

Final as approved July 27, 2021

**TOWN OF LENOX
PLANNING BOARD
July 13, 2021 Minutes**

In attendance: Pam Kueber (PK), Tom Delasco (TD), Kate McNulty-Vaughan (KMV), Lauryn Franzoni (LF), Jim Harwood (JH)

Also in attendance: Jes Cote (JC), Land Use Clerk; Anthony Lepore (AL), Cityscape Consulting; 9-10 citizens, and Clarence Fanto, Berkshire Eagle.

Meeting was recorded on Zoom and by the Berkshire Eagle.

Documents:

- Minutes for June 22 meeting
- Agenda for July 6 meeting
- Latest draft of Small Wireless Facilities in Public (Town) Right-of-Way bylaw
- Latest draft of Wireless Communications Facilities (WCF) Design & Specifications Manual in table format
- Landscaping and screening analysis and recommendation for WCF bylaw
- Proposal on draft language to allow for Use Variances
- Chat messages from the meeting were retained
- Berkshire County Towns Cell Antenna Zoning Restrictions

Minutes for June 22, 2021 – KMV moved to approve, as amended, TD seconded; 4-0 aye via roll call vote; JH abstained due to absence.

Review/discuss updated documents and next steps in work on Wireless Communications bylaw –

Because there were a number of citizens online, PK clarified what the Planning Board was working on and why. The Board is working on two zoning bylaws, each with an associated Design & Specifications Manual:

- Zoning Bylaw Section 8.18 -- is aimed at updating our existing Zoning bylaw for Wireless Communications Facilities (WCF). These can be either large or small, on a newly installed tower or mounted on another structure. They are typically on private property (not in the Town Right-of-Way.) There also

is an associated Design and Specifications Manual being drafted that would be maintained by the Planning Board and not requiring Town Meeting approval;

- Zoning Bylaw Section 8.19 – is aimed at crafting a Zoning bylaw for Small Wireless Facilities (SWF) in the Town Right-of-Way (ROW). These are currently a by-right use according to the Federal Communications Commission. The Planning Board’s goal is to create ‘guardrails’ to the extent we are able within the framework dictated by Federal law. There is also an associated Design and Specifications Manual being drafted that would be maintained by the Planning Board

LF and other Board members articulated that this bylaw review has been undertaken for three reasons –

- (1) to bring our bylaw into compliance with federal regulation
- (2) to enable more complete coverage of cell service throughout Lenox, safely and effectively, and
- (3) to put the recommendations and protections possible into our regulations given that Federal law is very prescriptive as to how wireless communications can be regulated. That is, there are some ‘guardrails’ we can put in place (things we can control) that the FCC allows.

JH, TD, and KMV explained that we are working on drafts that are changing meeting-to-meeting; we hope to include as much public input as possible, and to allow for questions/feedback/input. At this meeting, the Board asked if anyone had a really quick (procedural) question, but otherwise advised the public to wait to the end, so that the Board could work on bylaw text.

JH said that setbacks would be part of the bylaws. A resident commented that she supported setbacks near to residential uses. In response to a chat question, Land Use Assistant Jes Cote advised those who want drafts to contact her.

Small Wireless Facilities in the Town Right-of-Way -- The Board spent the majority of the meeting discussing the questions highlighted in the latest version of the Small Wireless Communications bylaw (8.19) and making changes to it as necessary. Cityscape consultant Anthony Lepore (AL) has been contracted to help guide the Board through this effort: These were mostly technical questions or

clarification of the legal language. It was clarified that the definition of Small Wireless Facilities was based on its size, not on frequencies, and defined in the bylaw.

Further discussion is necessary at a subsequent meeting on a number of issues and decisions. There was a discussion about spacing of SWFs, such as 100' apart, which is permissible under Federal law as long as there is a bona fide basis for doing so. This also included a discussion of Small Wireless Facility 'neutral host antennas' – using one set of antennas to broadcast on multiple frequencies; there are at least two manufacturers right now; aggregation means more RF from a single antenna vs. spreading them out, although cumulative effect is the same. It was agreed to consider adding 'neutral host' to the bylaw once the Board better understands pros/cons and can have further discussion. Also discussed was whether setbacks from residences is possible with SWFs in ROW, which AL said FCC will not allow. The Board will also research how far apart existing utilities like light poles typically are spaced.

Other topics that came up given Board discussion and chat questions:

- AL clarified that our current bylaw's restriction of location could be interpreted as an effective prohibition to providing wireless service and therefore could be ruled illegal by the FCC.
- Until any revised bylaws such as the ones the Planning Board is working on are approved by voters, any wireless facility applications before the Town would be covered by the current zoning bylaw;
- The Curtis proposal is not an SWF, it is a wireless communications facility collocation on a base station;
- Small Wireless Facilities in the Town Right-of-Way are not likely to come to Lenox for 5-7 years, in Lepore's opinion, although we may see some applications in areas such as Tanglewood, which already has one such installation in the Town right-of-way, and which are a by-right use according to the FCC.
- The Board's current timeline anticipates an early Sept. public info session, then a public hearing, prior to the November town meeting as a possible time to bring this to a town vote, to bring the bylaws into compliance and have those guardrails in place.

Additional next steps for next meeting or meetings:

- LF will work with AL to consolidate input from this meeting into the SWF-ROW draft bylaw.
- Board members will be sent and are encouraged to read latest draft of WCF and get any questions to LF ahead of the next meeting.
- TD will talk to Bill Gop and/or do other research how to properly define various road/street definitions for the bylaw(s).
- PK to work with Land Use to reach out to Town Counsel whether putting some of the time/manner/place regulations (such as setbacks, heights), which are currently located within Design & Specification manuals (rather than in zoning bylaw), is compliant with state law – or whether such regulations need to go in actual zoning bylaw.
- LF to circulate questions that came up in chat so that Board can consider how to respond at next meeting; will organize into topical issues.
- JC to respond to document requests.
- Board to get more research on pros/cons of neutral host antennas for small wireless installations and make recommendations for SWF-ROW bylaw. For now, AL to add spacing requirements for SWF in ROW.

Brief discussion of whether to hold the next meeting via zoom or at Town Hall. Board members supported continued use of zoom. It was noted that some citizens preferred Town Hall.

Agenda for July 27:

1. Focus on Wireless Communications Facilities bylaw and clarify questions that came in from chat.

Meeting ended at approximately 8:15 p.m.

Respectfully submitted,

Pam Kueber

July 19, 2021