

Town of Shelburne
Zoning Board of Appeals
Thursday, February 7, 2013

A duly posted meeting of the Shelburne Zoning Board of Appeals was held at 7:00 pm on Thursday, February 7, 2013 in the Town Hall Meeting Room, 51 Bridge St., Shelburne Falls, MA.

Present: Joe Palmeri, Chair

Lowell Laporte

Ted Merrill

John Taylor

Absent: none

Audience: Chris Macek

Press: none

Meeting was called to order at: 7:08pm

Welcome and Introduction of any prospective new Board members: Joe introduced Chris Macek who had been invited to observe a meeting of the ZBA to see if he would like to have his name presented for consideration by the Selectboard. Ted Merrill said that everyone he talked to about serving on the Board had said, "they would think about it."

Approve Minutes of January 3, 2013: Ted corrected "whom" to "who" on page one, following "Catherine Smith".

Lowell moved to approve the minutes of January 3, 2013 as corrected. Ted seconded.

Vote: 4 in favor, 0 opposed, 0 abstentions.

Mail: Joe reviewed the ConComm agenda for their upcoming meeting, reports from the Cooperative Building Inspector's office, email from Tom Miner on updates on the new medical marijuana dispensaries legislation that recently passed with a fact sheet prepared by the Franklin County Regional Planning Board.

Old Business:

Update on Planning Board's wind bylaw development process: Lowell reported that the committee is in the early stages of looking at the possible standards for wind power in Shelburne. The committee is looking at the potential sound impacts and how to regulate that. Since it would be very expensive for any applicant to get a sound test, the committee is not sure what to do for small scale applications. He expects that the process will look at caps – height, sounds, etc –and at different zoning districts. The committee is also trying to identify the typical number of KW hours per year used by residences, farms or businesses in Shelburne but is having trouble finding this information easily. Joe asked if they are trying to establish base sound levels in town. Lowell said yes but how do you determine ambient sound levels – different times of day, nighttime versus daytime, etc. The committee is trying to come up with useful information on which to base their caps. Other bylaws have

Approved: _____ Date: _____

either set the cap as a number above ambient noise level or a specific maximum number regardless of background sound levels.

Kevin Parsons is chairing the committee and seems to feel that they can get something together for this year's town meeting. Liz noted that warrant articles need to be submitted to the Selectmen by early April and Joe noted that public hearings have to be held by the planning board as well. Lowell said the committee is looking at different areas in Town to estimate the size of a turbine appropriate to that area. Joe asked about the impact of the flutter on the inner ear. Lowell indicated they think that is more of a problem with the large scale turbines.

John asked if there were people on the committee that are against even small scale and Lowell said maybe there were. Joe said is important to establish specific levels and/or standards to allow for effective permit review and enforcement. Lowell indicated that solar is probably a more economically viable option than wind at the present time. Lowell also noted there is a question as to which board will be the SPGA. Lowell said the bylaw is a work in process.

Proposed modification of an existing AT&T Communication Structure off of Cooper Lane: Joe recognized James Burgess, representing AT&T, who is here tonight to go over an administrative review of modifications that AT&T wants to do at the SBA Tower off of Cooper Lane. His firm is assisting with about 90 similar upgrades in this area. AT&T is seeking to upgrade their service from 3G to 4G which will increase the number of phone calls that can be handled by that tower. The current facility includes a 175 foot tower with 6 antennae on three sectors and the proposal is to add one antenna to each sector. There is also an additional cabinet, about the size of a trash can, added to the base of the platform. This does not change the height of the tower and does not increase the footprint of the platform. They are going to be strengthening the tower in order to be able to handle the additional antennas – a complete structural analysis has been conducted and the tower will be in compliance with new standards for this type of tower.

John T noted that our bylaw really doesn't refer to upgrades of an existing tower. James noted that federal legislation covers streamlining the modifications process, preempting local zoning. James handed out copies of "Wireless Facilities Deployment: Federal Regulation in the Middle Class Tax Relief and Job Creation Act of 2012". It says that "The Act requires approval for all eligible facilities requests that do not substantially change the physical dimensions of such tower or base station and:"

John T. said he personally has talked with Town Counsel in the past who recommended full notice of abutters and a hearing even for "findings" under Section 10. James referred to the law which applies to attaching additional antennas to an existing tower that was built solely for wireless; under these circumstances the process requires a building permit but should be exempted from the special permit process. James noted that our bylaw allows for administrative review which is what they are currently applying for. He is here to work with the board and he wants to be clear that they are not trying to circumvent the process. Joe feels that we should hold a public hearing even for a finding, allowing the abutters to express their opinions. John noted that under our current bylaw this project may need a special permit, however, this proposal is an example of circumstances that are not clearly addressed in our current cell tower bylaw and why the Board has started to review it for

possible revisions by Town Meeting. Jim Burgess noted that another site has already been permitted directly by the building inspector as maintenance - that site included exactly the same upgrades and modifications. Lowell noted that this is good information for our proposed revisions.

Burgess noted that antennas are being added to handle capacity. The equipment at the base upgrades it to 4G but the 4G would not work without the additional antennas; 4G stands for fourth generation which increases the bandwidth. This won't change the footprint but it will increase the signal. Lowell asked if any of these upgrades can be a hazard to the abutters. Mr. Burgess said that these modifications would not impact either a worker or abutters.

Joe asked how our bylaws could let them proceed without a review. Ted noted that they are not changing the service they are providing; they are adding a small amount of equipment. John noted this request is not really adding new service, nor substantially changing the size and footprint of the tower. Lowell felt that the board shouldn't hold up their request and Ted Merrill agreed. Lowell said the board should let the project move forward since in the eyes of the Board it is nothing more than minor maintenance. Mr. Burgess said that if the Board is concerned about legal justification for their decision just reference the federal legislation which preempts local zoning. John T. said this is not a substantial change to the existing facility and in essence amounts to maintenance and a building permit has already been issued for the same update on another facility nearby.

Moved by Lowell Laporte that the Shelburne Zoning Board of Appeals finds that the proposal dated December 2012 of AT&T to upgrade their equipment at the SBA Tower off of Cooper Lane, site number MA5160, is not a substantial change to the existing AT&T equipment at the site, and as such its installation will not be substantially more detrimental than the existing use to the neighborhood, and further that in this circumstance no further action by this Board is required.

Seconded by John Taylor.

Vote: 4 in favor, 0 opposed, 0 abstentions.

Liz will type up this motion as a finding and send it to Jim Burgess with a cc to the Building Inspector and the Town Clerk.

Cell tower bylaw review: The board continued a review of John's first draft of possible revisions of Section 16 of the Town of Shelburne zoning bylaw relating to cell towers. Part of the goal is to clarify structures, towers, facilities, etc. The Board reviewed the first two pages of suggested changes.

New Business

Board Membership: Chris Macek is in attendance and Mike Parry has offered to have his name put forth to serve on the ZBA. Chris said that he would be interested in serving. Joe said he would put forth Chris' name to the Selectboard for consideration. John raised the issue of whether Judith Truesdell's name should be put forward again if the Board was going to pass on Mike Parry's name. It was decided that John Taylor would ask Judith if she would like to have her name put forward again. Ted said that he would serve as an alternate as

soon as there are additional members of the board. Joe will send an email to the Selectboard with these recommendations.

Other Business not reasonable foreseen 48 hours prior to the meeting: none presented.

Public Comments: none presented.

Schedule next meeting: March 7, 2013. Joe Palmeri reminded the Board that he will be away next month.

Motion was made by Lowell to adjourn the meeting and seconded by John.

Vote: 4 in favor, 0 opposed, 0 abstentions.

The Meeting was adjourned at: 9:34pm

Respectfully submitted by

Liz Kidder

Administrative Assistant

Approved: _____ Date: _____