susan Foulds, Elaine Hunter, Lois Hill, Scott Haskell, Kathleen Owen, Bonne Berube, Anne Grosser, Diane Sheldon, Susan May, Richard DeFasio, Henry Kranz, Susan May, Diane Sheldon, Meb Joyner, Sonya Bykosfy, Karen Beckwith, Lois Hill, Courtney Gilardi, Amelia Gilardi, Gilardi Jr, Robert Petrocini, Phil Gilardi

Public, via Zoom: Clarence Fanto, Scott Barrow, Ellen Jacobsen, Robert Berg, Hank Maimin, Jason Berg, Meryl K Delasco, Sandy Panzella, Safe Tech Forward, Amy Edelman, Amy Sternlieb, Ellen Jacobsen, Paula Blagg, Larry Lane, sbpnext, Lucy Kennedy, Carol Haythorne, Tom & or Dianne Romeo, Shannon Delasco,

### **Presentation**

TD went through a Powerpoint presentation prepared for the public hearing. The presentation summarized the need for a new zoning bylaw, and the content of the proposed zoning bylaw.

### **Public Comments**

TD opened the floor to public comments. He asked people to stick to content of Zoning Bylaw. He asked people to limit comments to 4-minutes. Kate also asked for their names and addresses. Tom reminded people to speak up since there were no microphones.

1. Phil Gilardi, Pine Knoll:

Mr. Gilardi asked for clarity regarding Small Wireless (5G)

TD explained that the small wireless bylaw is pending Planning Board review and then Selectboard approval.

PK explained that they are going to suggest a more detailed policy than the Town has on the books.

Mr. Gilardi asked under the existing zoning bylaw how current facilities were permitted if the old Zoning Bylaw doesn't allow them.

Mr. Gilardi had more questions:

If notice is being mailed to neighbors, what is the mail type, how in advance are notices mailed?

What are the requirements of a consultant who must be hired by Zoning Bylaw?

2. Susan Foulds, 42 Walker Street

Has cell service at home, not across the street on Church Street

Wonders if this is required for an evaluation of how to fill service gaps?

TD explained they had a consultant conduct a drive test, but a carrier in their application to the Town would have to show how to solve the problem

TD explained the Zoning Board of Appeals would receive the specific application and proposal, and would need to review based on Zoning Bylaw. It would be a public process.

SF said...so in fact we don't know what to contemplate, because we don't know what a coverage plan may be. It could be full blown towers but it could be different configurations. So that is what is causing angst because people are worried about the "full-blown tower scenario".

Susan Foulds said she hoped to be on the record for being FOR the proposed zoning bylaw because it will in terms of public safety--talked about EMTs, kids needing to call home in places w/ no coverage; people stranded in recent storms.

3. Amy Judd, 6 Walker Street

Proposed amendment to zoning bylaw, change zoning purpose. Said we have a bad bylaw and will be sued. Suggested Planning Board work with Andrew Campanelli. Will send zoning bylaw amendments to Town Planner Gwen Miller.

4. Kathryn Levin, Scientific Alliance for Safe Education, Shunpike in Sheffield, MA

Commended PB for work to date. Said she had spoken to public safety in Lenox who use a special radio frequency to communicate. She had a technician go out and do a coverage test. She did not bring the

data. She had twenty-seven bound documents she described as written evidence for a case against the FCC. Provided a thumb-drive with the evidence.

5. Selene Ireland of 15 Alma Street, Pittsfield --Describes health impacts from proximity to cell tower in her neighborhood.

At this point Kate McNulty-Vaughan interjected, and said while concerned about what is happening in Pittsfield, this is not the venue for litigating that. She asked to make sure that Lenox residents speak about the Lenox zoning bylaw proposal. KMV also said that Ms. Levin's interpretation of the FCC court case isn't the most accurate interpretation. She reiterated that Lenox is aiming to have a durable, good zoning bylaw.

6. Amelia Coco, lives on East Street in Lenox, used to live on Alma Street but was forced to relocate because of the Verizon tower sited there. She said she has a diagnosis that is covered under the American Disabilities Act. Her doctors are doctors of environment and toxicology. She said she is human evidence of harm and that is not up to date but the proposed zoning bylaw is. She noted generous donations to a GoFundMe page. Asked Planning Board use another attorney.

7. Anne Grosser, lives on East Street in Lenox, asked why the Planning Board won't consult with one of the recommended "independent" attorneys. Susan Lyman responded. She noted there is no more independent counsel than that of municipal counsel; she also pointed out she had reviewed several cases in which Attorney Campanelli represented the plaintiffs. In one, he advised the Planning Board and then he also represented a group of citizens who sued the Planning Board. In the PB's opinion, the Town would not be well served by suggested attorneys to date. The Town is very well served by Attorney Joel Bard. Ms. Grosser also asked why other towns are being more strict in their proposed zoning bylaw. Why isn't there a regional approach to solving the coverage challenges?

8. Jim Harwood said that while Ms. Grosser did not agree with the Planning Board, the Planning Board feels they have proposed a good and sound zoning bylaw. Fragmented government is what happens without a county government.

8. Susan May, Old Stockbridge Road: asked why the setbacks are so narrow and asked why health isn't a protected characteristic. Had some back and forth with Jim Harwood who explained rationale behind setbacks, Gwen Miller also pointed out that the Zoning Bylaw does allow the Zoning Board of Appeals to say no. Pam explained that the setback requirement is not the smallest setback; she explained waiver allowance, she also noted that some other communities may have zoning bylaws that are not compliant

with federal regulations. Susan May also asked about small wireless bylaw. JH said they would have another meeting on that.

9. Karen Beckwith, 14 Old Stockbridge Road--said this is a data grab by the industry. She said there is pressure coming from an unknown source to provide coverage beyond the ability to make a simple phone call from their yard--why is there no definition of adequate coverage? JH said if she is worried about the various scenario she described that she should vote in favor of the proposed zoning bylaw. Does not like purpose of proposed zoning bylaw. Suggests Planning Board add language from old purpose.

KMV had a response. She said she lives off East Street and manages to get some cell coverage. A neighbor gets NO coverage. KMV noted there are some people who don't want any wireless facilities anywhere; but in her neighborhood all the way down to Lenox Dale there are homeowners and residents who would like at least a little service. She said there are great swaths of Town where people feel very vulnerable bc their coverage is poor or non-existent. She said there was a terrible accident where EMTs were challenged to response because of the no cell service.

10. Sonya Bykosfky, 225 Main Street--need microphones at public meetings. Had specific additions to zoning bylaw language. Including--could balloon test be 4-days instead of four hours. Ms. Bykosfky wrongly stated that wireless facilities would be prohibited in Lenox Dale. This was corrected by the Board; Susan Lyman and JH commented the beauty of the proposed ZBL is that it allows for flexibility in situations like Lenox Dale.

11. Jill Dore, 11 Dunmore Court--she is in favor of the ZBL, thanked Board for the work they have done. She hopes the perspective is not lost that at the last Town Meeting, 63% of Lenox voters voted in favor of the Zoning Bylaw. She thinks this perspective gets lost when the majority of voices are the minority against the proposed zoning bylaw.

12. Diane Sheldon, Old Stockbridge Road--

no cell towers in village? no antenna? Susan Lyman and Jim Harwood explained prohibition on Curtis and similar buildings. Diane Sheldon also said there were democratic process questions--like she has asked many questions at public meetings but not gotten answers at those meetings, but later in written materials. She thinks very important to take up 5G at Town Meeting level. Still very concerned about David Maxson's work to date for Town and his qualifications. Pam Kueber responded about the zoning bylaw and the attacks on the consultants to date. She noted the product is the zoning bylaw itself.

13. Marybeth Mitts, Dunmore Court--in favor of the proposed zoning bylaw, she believes it will plug gaps in coverage. She said the Planning Board has written a draft zoning bylaw that will give the Town more local control in siting. MBM said there was no pressure from the telecomm industry, but that the

Town knows there is terrible coverage in the community. She described tourists trying to meet friends at Tanglewood or merchants unable to complete sales transactions. She said public safety is the most important reason behind the onus. Marybeth Mitts described trying to connect with her brother about a family challenge and being unable to do so until she was home with WiFi. She reiterated that this zoning bylaw will help solve all these problems. She noted the \*volunteer\* planning board has put in tremendous time into this, they have worked with the BEST TOWN Counsel in the state and has harnessed the best consultants.

14. Scott Barrow, 14 Old Stockbridge Road--wondered if the Board would entertain specific amendments. Wondered why the 1/3 of voters voted no--wouldn't it help to move forward collaboratively if worked together.

15. Courtney Gilardi, East Street in Lenox--said there are many letters from experts that are not on the website. Why aren't they on the website? She notes there are many letters to which there have been no responses. Would hope Lenox would learn from Pittsfield's experience. What are grounds for objections? Suggested specific amendments.

16. Karen Beckwith, 14 Old Stockbridge Road, had comments on the definition of adequate coverage per the TCA of 1996 versus what people are looking for in Lenox, explained she didn't want wireless facilities near her property near village.

17. Susan May, Old Stockbridge Road--asked if Town owns land where old dump was, and where Town put solar field. Could town put cell tower on that property?

18. Robert Berg--an attorney from NY, a class action attorney for 40 years; has dedicated practice to telecommunications law, particularly wireless infrastructure deployment. Has specific concerns about proposed zoning bylaw and entire process to date. Thinks proposed zoning bylaw is generic.

KMV pointed out the members have attended informational sessions/forums held in the past.

SL moved to close public hearing at 8:50 p.m. JH--aye; KMV--aye; SL--aye; PK--aye; TD--aye.

SL moved to adjourn meeting at 8:52 p.m. --all in favor.