

**TOWN OF LENOX
PLANNING BOARD
Aug 24, 2021, Minutes**

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

Also in attendance: Jes Cote (JC), Land Use Clerk; Anthony Lepore (AL), Cityscape Consulting, Jack Magnetti (JM), Foresight Land Services. Citizens-Scott Barrow

Meeting was recorded on Zoom and by the Berkshire Eagle.

Documents:

- Minutes for July 27, 2021; Aug. 10, 2021, and Aug. 17, 2021.
- August 24, 2021 Planning Board Agenda
- Form A – Tucker McNinch – East Street (Map 18 Parcel 13)
- Timeline to Town Meeting
- Joel Bard Correspondence
- Scott Barrow Correspondence
- Lenox MA SWF in ROW Bylaw v8 8-18-2021 with LF notation fo.doc
- Lenox MA SWF ROW Procedure Manual v8 8-18-2021_LF.doc
- Procedure – Permitting Wireless Infrastructure- used for Ta.pdf

Meeting held by zoom. Meeting was recorded on Zoom and by Berkshire Eagle.

Minutes

- July 27, 2021 minutes -- KMV moved accept as amended, LF seconded; PK, KMV, LF, aye, TD abstain, so approved.
- Aug. 10, 2021 minutes – KMV motion as amended, TD seconded. PK, KMV, LF, TD aye; so approved.
- Aug. 17, 2021 – TD approved as presented, PK second; PK, KMV, LF, TD aye; so approved.

Approval Not Required division of land (from Subdivision Control Act) for property at 421 East Street / Tucker McNinch, applicant -- Plan presented by Jack Magnetti (Foresight Land Services); Lot is being split into two parcels. Board found

there was sufficient and adequate frontage on two public ways, East St. and Dugway, exceeding that required in the underlying residential zone, with real access to these public ways.

KMV pointed out that current survey showing 9.3 acres differs from Assessor's Card, which shows 6 acres.

TD moved to endorse ANR as presented, PK seconded. Roll call vote: PK, TD, LF, KMV, JH aye; so moved. Quorum of Board members to go to Town Hall to sign mylars.

Update on Site Plan Approval documents for 55 Pittsfield Road #2 – ZBA Special Permit hearing for this petition is Sept. 1. Board thanked TD for writing up approval of Planning Board's site plan and endorsement of waiver request, with a few clarifications discussed and added (date of PB meeting, site plan review not appealable per se). TD will work with JC to get documents into ZBA file for the Special Permit hearing. PK has sent letter about Use issue to JC and she put it in file.

Draft bylaw review: Small Wireless Facilities in Town Right of Way

- **Update from Joel Bard, Town Counsel:** In response to our question, advised us to put dimensional requirements (e.g. setbacks, heights) into the zoning bylaw, not into the Design & Specifications manual.
- **Update on funding for Wireless Master Plan/Gap Analysis** – no update. PK met with Chris Ketchen (CK), Bill Gop, and Marybeth Mitts to review SWF in ROW bylaw and actions that would be required by Town staff if it were adopted at Town Meeting; meeting went very well. CK still trying to find funding but request for appropriation could go to Town Meeting, estimate is \$35,000.
- **Discuss/respond to recent correspondence** – Scott Barrow, 14 Old Stockbridge Rd., sent in messages via town website. Contact form; PK sends these to JC for distribution and our records. Suggestion to watch a video, several Board members did. Board confirmed that we are reading the correspondence, paying attention to suggestions/research. Discussion of Aug. 13 decision related to FCC. AL: DC circuit remanded back to the FCC their Order from last year that declined to modify existing RF exposure

factors; DC court told them to go back examine issues, in particular singling out migratory birds and noncancerous effect on children-citing anecdotal effects with respect to children. Court also found there is no evidence of cancer caused by RF. FCC must start process again to either modify or retain the existing RF emissions limits contained currently in code of regulations. Relates to any Personal Wireless Services (cell phones) – that is, both WCFs and SWFs (typical tall towers as well as smaller infrastructure). Typical Timeline for resolutions – AL said that the last inquiry timeline was launched in 2013 process concluded 2019. JH-FCC had only looked at cancer and not other health concerns – AL agreed. JH-believes FCC said evidence only from 1996. PK mentioned that she had gone to Town Hall to look at current overlay district; it is comprised of lots along Route 7; interestingly, current tower is not in overlay district, got a use variance to go in a very nearby location; PK will bring detail to further meeting.

- **Review Calendar to Town Meeting with question of whether to bring SWF bylaw to this meeting** – TD: People will want to see complete picture before they even vote for something that’s a by right use, JH agreed. Better to bring a comprehensive wireless master plan all at once rather than do it piecemeal. AL has advised no practical rush to get Small Wireless done – on the horizon at best scenario. Legal need – FCC required us to have this in place, we already have missed that deadline. TD – need to bring the public along. Discussion continued. JH – asked about AL responsibilities to PB vs. Housing Authority (HA). Members noted this has been asked and discussed several times already. LF: AL working with us under contract Land Use Director Gwen Miller administered to help Town update its zoning bylaw; he and his firm represent municipalities on gap analysis, bylaw etc. per municipalities’ goals; they do not represent industry / other interests. AL explained he represents HA re potential lease on the Curtis, which is a separate issue from his obligations to Lenox on bylaw work. Similarly, worked for Coconut Grove, FL, where he handled 7 leases, also did bylaw. AL-is not counsel for applicant under Town, is counsel to HA, who is not the applicant to the ZBA; will not have a role in any application per se, role is limited to lease. PK clarified that it is the Planning Board, not AL, that is writing zoning bylaw; we are very actively involved and not just swallowing

info; compared the situation to if our Town Counsel did same activities, would anyone object? JH suggested seeking advice from AG so we could answer questions from residents; wants someone else to tell us whether an expert says this is or is not a conflict of interest. KMV agrees, makes sense at this point; she personally understands the difference; from her understanding of what a planning board or municipality can do related to wireless communications bylaw, what we have learned and put into writing so far is not too different from what her daughter, who works in Land Use in another MA municipality, said is status there. JH-due diligence to check and definitively answer this question-noted that he personally had been questioned about conflict of interest before and followed up. Board agreed to follow up; KMV need a written description -- JH will work on it, seek JC help, probably need to talk to CK and HA, craft a paragraph or two then we can look at it, then call – will bring paragraph to a meeting; will ensure AL has a chance to look at it so that we are characterizing his work correctly. He also can work with LF. Second question from JH – can we make a rule and if it loses in court that might not be a bad thing. Philosophical question: As long as we have a severability clause, why not include that transmitters/receivers need to be a certain distance from a residence? If it gets shot down, it's severable. KMV-questioned whether Town would be excited about bringing on a court situation or are there other means that we could exercise to indicate the difficulties of the box we are in; asked if you knowingly go into this knowing we have a potential applicant waiting for something written, and if we write something we know is wrong and will cause expense for town – is that the best route for us to take? TD-if we willingly put the town in that position, sued, spending money-we've failed. PK-AG might not approve the bylaw; PK on google has read about some novel theories from Calif. in particular, made a list of questions, don't know how to answer, need to vet the questions, if we wanted to go that route. JH-not suggesting that we write something just to get it done, but take a responsible approach, eg Stockbridge and GB; AG has approved their bylaws; the territory is shifting, the ruling in DC has FCC on its heels. LF-our process steps seem out of order right now, if we had a gap analysis, we could see very clearly where we can make the setbacks much different e.g. in residential areas, mixed use areas; there are a lot of protections in what

we've drafted; major point-we could have large setbacks and different prohibited areas, can list all of those things; the discussion is what we, as understood, can't say 'because there could be potential health effects' – cannot bring that into the conversation ,we're not supposed to be using those opinions for or against in our deliberations – we can focus on safety (fall zones), aesthetics. TD- (health effects) at this point in time are perceived. AL-repeated statutory language based on California Pay Phone case standard applied to both macro and small wireless. KMV-useful discussion; need for gap analysis; this will give us time, which is probably the best thing we can do right now. TD question: moratoriums by other municipalities – material prohibition? AL: FCC has said, application starts the shot clock, moratorium has no legal effect, district court will say 'hand them a permit.' KMV/PK – if you don't make the shot clock it's not approved – AL: macros-yes, small wireless deemed approved. AL-Long Island denied application for 10 small wireless facilities, legal bill is well over \$250,000 right now. JH-better off with a regulation than without it. AL yes - do as much as you can to push the envelope. JH-asked about using health; AL-only FCC can regulate those issues; court has said they must look at again, but even so you cannot step into their clubhouse and regulate RF. JH-how did GB and Stockbridge create buffer? AL: If by doing that it didn't materially inhibit offer services. Pittsfield had 1,600 setback, but that was an effective prohibition given GIS mapping. PK-we are doing a wireless master plan (to help answer all these questions). It was pointed out that setback proposals can be studied with GIS, e.g. show a map at 200 feet setbacks must show where services possible. AL: Noted role that physics plays as new wireless facilities are added to the mix: Existing service(s) must infill with others effectively per physics – has to be a certain distance away and located in a way so that the signals of the two don't overlap significantly – honeycomb approach – physics of that point to particular best spots with some flexibility to tweak a little bit. JH-goal is to set maximum distance from residents that also gets to minimum distance for service. KMV that's what we've been trying to do. PK-Wireless master plan that would put all the pieces of this puzzle together in a cohesive way – where are we lacking service – capacity and coverage – least intrusive – get away from human activity – still provide service – fill ins – what the wireless

master plan would do. TD we could ask GM to put together a GIS map or ask BRPC – PK suggested wait. LF we have been talking about how far the setbacks could be -- we lack the knowledgeability if what we want to do will have the effect of not prohibiting service. RFP coming. JH-include something now as a distance that is defensible until study is completed. LF-question for AL is, is there a range of setback that you have found works well in small communities and fulfills the need to have the ability to place the tower? AL: For SWFs, between 1 and 1.5 times is all you can legitimately justify re physical safety issues; for macro have seen typical, 110% of tower height or breakpoint, have seen 150% and 200%, depends. Sedona – 200 percent because they had a lot of physical room and not a lot of intensely clustered residential areas and it's pretty flat although some terrain issues. Where it's flat they put towers on elevations. LF-600' at the time was considered – newer articles talk about 1,200' rule of thumb re safety – AL: those bases are perceived health effects. BOH said 450 meters. JH-pick a number that we think is defensible and we can amend; PK-we are out of time on WCF, just had discussion on SWF. JH-okay with leaving it as is, there's risk. AL explained only legal risk of remaining with existing code. PK-must show gap in coverage or capacity / least intrusive. Summary of discussion: LF-we have agreed vigorously pursue master plan work, we are looking at comparing our bylaws to town bylaws around us to see if there is something that could work with us; haven't heard us say we want to complete the small wireless bylaw for this town meeting. PK-bring them together as cohesive issue. Do we have internal capacity to look at this in the interim while we wait for gap analysis; AL-talk to other communities and see what datasets they use and see whether/how this would help us move forward.

- **Public Comment** – Scott Barrow, 14 Stockbridge Road – two questions. 1. Asked about gap analysis. AL: Engineering side of Cityscape maps every facility and within a mile; use provider software; replicate coverage; master plan – show existing coverage, where population growth; project data coverage and capacity and issues – in Lenox will be easiest part. Hardest will be terrain mapping in Lenox. Use same software as carriers use. Allows decisionmakers plan for infrastructure, guardrails. See Fort Collins, Colorado master plan just received publicly. AL not a part of this. Useful to

help decisions – armed with information. LF-\$35K figure, asked for estimate; procedure – allocate budget at town meeting – go out to bid – town would choose the winning bid; not going to one place. 2. Concerned we could be bullied into making a decision (on Curtis) because of threat of a lawsuit. There must be other way to solve this problem re center of town location; is it low power? LF: hard to address something that doesn't exist and don't know what that application would look like. AL: hypothetically macro vs small wireless facilities – a town can just choose small facilities eg Wellington, Florida. More smaller towers, virtually no macro towers. Other communities have selected other approach – fewer, taller towers. Even so, you will likely have to drop in smaller towers or other towers to solve the problem because of physics. Eg last Tuesday night, Monroe, NY, ZBA hearing – applicant wanted to build on a golf course; big tower at top of hill was broadcasting too far and causing interference. Can't speak to Curtis, determining rent and what the term is, is his only involvement. PK: when it comes to WCFs, which we believe Curtis would be one of those – applicant must demonstrate substantial gap in coverage or capacity and that proposal is least intrusive way to close gap – must have evidence in the record. [*Addendum to this response: See Section 104 of WCF Design & Specifications Manual for "additional requirements" for new WCF – PK 9/26/2021.*] AL - 'Least intrusive' – for decision makers to determine. In Monroe, NY, Cityscape recommended concealed facility, but ZBA wanted unconcealed because they thought it blended better with steel of nearby bridge.

- Robert Pelliciotti, 32 Old Stockbridge Road, knows people who live on upper floors of Curtis, they are scared about radiation. Nothing wrong with safe technology, Lenox is up to the task. KMV: A lot of us doing research, have made some very serious efforts to understand the totality of all this. PK: Incredible experience of learning by working with bylaw every step of the way – we have a framework and structure in place and a good idea of the questions – like you, just much more informed about every aspect of this. LF: reminds that this is not the group that would be vetting Curtis application, we are setting guardrails.
- Written submissions of comments – process – Please send to JC, they get distributed to us immediate basis, helps us to keep all communication as

part of the public record, useful for everyone. Email: landuse@townoflenox.com or use the Contact form on the Planning Board, and PK will then send to JC for record and circulation. Appreciate everyone following that process so that we don't lose track, during short-term rental work, a small mountain came into our personal emails, got difficult. PK- must follow public records law.

- PK will go offline with her questions on SWFs with Anthony; questions mostly related to benchmarking of other towns who put various things in their bylaw that may have been "pushing" things.

Agenda for Sept 14 -- Brushwood Farms Housing / Penrose applicant project presentation and minutes, any updates on wireless.

LF – asked Board members that while fresh on their minds, review small wireless bylaw and manual – it's sitting in a really clear spot given what we need. Identify what we are looking for / gaps / while it's fresh in our mind.

Respectfully submitted,
Pam Kueber
Sept. 26, 2021