

TOWN OF SHELBURNE
Planning Board
Minutes of Meeting September 9, 2015

A duly posted meeting of the Shelburne Planning Board was held on Wednesday, September 9, 2015 at 7 pm in the Shelburne Town Hall, 51 Bridge St., Shelburne Falls, MA.

Present: John Wheeler, Chair

Will Flanders

Josiah Simpson

Administrative Assistant: Liz Kidder

Absent: Cam Stevenson, George Dole

Audience:

Press:

The meeting was called to order at 7:05 pm. John noted that Cam had sent an email that he would be unable to attend tonight's meeting.

A motion to approve the minutes of August 12, 2015 was made by Josiah and seconded by Will.

Vote: 2 in favor, 0 opposed, 1 abstention by John as Chair of the meeting.

ANR Plans – none presented.

NEW BUSINESS

Draft Shelburne Noise, Earth Removal and Related Disturbances bylaw – John reported that he had attended Shelburne pipeline committee meeting where they discussed this bylaw prepared by the FRCOG. Bob Manners asked if the Planning Board would review it and make a recommendation to the Selectboard by October. The Board decided to review the bylaw during the meeting. John said he would get the Boards comments to the Selectboard.

- Page 2, Sec. 3.1 – substitute “are proposed to” for the word “will” – “This article applies to all LSCIF and ASEFs that are proposed to be permitted or constructed after the effective date of the article.”
- Page 9, Sec. 9.6 – in the last sentence change “within 24 hours of the event” to “ASAP through phone calls to the appropriate, Board of Health, Fire Chief, Police and the Board of Selectmen.”
- Page 12, Section 11.5 – In the last sentence, insert the word “well” in front of “owner” – In such instance, the well owner must execute an agreement releasing and holding harmless the Town, its officers and its employees from any damages.
- Page 12, Section 11.6 – in the third line change the word “should” to “shall have the right to” – the end of the first sentence should then read “.....the owner of the well shall have the right to file a complaint against the Owner/Operator with the Regional MassDEP office with a copy to the Town Board of Health.
- Note: throughout the draft bylaw, the terms “owner”, “Owner/Operator” and “Owner and Operator” are not used consistently. The term “Owner/Operator” should be used throughout.
- Page 13, Sec. 12.3 – The setback from “High On-Site Populations” is not clear in that it does not clarify where you measure from – the lot line or the facilities of concern.
- Page 14, Sec. 12.6.1 – in the fourth line, just below the middle of that paragraph, it states “All testing required by the Bylaw shall be done by a qualified licensed professional acoustical engineer paid for by the Applicant.” After the term “acoustical engineer” insert “selected by the Selectboard and” -- that whole phrase should read – “....a qualified licensed professional acoustical engineer selected by the Selectboard and paid for by the Applicant.”
- Page 15, Sec. 12.7 Hours of operation. This section may need to be reviewed relative to a pipeline which is operated 24 hours day, seven days a week.

Approved: _____ Date: _____ 1

- Page 16, Sec. 12.9.1 – in the first line insert “100-year” in front of the term “floodway” – to read “No LSICF or ASEF shall be allowed to be constructed or operated in the 100-year floodway designated as such in the Flood Insurance Study (FIS) and shown on the Federal Emergency Management Agency (FEMA) maps.:
- Page 16, Section 12.9.2.(c) – in the first line again insert “100-year” in front of the term “floodplain”.
- Page 17, Sec. 13.2, Insurance. – does this provide adequate coverage? It says liability in amounts of not less than \$1,000,000 per person, \$10,000,000 per occurrence – does this mean that the maximum payment could be \$1million to 10 people even if any more people were impacted? Should these levels be raised?
- Page 18, Sec. 14.1 – in the second line insert “all provisions in” between the words “with” and “Section 14.0” so that this line reads – “...or has been abandoned consistent with all provisions in Section 14.0 of this bylaw shall be removed.”
- Page 18, Sec. 14.1. (e) – the first line states that the Owner/Operator shall provide a form of surety.....” When is this form of surety provided to the town?
- Page 19, Section 15.1 – the list of costs that shall be covered by the Owner/Operator who violates the Bylaw should include “all the hourly costs of all the appointed and elected Town officials who had to deal with enforcing the bylaw following a violation,” or wording to that effect.

OLD BUSINESS

Cluster/Natural Resource Zoning Bylaw-Public Information Meeting Sept. 23 – Jeff Lacy is confirmed and the meeting will be held in the elementary school cafeteria. John and Liz have laptops with Powerpoint installed and Liz will check to see if the school has a projector already installed at the school, if not, John has a projector he can bring.

Will noted the email from Pat Smith in which she discussed updating that Shelburne draft open space development bylaw from 2006 that was never adopted. Will said his inclination is to use a traditional “cluster” approach that is an option for a developer but includes a tiered incentives structure to strongly encourage this type of development; the more incentives you include in your design the more lots you can build. Will said he was interested in exploring possible tax incentives through a charitable donation for the open space set aside. Under regulations where a specific set aside is required, there is no possibility of a charitable donation, it has to be a voluntary donation. Will noted that in Northampton, a homeowners association has to have their legal bylaws accepted by the Town. Will thinks the homeowner’s association bylaws should be required to have provisions under which all the homeowners as a group are responsible for ensuring the responsible enforcement of any restrictions or maintenance provisions for the whole development. He feels the homeowners association should be financially responsible for the cost of the monitoring of the CR by a land trust. The homeowner’s association fees will be used to pay for the yearly land trust monitoring and any legal bills incurred by a land trust related to correcting violations; instead of neighbors monitoring each other, it is the whole homeowner’s association.

Instead of waiting for a meeting with Pat Smith in October, it was agreed that Will would try to meet with her and explain the consensus of the Board regarding the direction of the open space bylaw. Hopefully, she could then come with a working draft on October 14th to review with the board. It was decided to meet at 6pm that night since members of the ZBA are also going to be attending the meeting.

Zoning Revisions for ATM 2016 – Faye Whitney had sent an email saying that several members of the ZBA will be in attendance at the Planning Board meeting on October 14th to discuss possible zoning revisions to prepare for ATM 2016.

Liz Kidder mentioned that she also works with the Board of Health and they had a matter for the Planning Board to consider regarding possible revisions to the definition section of the Bylaw that came about because of an increased number of Air B&B listings for Shelburne Falls. Liz noted for the record that she owns a vacation rental apartment in Shelburne that she advertises on VRBO. Because of her concern about the appearance of a possible conflict of interest on her part since she may be considered a competitor to those listed on Air B&B, she had called the State Ethics Commission. On their advice she had submitted full disclosure documents to the Selectboard and they had approved a waiver for her as a municipal employee to work on this matter for either board. John Wheeler stated that he had talked to the State Ethics Commission since he lists a house for rent on Air B&B and VRBO and based upon their advice, he was recusing himself from any discussion on this matter.

Liz reported that the Board of Health had been monitoring AIR B&B listings for the Town and had been quietly noting listings that were written in such ways as to misrepresent the space being rented or where the owners were getting into food service regulations. In doing so, they realized there were inconsistencies between the Shelburne bylaws relative to B&Bs and lodging houses and the related MDPH definitions. The Board of Health suggests that the Planning Board may want to consider revising the Town bylaw definitions to match the MDPH definitions and then review their placement in the Town's use-table. Liz distributed a copy of a memo distributed by the MADPH relative to Air B&B listings and state public health regulations.

Will said it seems appropriate to consider these changes and that it should be coordinated with the BOH because of overlapping responsibilities. After looking at the Town's definitions, Will suggested that it was worth revising them. Josiah noted that it is worth getting into the definitions and use table but he is not interested in getting into regulating Air B&B as such. Will suggested it would be useful to see what bigger cities are looking at in terms of issues created by them. Will said it appears that an AIR B&B would fall under Shelburne's definition of a lodging house which is not allowed in the Village Residential or the Rural Agricultural districts. The consensus was to include at least a review of the definitions and use table as part of preparation for ATM 2016.

John Wheeler rejoined the meeting.

Tennessee Gas Pipeline Company, L.L.C. Northeast Energy Direct Project, FERC Docket No. PF14-22 updates -John has been attending the Shelburne Pipeline committee meetings. Will questioned why the Planning Board was discussing the pipeline each month. The Board reviewed MGL Chapter 41 section 81D about the Planning Board's responsibility to maintaining and try to encourage the implementation of the Town's master plan. The Board discussed starting to conduct a review of the existing and somewhat out-of-date master plan over the next few years. It was decided that Pipeline updates will be kept on the agenda each month in case there is something new to discuss as the FERC process proceeds.

Subdivision Regulations - Will explained his rewrite of "E. Partial Release" of a performance guarantee on page 25 of the current draft. He prepared this rewrite to reflect George's comment that developers don't want to finish the final coat of a roadway until all the houses are built. Because Cam and George were not in attendance it was decided to wait before moving on to further review of the rest of the draft regulation.

COMMITTEE UPDATES

FRCOG Planning Board – no update presented.

Open Space – John said they met in August and decided to send a letter to the Selectboard stating their opposition to the Pipeline.

Community Energy Strategies Pilot Program (CESPP) update – John said they had their kickoff meeting after a year or longer without meeting. John reviewed the history of the pilot program for Will and Joisah since this started before they were on the Board. The focus has been educating landlords and residents about strategies to conserve energy. The FRCOG got a grant for Shelburne, Buckland, Greenfield, and Montague and has hired Co-op power to prepare educational materials. The meeting talked about effective outreach and creating marketing materials. John said that was a lot of brainstorming on how to get the word out including contacting organizations such as the GSFABA to spread the word to businesses. .

Other Town Board Updates – none presented.

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

READ MAIL – the Board read mail as listed below.

PUBLIC COMMENTS – none presented

SCHEDULE NEXT MEETING – Sept. 23rd Public Information Meeting, October 14th

The 14th meeting will start at 6pm in order to allow time to review the open space bylaw and meet with members of the ZBA.

A motion to adjourn the meeting was made by Josiah and seconded by Will.

Vote: 2 in favor, 0 opposed, 1 abstention by John as Chair of the meeting

Approved: _____ Date: _____ 3

Meeting was adjourned at 9:46pm.

Respectfully submitted by,

Liz Kidder
Administrative Assistant

List of Documents:

Model Draft Noise, Earth Removal, and Related Disturbances Bylaw for Large Scale Industrial & Commercial Facilities

Email from Pat Smith, FRCOG, August 26, 2015 regarding Shelburne Meeting Schedule

2007 Draft Section 17. Open Space Development of Shelburne Zoning Bylaw

Information from Shelburne Board of Health regarding inconsistencies between Shelburne Zoning Definitions and MASS DPH definitions as related to AIR B&B type rentals

Emails regarding Pipeline Proposal:

August 13, 2015 from Meg Burch

Sept. 2, 2015 from Kathryn Eiseman and Peggy Sloan

September 3, 2015 from Peggy Sloan

September 8, 2015 from Peggy Sloan

September 2, 2015 from Peggy Sloan

August 13, 2015 Email between Alain Peteroy and Liz Kidder

Public Notices from neighboring towns:

Greenfield -4

Charlemont – 4

Brochure – “Chapter 40B: Hot Topics in a Hot Market” workshop October 2, 2015