

TOWN OF SHELBURNE
Minutes of Meeting
Planning Board
Wednesday, December 11, 2013

On Wednesday, December 11, 2013, a duly posted regular meeting of the Shelburne Planning Board was held at 7:00 pm in the Town Hall Meeting Room, 51 Bridge St., Shelburne Falls.

Present: Matt Marchese, Chair
Beth Simmonds, Vice Chair
Doug Finn, Secretary
John Wheeler
Cam Stevenson

Absent:

Audience: Bill Pratt

Press:

The meeting was called to order at 7:02pm.

Motion to approve the minutes of October 23, 2013 was made by Cam and seconded by Doug.

Vote: 4 in favor, 0 opposed, 1 abstention by Matt who was not present at that meeting.

NEW BUSINESS

Coreen Young, Smead Hill Road -- portion of Map #38, Lot 7 – ANR and Shelburne Right of First Refusal under Chapter 61A. Since Mr. Pratt was present, the Board addressed this ANR first. Matt noted that the Planning Board had received a copy of a letter from the Conservation Commission related to this property which has been under Chapter 61A and is now to be sold. The Conservation Commission conducted a site visit of the lot on Smead Hill Road. Based upon their observations, the Commission has written a letter to the Selectboard recommending the Town should relinquish their right of first refusal.

The Board reviewed the ANR application and noted that it meets the requirements for a lot according to the Shelburne Zoning Bylaws. It was noted by Mr. Pratt that the owners were purchasing the lot for protection of their property, but that it had successfully perced and could be sold as a building lot. The owners will be reimbursing the town for the 61A tax break they had received from the town. Matt noted that the Planning Board is not required to take a position on the town's Right of First Refusal and he asked for input from the Board. Beth felt the Town should not buy the property and the rest of the board decided not to take a position concurring with the Conservation Commission's recommendations.

Motion that we approve the ANR as presented on the Smead Hill Rd. lot, portion of Map #38, Lot #7, owned by Coreen Young made by Beth and seconded by Doug.

Vote: 5 in favor, 0 opposed, 0 abstentions.

ANR – William Sweeney, 143 Main St.

Beth said she had encouraged Mr. Sweeney to attend tonight's meeting but he thought there would be no problem and he therefore would probably not attend. The Board reviewed the ANR plan and determined that he has enough frontage, acreage and access to public water and sewer and therefore complies with local zoning bylaws.

Motion to approve the ANR submitted by William R. Sweeney, 143 Main St., was moved by Doug and seconded by Cam.

Vote: 5 in favor, 0 opposed, 0 abstentions.

Natural Resource Based Economic Development and Forest Conservation in western Franklin County: The Board reviewed a basic information sheet regarding this program designed to develop a new version of a state forest. The FRCOG has received funding to work on developing this program in terms of conservation as well as economic development in relation to the forest economy and had held a public information session in November. Liz noted that this was just an information agenda item and that no action was needed by the board. However, the next step in the process will be for the FRCOG to hold discussions with local town boards and therefore the Planning Board is likely to be discussing this at a future meeting.

Approved: _____ Date: _____ 1

FRCOG straw poll regarding possible state legislative proposals affecting adoption of zoning bylaws: CAM noted that at the last FRCOG meeting they handed out a straw poll and asked for feedback from each local planning board. Apparently there is a bill in the state legislator to change the law regarding the town meeting vote which requires a super-majority (66%) to pass a zoning bylaw or to change a bylaw.

Cam reviewed the options included in the straw poll:

In Massachusetts any change in local zoning requires a super-majority vote of two-thirds of the local legislative body (66.6%). There is no local option to choose a different majority. This statutory super-majority appears to be unique in the U.S., the national norm being a simple-majority (e.g., greater than 50%).

With that in mind, which approach do you prefer in the zoning reform bill?

1. **The super-majority is retained as the default**, but communities may lower the vote quantum anywhere down to a simple-majority. Once reduced, the majority may also be subsequently raised.

2. **The simple-majority is set as the default**, but communities may raise the vote quantum anywhere up to a super-majority. Once raised, the majority may also be subsequently reduced.

3. **Set no majority in statute**, but specify a range of between a simple- and a super-majority and let each community decide for themselves.

4. **No change** to current law.

5. **Other** (please specify)

Doug said he feels that it should stay a super-majority – the whole town should be strongly behind any specific bylaw. The Board had a general discussion on issues created by the high bench mark and whether it should be a state law-across the board or should each town set their own standard. Doug said he felt it is easier for a local board to implement a bylaw that was passed by a super-majority at Town Meeting. Beth asked if you allow for a town to change the type of majority vote – how often would the town be allowed to change it. If a town has changed to a simple-majority vote, would they be able to change it back to a super-majority vote by simple or super majority vote? Matt noted that the board doesn't have to take action on this poll, but the consensus of the Board was option 1 with qualifiers--how often can it be changed, how long before it takes effect, does it take effect at that meeting, or the next town meeting, or when approved of by the Attorney General, for example. Doug noted he thinks most people would want to stay with a super-majority.

Motion was made by Doug and seconded by John to notify the FRCOG that the consensus of the Board was to choose Option #1 with the qualifying questions.

Vote: 5 in favor, 0 opposed, 0 abstention.

Matt asked Liz to notify Peggy Sloan of the Boards response to the straw poll along with the qualifiers raised by the board, including: how often can the towns change it, is it effective immediately, do you need a super-majority to change it each time?

OLD BUSINESS

Windpower Bylaw - Advisory Committee Report and Next steps: Matt noted that John was kind enough to take the recommendations in the WAC report and edit the Shelburne draft wind bylaw accordingly. John reviewed all his suggested changes and the Board identified areas to be held out for further review. John noted his changes were based upon the consensus of the WAC. Matt gave John a huge thank you for doing this.

Issues discussed: Setback 917.5.(2) – should it be 1.5 times the total height. John noticed that this is related to ice throw and the occasional loss of a blade. Beth asked if this might be too restrictive when minimum lot frontages are 250 feet. Cam suggested leaving it at “2” as recommended by the WAC and see what the reaction is at Town Meeting. Matt asked John to check with members of the WAC on this question and get their reasoning behind this specific number.

Noise 17.5.3 noise – the question of how to measure ambient noise levels. John noted that there had been a lot of discussion on this at the WAC. Beth suggested that the ambient noise study indicate be a not to exceed threshold number with guidelines for how the study is to be conducted. John noted the companies installing wind turbines won't give a guarantee as to ambient noise impacts. Matt asked who would like to look into any recommendations on ambient noise testing and Beth volunteered to report back next month. John said he would check with a couple of people on the WAC who did a lot of research into this issue and see if they could provide additional input. The question of a limit of 5Dba was raised – is that an average over a year or at one point in time.

Page 8, Shadow Flicker, “F”– Beth said that she has learned that flicker is something that is intermittent and predictable. Therefore, the application should include the models that show when the flicker will likely occur. It should be required that the machine is turned off during those times. Matt asked Liz to prepare appropriate language for the next draft bylaw that if flicker

becomes a problem with an installed turbine, the owner will have to keep the machine shut down during the occurrence of flicker as predicted in the models.

17.10.2.2 Procedures – in the town of Shelburne, the Planning Board carries out ANR and subdivision reviews and the ZBA is the SPGA. Matt asked the Board who should be the SPGA on wind. If it is the Planning Board, then he would expect that to be a point of discussion at Town Meeting since it will be a change from current responsibilities in Town. It was noted that there will also be a public hearing on this draft bylaw prior to the submission of the final proposed bylaw for Town Meeting vote. The Board decided to leave the Planning Board as the SPGA and see what the reaction is at the Public Hearing.

Page 7, C -Pictures of turbines– Beth raised the question of why pictures should be included in an application. John noted that it can be as simple as including a manufacturer’s brochure in their application package.

Page 8, Acoustical Engineer/noise study– whatever we decide on a noise study needs to be included here. John noted that in another town’s bylaw, the Planning Board picks the acoustical engineer and then the applicant pays for their fees. Cam raised the question of who is and how do you identify a “qualified” acoustical engineer? Cam will look into this for the Board’s next meeting.

Page 4, 17.5.5 –one turbine per premise –Beth raised the question of why limit the number of turbines. There may be a site where the situation may be better served by having more than one turbine. John said that financially, it usually makes most sense to just put up one turbine on a site but there may be a unique circumstance on a specific property. The consensus of the Board was that as long as all the other requirements are met, more than one turbine can be allowed per premise as long as it does not exceed the maximum amount of 30 kw per business and 10 kw per house. Liz should insert this correction into the draft bylaw.

Site Plan Review – John distributed examples bylaws from Rowe and Heath. John will also look for other examples to distribute for review prior to our next meeting. John will get digital copies to Liz to distribute.

Matt noted that he would like a revised draft wind bylaw for the Planning Board to review at our next meeting in January. The Board’s goal is to hold a public hearing during their meeting in February at the elementary school. That would give the board a chance to make any final changes to the bylaw during their March meeting and get the proposed bylaws to the Selectboard by their April 1 deadline.

Solar zoning bylaws: Liz reported that we have lost one volunteer for the solar advisory committee which leaves us with one, Tom Miner. There were a couple of newspaper articles and Liz had notified all town boards and no one has responded. Liz noted that there may be some additional recommendations to be put forth as a result of the Community Energies Pilot Program that may be useful to consider related to solar facilities. Matt asked if the Board wants to just put it off until next year. The consensus was to hold off on further work on a draft solar bylaw until next year.

Community Energy Strategies Pilot Program update: John went to the meeting in October held at GCC. Matt said he had received a notice of another meeting -- an energy forum at GCC, January 16, 2014 from 6-8pm in the GCC cafeteria.

Draft Subdivision Regulation review: Matt asked the board members to review the draft Shelburne subdivision regulations and get any comments/suggested changes to Matt by the end of the year. Matt said he would get any changes to Liz to prepare a new “final” draft for Board and public review.

Review of MGL Chapter 41 Section 81D – Liz distributed a copy of the state law relative to the role of the Planning Board in regards to the development and maintenance of a town master plan to help answer questions raised at a previous meeting.

Open Space Plan map updates – Matt and the board looked at the latest version of the Open Space Plan which had been dropped off by David Schochet. Liz distributed a copy of an email from David listing all the maps that had been updated by the FRCOG. Liz noted that David had asked for a letter of support to be sent to the state agency detailing the support for and involvement of the Planning Board. Matt asked Liz to request that David send us a digital copy so that the plan can be distributed to all Board members via email. Matt said he had no problem writing a letter of support but wants to review the whole plan first. Matt noted he would especially like to get a digital copy of the maps.

COMMITTEE UPDATES

FRCOG Planning Board: Cam reported that at the last meeting they discussed small farm economics, the decommissioning of Vermont Yankee and the impact from either slow or quick action, and the question as to whether a “green community” can

retain its designation if they reject wind turbines. Peggy Sloan said they really just want communities to reduce their energy consumption.

Open Space: John noted they have been meeting every week working on the final plans and reviewing all the maps.

Long Range Planning: – Doug said they met at the Shelburne Center Library. Their next meeting was at Cowl Gym but Doug didn't get a notice. Doug noted he is supposed to be on their email list. Matt asked Liz to check with the Selectboard's office to make sure the chair of that committee has Doug's correct email address so that he can receive proper notification of meetings

OTHER BUSINESS NOT REASONABLY FORESEEN 48 HOURS PRIOR TO THE MEETING: none presented.

MAIL – notices of meetings were read. Matt read a letter from Larry Gould requesting that his private land not be identified in any way on open space maps. Matt noted we had received guidelines on chairing a meeting which he asked Liz to distribute to all the Board members.

PUBLIC COMMENTS: none presented.

SCHEDULE NEXT MEETING: the Board decided to hold their next meeting on the third Wednesday, January 15th instead of the second. It was decided that the Board will hold their public hearing on the draft wind bylaw during their February meeting on the 12th. The Board will meet at 7pm and then adjourn to hold the public hearing and then reconvene their meeting to finish other business. The goal of the board is to hold a public hearing on Subdivision Regulations in March. These regulations can be passed by the Board and will not need a vote at Town Meeting.

Motion to adjourn the meeting was made by Beth and seconded by Cam

Vote: 5 in favor, 0 opposed, 0 abstentions.

The meeting was adjourned at 9:35pm.

Respectfully submitted by,

Liz Kidder
Administrative Assistant