

**TOWN OF LENOX  
PLANNING BOARD  
July 27, 2021, Minutes**

In attendance: Pam Kueber, chair (PK), (TD), Kate McNulty-Vaughan (KMV), Lauryn Franzoni (LF)

Absent with notification: Tom Delasco

Absent without notification: Jim Harwood

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

Meeting was recorded on Zoom and by the Berkshire Eagle.

**Documents:**

- Agenda
- Meeting minutes for July 13, 2021
- 8.18 dated July 21 last updated July 22
- SWF Design & Specifications draft dated 7/20
- List of questions from chat screen from July 13 meeting
- Link to Berkshire Eagle article on Linked2Lenox presentation 2/22/2019

PK opened meeting. She noted that chat is turned off, it was distracting at the last meeting to have comments popping up on screen throughout. That said, questions from last week will be addressed at beginning of this meeting, and we have allocated time at the end of meeting for public comment. Requested that citizens identify themselves and state their place of residence when they comment.

**Meeting minutes:**

LF moved to approve July 13 meeting minutes as amended, PK 2<sup>nd</sup>. Roll call unanimous ayes.

**Responses to chat questions from last meeting**

PK led answers to the questions that had come up at the last meeting regarding the Board's work on wireless telecommunications bylaws

1. How are our bylaws not in FCC compliance? AL: Not in compliance with FCC statutes – briefly, 96 action, 2008 shot clock order, 2018 third report and other areas.
2. Where is current overlay district? Parcels are along 7 and 7/20 junction, identified in zoning bylaw, map can be found in Land Use office.
3. What type of structure is proposed Curtis antenna? Also answered at last week's meeting, it is a 'Wireless Communications Facility (WCF) on base structure'
4. Question re Curtis proposal and bylaws existing and proposed: An application for a Special Permit submitted to ZBA anytime until the adoption of a new bylaw would be covered under the current bylaw.
5. Small Wireless Facilities (SWF) in the Town Right of Way (ROW) – yes, these would typically go on streetlights and other structures in Town ROW
6. Does SWF refer to equip for 5G? Also discussed meeting, AL said may at some point in the future use the spectrum that will be 5G but that does not exist yet. Also can be used for 4G fill-in service where traditional macro structures (tall cell towers) don't cover or are overloaded. Big "if" these types of structures will be coming to Lenox because of our small population. But we are developing regulations because FCC has mandated SWF in Town ROW as a by-right use, and we are putting guardrails in place.
7. Power of antennas? Would be determined by specific applications and what they are proposing. KMV asked if different antenna have different amount of radiating power; AL: The frequency being used and area it is required to cover will determine the power utilized.
8. Explain 'Fiber back haul and electrical being run' – came up when we were talking about neutral host antennas. AL: SWFs require fiber connectivity and also needs electricity. Moving fiber into homes directly is whole other issue.
9. Spacing - 5g can reach over 2000 feet? PK we had spacing discussion last meeting and design manual calls for 200 feet spacing
10. Can we exclude parks, schools, playgrounds from SWF in Town ROW? AL: FCC says that ROW in front of all locations must be made available.
11. Collocation / neutral host antennas - We are going to look into have further discussion about.

12. Wireless needs assessment and coverage gaps – This is something we have talked about before and will talk more about at this meeting in regard to Wireless Communications Facilities (WCF), have estimate for it.
13. Looked at other wireless bylaws? – Yes, two bylaws from 1998 very out of date most likely. Board has been spending its time so far to get to know the issues and what we are dealing. Good idea – do some benchmarking; also, this why we have AL.
14. Safety issues, var. – not something we can be experts on. AL reminds: Town board members are prohibited from considering RF issues in assessing applications or drafting bylaws. FCC pre-empted, SC affirmed.
15. Running fiber to home – via Spectrum we do have fiber running through 95% of homes. Some talk of town doing its own fiber network, but it would be redundant. LF suggested putting link to Eagle article in these minutes – [link is here](#).
16. Who has been consulted so far in town – We heard from both homeowners and business owners that they'd like to see better coverage. No survey yet, our approach has been to cover both and all needs.
17. Other comments were related to why people were attending the meeting.

Moved to discussion of WCF bylaw draft – Board discussed reorganized and updated copy from an earlier discussion.

LF pointed out PDFs don't show comments. In future PK will send Word document in packet so Board can see comments.

Discussion of "Basic Use Permit": We want it to work like a special permit, with notification to abutters, etc. except that it would require a majority v supermajority vote of the ZBA.

Eligible Collocated Facilities (ECFs) – which must be approved if application is complete and in compliance -- approvals need to be done within 60 days; asked JC if application could be vetted by ZBA within 60 days including decision; doable except possibly in summer when it can be difficult to get a quorum. Doable, but tight, from moment you get an application – obtain certified list of abutters then letter out – possibly within 30 days a hearing if everything aligns. Doable but tight.

If it's not ECF or new tower, it's 90 day shot club. We have nothing eligible for ECF right now – existing tower on Route 7 is full; other applications are full discretionary decisions in accord with our bylaw.

Agreed: all BU's need ZBA approval. Make consistent.

KMV when we get to public hearings that ECFs are like a consent agenda – we can ask the decision to be prewritten go faster.

ECF would not be appealed. Other Basic Use Permits (Bus) could potentially be subject to an appeal. Still have shot clock to work with.

Questions re things not carried over from existing bylaw

- Repeaters – not a term used for about 20 years, really don't exist except you have a booster over by Tanglewood, which the BSO installed.
- Teleport – satellite dish farm, something that is not terminology used any more and we don't have any in Lenox. We can continue to prohibit teleports explicitly if we want, although such installations would not be governed by this bylaw anyway. We can just leave it out because our bylaw says that if a particular use is not expressly allowed, it is not allowed. We are not in prime geographic area for satellite farms – has to do with satellite orbits – they must be in good line of sight.
- Other definitions in our current bylaw not being carried over. AL: said some disallowed over the years by statutory decisions.

In vetting an application subject to a discretionary approval, AL reiterated:

- Has applicant shown a need –
  - where they currently have *coverage* (gaps in service), or
  - where they have coverage but insufficient *capacity* (dropped calls), and
  - which can't be provided on an existing wireless structure
  - supported with substantial competent evidence in the record
- Where they are proposing new infrastructure to fill gap / how facility will resolve issue(s)
- We can have independent engineer review to verify coverage or gap

Special Permit (SP) definition – Change “Special Use Permit” to SP.  
Reference both 8.19 and 3.4?

- AL needs to look at 3.4 and see if we can cross-reference. We may want to call it something different if it’s not a 3.4 SP.

ECF – BU as a consent agenda items

Discussion of moving forward with Needs Analysis/Gap Analysis/Wireless Communications Master Plan:

In discussion of Use Table, Board discussed whether the scoped-out project to conduct gap analysis and Wireless Master Plan in order to make best recommendations regarding placement of future infrastructure. Agreed we would need this information to be able to complete and present bylaw for consideration by voters.

End result of Master Plan: AL:

- Will show snapshot of what you have in existing coverage and illustrate where there is gap in coverage or capacity.
- Will cross- reference to where our population in / permanent / traffic.
- Project on carrier neutral basis where the need is going to be for additional wireless facilities write a bylaw that will encourage growth where we want it and how we want it. Eg fewer taller towers, more smaller towers –
- armed with the info to make those policy recommendations.

All agreed to proceed with funding request. The where and the why / where there is significant need in terms of how to build the use table. Will be a delay but we can use the interim to complete the framework of the bylaw and its details.

Question re risk of waiting on WCF bylaw? AL: New concealed antenna on an existing building in the pipeline but not until this bylaw is done because there is no other way forward in existing bylaw, or they could take the Town to court if they chose. SWF in ROW not contingent on Master Plan,

though, because of FCC requirements; we could proceed with that one absent Master Plan. FCC told municipalities they were supposed to have SWF in ROW done 14 months ago. Continue working on WCF – it has been a good process / given us a real base of knowledge that we didn't have before.

AL will talk to master planner for timeline on conducting needs assessment/Wireless Master Plan, and Planning Board will continue to stay connected with Town re funding.

Returning to WCF bylaw – Put “References” column in use table. When referring to non-concealed antennas, reference 5.8.8.ii

The Board did not complete its discussion of the WCF bylaw, needed to stop for time for question. LF to clean up and circulate WCF document with tonight's updates, but retain comments. KMV suggested some illustrations that explain certain things, e.g., appurtenances extending 20' from building and what you would put up to shelter the structure from inclement weather. Agreed citizens and ourselves would be helped by visuals, they don't necessarily need to go in bylaw -- they could go in public info session.

### **Public comment**

Scott Barrow and Karen Beckwith, 14 Old Stockbridge Rd – Seems like FCC rules everything, we have little power to regulate – can we clarify? AL: We do for certain types of facilities, don't for other types of facilities that are “shall approve may not deny.” New macro towers are discretionary; applicant must demonstrate bona fide need for coverage or capacity and which can't be provided on an existing wireless structure. Town would verify that need, substantial competent evidence in the record; can be appealed and affirmed or denied. (Decisions made on RF reasons will be reversed.) We can also look at request given hierarchy we have put into our code: applicant must demonstrate, if they chose #3, why they didn't choose #1 or #2. We also can control design (e.g., no lattice towers); we want concealed towers – being recommended for both large and small. We can call for certain specified setbacks as long as they don't have the effect of prohibiting the deployment of wireless facilities per FCC regulations. KB: Concerned about FCC prohibition to considering health effects. SB: Asked whether

other locations for Curtis have been explored; AL – engaged solely by HA for negotiating a lease for the HA like you’d hire a lawyer if you had a commercial piece of property. If applicant gets lease, applicant will have to demonstrated the location on Curtis is permitted per bylaw and no other alternatives available. SB: Would Curtis application be permitted under current bylaw? AL: Not representing that part of town. SB: If nothing happens with Planning Board per changing bylaw, affect Curtis situation? AL: Has been told that in current environment that application would not go forward; under existing bylaw it would potentially be denied, but even so the applicant could go to U.S. District Court and order the Town to issue permit on the claim that there was an effective denial of services. PK: Planning Board has nothing to do with the Curtis application, work on this bylaw had no genesis in that application; bylaw work came out of Master Plan, and town conversation for a longtime about cell coverage gaps; when PK read about Curtis she doublechecked existing bylaw, per her reading it’s not allowed – but, we’re not the ZBA. That said, we are still working on this bylaw because it’s a bigger picture; the issues being raised are issues we’re grappling with.

Courtney Gilardi, 980 East St. Lenox, 17 Alma St. Pittsfield: Asked AL why environmental effects’ are read as ‘health effects’ – AL: due to courts, including the Supreme Court, rulings on congressional intent. There have been decisions in all Circuit Courts and U.S. Supreme Court. AL already provided the Planning Board with the copy of memo to Pittsfield which covers this issue. Asked a question about SWFs ROW that we did not understand. Could Lenox, if 50’ pole were out of character aesthetically, deny on aesthetic standards if it met other standards. AL: SWF in Town ROW allows poles up to 50’. Does MEPA or Historic come into play? AL: Yes, but not as much; FCC puts some limits on what can be regulated. PK encouraged CG to submit suggestions re guardrails that we could put in place within bylaws. CG says FCC does not preempt health discussions, need to have these conversations and if we need to get alternative legal advice on that we need to get alternative legal advice. KMV: If it appears that discussions of health are creating a decision atmosphere, we need to be cognizant and act appropriately. LF reiterated we are not the permitting authority for any applications.

Susan May, 40 Old Stockbridge Road: Zoning Bylaw says it was “enacted to promote general welfare... to protect the health and safety of inhabitants ... to encourage the most appropriate use of land... increase amenities.” Zoom seminar

by Board of Health coming up, asks that we educate ourselves. AL keeps saying no health effects. AL interrupted: Commenter continues to misquote him; he has said the FCC has said what you can and cannot consider in developing regulations and adjudicating applications. Local governments are prohibited expressly by FCC and Supreme Court from considering RF, EMF or other such when adjudicating applications or writing regulations – could have the effect of prohibiting. Board can hear concerns, but cannot inform their decisions in creating regulations, adjudicating. SM: Great Barrington, Stockbridge, Otis, Pittsfield – all have setbacks from residential structures, has been done in other communities. LF: We are working on all of this – what can fulfil the needs of the town without infringing on districts; needs analysis will help us weigh recommendations on where we might permit certain types of facilities with what setbacks, etc., need more information to determine how big our guardrails can be. We are far away from saying we are permitting or not permitting anything. SM: Draft language does permit it. PK: Take offline because there are four different documents, we have not had definitive discussions on setbacks.

Next agenda:

Aug 10:

- Update on wireless master plan/gap analysis; timeline for it;
- Calendar to town meeting to decide whether any portion of our work can move forward to Nov. town meeting.
- SWF in ROW – look at it, a few issues still to investigate; look at that design manual.