

**Town of Shelburne Planning Board  
Minutes of Meeting**

Wednesday, October 17, 2012  
Buckland Shelburne Elementary School  
75 Mechanic St., Shelburne Falls

A duly posted regular monthly meeting of the Shelburne Planning Board was held at the Buckland Shelburne Elementary School on Wednesday, October 17, 2012.

**Present:**

Matt Marchese, Chair  
Beth Simmonds  
Douglas Finn  
John Wheeler, arrived at 7:45pm  
Briony Angus, Tighe & Bond, consultant to the Planning Board

**Absent:** Chuck Washer

**Press:** Diane Broncacio, Recorder  
Cameron Graves, Independent

**Audience:** Sue Frankewicz, Mike Parry, Ray Hartman, Eugene Butler, Deb Andrews, Marion London, Peter London, Charlie Cohn, Joan Rockwell, Tom Miner, Karen Gould, Giesala Walker

**Meeting Called to Order:** 7:06pm.

**Read and Approve Minutes:**

**Moved by Doug Finn and seconded by Matt Marchese to accept the minutes of Sept. 12, 2012 as written.** Vote: 2 in favor, 0 opposed, 1 abstention by Beth Simmonds who was not in attendance at that meeting.

**Moved by Beth Simmonds and seconded by Doug Finn to accept the minutes of Sept. 13, 2012 as written.** Vote: 3 in favor, 0 opposed, 0 abstentions.

**Old Business:**

**Wind Turbine Moratorium** –overview of local windpower bylaws by Briony Angus, AICP, of Tighe & Bond, consultant to the Planning Board through a Technical Assistant Grant from the FRCOG.

Matt introduced Briony Angus of Tighe & Bond and Peggy Sloan of the FRCOG Planning Department. Under our grant, the first task for Tighe & Bonds was to evaluate the advantages and disadvantages of 6 existing bylaws relative to both large scale and on-premises wind facilities and to give a presentation on the different options and key issues (setbacks, noise limits, height limits, ice throw, etc.). Matt noted that at the end of the December, when this grants ends, Tighe & Bond will have completed a working draft On-Premises Wind Facilities Bylaw for the Town of Shelburne. The Planning Board will then work on refining the bylaw with the input of the wind advisory group in preparation of submitting the bylaw for consideration at Shelburne's Annual Town Meeting in the spring.

Briony presented a powerpoint presentation, attached to these minutes, which will be available in the Town Clerk's office and posted on the Town of Shelburne website. Briony also presented a Wind Bylaw Comparison Table for both large-scale and small-scale bylaws. Bylaws reviewed by Briony included:

- The Berkshire Regional Planning Commission Model Large Scale Wind Facility Bylaw
- Mass DOER – As of Right, Large Wind Energy Systems
- Town of Lee, MA (Large Scale)
- Town of Winchenden (Commercial Scale)
- Mass DOER – Small Wind Energy Systems
- Town of Ashburnham (Small Scale)
- City of Worcester (Small Scale)

Briony's presentation included:

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

## Goals for the Presentation and Scope of Work of the Grant

### Critical Factors from Bylaw Reviews:

- Bylaw Structure
- Specific Zoning District or Overlay District
- As-of-right vs. Special Permit
- Small-Scale vs. Large Scale
- Permit Application Requirements
- Design Requirements
- Security Measures (financial, health & safety, legal)

### Bylaw Structure

- Separate sections for small- and large-scale or
- Integrated requirements, specifying the applicability
- What is most consistent with the existing bylaw?

### Specify Certain Geographic Areas or Zoning Districts?

- Zoning Overlay (by area)
- Regulated in Use Table (by zone)
- Allowable (as-of-right or Special Permit) in all Districts
- Consider: Is there an area in Town that is not appropriate for wind development? Is it a specific zoning district or a geographic area?

### Defining Small vs. Large Scale

- Capacity
- Height
- Rotor Diameter
- End Use of Power
- Consider: What is the critical factor for the Town of Shelburne?

### Small Scale/On-Premises Wind

#### Permitting Considerations

- Building Permit
- Special Permit
- Electrical Permit
- Compliance with other local, state, federal regulations
- Consider: 1. Ability of Town/Planning Board to administer/enforce, 2. Control permitting costs and time commitment, 3. What are the impacts and areas that require special consideration?

#### Permit Application Requirements

- Minimal for small-scale
- Optional pre-application meeting
- Site plan including: property line, structures, etc.
- Structural and foundation plans
- Technical information about the turbines

#### Height – regulate by tip height or rotor height

#### Design Requirements:

- Appearance
- Signage
- Lighting
- Appurtenant Structures

#### Noise – Acoustic Characteristics

#### Visual Impacts/Characteristics

Setbacks: Impacts can be mitigated/avoided by siting and setbacks

#### Other Design Requirements:

- Access
- Electromagnetic Interference
- Met Tower Consideration
- Financial Surety/removal cost estimated or provided
- Waivers

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**Large-Scale Wind** – How does large-scale differ on each of the above points?

**Summary:**

- Consider areas of Town/Zoning Districts
- Consider how far away impacts will be felt
- Use defensible requirements
- Make it very clear – easy to comply with, easy to administer, easy to enforce.

**Considerations from existing Shelburne Zoning**

- Evaluate relationship to language in Section 14.0, Environmental Controls
- Steal some language from Section 16.0, CMRS
- Determine applicability of Section 16.12, Performance Guarantee and Fees and Section 16.13 Special Permit Review.

Briony noted that:

- the Town of Ashburnham separates out large scale from small scale in their bylaw instead of mixing them together.
- in her opinion, the Worcester bylaw is cumbersome and leaves a lot to be desired regarding implementation and administration.
- regarding large scale, it is often a concern whether the local board has the capacity/ability to do the necessary technical reviews.
- Winchendon uses the term of Engineered Fall Zone – an unusual term not used by engineers and she is not sure where they got that language.
- it is difficult if you have to jump around through a bylaw to find what is applicable to a specific application and she prefers a well-organized bylaw.

Board questions of Briony:

- Beth – do any of the towns, whose bylaws you reviewed, have any wind turbines? Briony responded that Ashburnham and Worcester have existing small scale turbines.
- Matt asked if there are any requirements that turbines have to be operating at any specific level of performance? Briony did not find that requirement in any bylaws that she reviewed.
- Matt asked if any of the bylaws make recommendations about certain types of turbines that should be used? Briony said none of the bylaws specify specific makes or models of wind turbines.
- Beth saw a reference to a setback of 150 feet to any nearby buildings. Briony noted that she felt some of the language used in these bylaws is unclear and sometimes awkward.
- When were the bylaws developed that she reviewed? Briony noted she doesn't know but she has provided copies to the board via email and that information should be on each bylaw.
- Matt noted Shelburne has a ban on large scale, and a moratorium on premises use that needs to be address by next ATM. Shelburne residents have expressed concerns about health impacts – how have these played out in other towns? He noted that it seems there are very few requirements for small scale wind on noise and flicker in comparison to large scale wind bylaws. Briony noted that people are generally developing regulations similar to and referring to DOER standards and use setbacks for the visual impacts. Nobody seems to be addressing the safety issues, even after the situation in Falmouth where they complied with the DOE requirements. Matt stated the Board will need some threshold(s) to regulate a project, especially in relation to health impacts. The Board will need to gain comfort with the best available information on the health impacts of wind facilities-- it could be a full time career reading through all the material on these issues. Briony suggested the Board try to make their bylaw as defensible as possible.
- Matt referred to noise requirements as an example of a concern regarding health impacts. The state has set a standard-- the Town could use that standard or the Town could make them more stringent. But if the Town makes them more stringent than the State, does that make them less defensible in court? Briony suggested it would be a useful exercise to identify existing uses in town that generate noise and compare them to a small scale turbine on a specific property. Forget it is a turbine and think about it as a noise generator. It would help the Board to visit an existing turbine but of course that is not the same as living with one. If the town bylaws were more stringent than the state standards, the Board should understand why they think an area/zone is more sensitive to noise from a wind turbine than the level of noise that is currently there. Briony would not recommend using noise and public health issues as a way of keeping wind turbines out—the Board should just state whether they should be in a certain zone/district at all.

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- Beth asked if Briony thought the State would be coming up with more strict guidelines? Briony noted that small scale bylaws are for small systems such as a turbine on a barn, so there have not been more detailed guidelines developed. Shelburne could just deal with wind turbines by proper siting – using setbacks and zoning in town.
- Matt suggested the Board look at our current use table/zones and see where wind systems might fit -- then the Board could make a determination as to how to proceed. Matt thought that looking at it as a noise generator was an interesting suggestion and way of exploring the Town's existing noise levels.
- John Wheeler said that he is unclear about how to define small scale and large scale. Briony noted that by approaching it as premises use helps to clarify the purpose of our bylaw. The premises use implies use of energy on the property which usually means very small turbines. Matt explained that the term premises use came from a citizen petition and that is why we are looking at it that way. In looking at the comparison chart that Briony presented, it shows that small scale is determined by height or by how much electricity is generated. Ultimately it is how the Board defines it that clarifies what premises use is for the Town of Shelburne.
- Matt noted that given our timeline, the Board will have to make a decision shortly on whether to just focus on small scale or consider addressing large scale at the same time.

Matt opened up the meeting for public comment/questions on the presentation-- he noted this is a public meeting, not a public hearing, and it is also the beginning of a long process. Matt said that he appreciated the public coming out and reminded them there will be additional opportunities for discussion and input throughout this process.

Ray Hartman, Little Mohawk Rd.: does Tighe & Bond do studies such as this outside of Massachusetts? He noted that Massachusetts is very proactive in encouraging wind power. Are there perspectives from other states that might be useful for us to consider? Briony said they have been involved in New Hampshire and Connecticut. She guesses that NH less is less restrictive, and she said that Connecticut is looking at language, such as setbacks, that is probably very similar to Mass. The projects she is familiar with are still in process. Tighe & Bond are not recommending the DOER bylaws, they had just been directed to look at them as part of their scope of services. Ray asked if Tighe & Bond has staff who are qualified to analyze health studies in relation to wind. Briony said they do have highly specialized staff capable of reviewing site plans but they do not have anyone with a specialty in noise analysis.

Mike Parry, Patten Rd.: he noted Briony had said to pick recommendations that are most consistent with the existing bylaws of the Town. Shelburne has banned large scale wind, how are other towns addressing this? Briony said her comments related to whether there should be separate sections in the bylaws for small-scale and for large-scale. Her comments were more to the structure of the bylaws rather than the content

Mike noted that in many presentations over the last year in Shelburne, many concerns have been raised over health impacts and he would have like to have seen more information on this in her presentation. Matt noted that he thought health concerns, noise and flicker, were included. Briony noted that she did not find potential public health impacts covered in the bylaws she reviewed.

Sue Fraser Frankewicz, Highland Village: Sue asked if there was going to be access to Briony by the wind power advisory group? Matt responded that Briony will be working with the Planning Board under a very limited budget. If there are specific questions that come up, the Planning Board may defer to the wind advisory group to help out. There are going to be two other meetings this calendar year and the advisory group will be able to attend and ask questions. Technically, the consultant is available to the Planning Board. If anyone has questions they should direct them to the planning board. Unfortunately the grant is limited, and therefore there is only so much time available. The Wind Advisory Group will be given specific tasks/issues to address to assist the Board as they fine tune the draft wind bylaw prepared by Tighe & Bond.

Peter London, Patten Rd.: Peter stated that 77% of the Town voted against commercial windpower and he asked for clarification of small scale and premises use and how that relates to height. Briony noted that the definition of premises use will be developed by the Shelburne Planning Board. If you are talking about a single family house using a wind turbine for its own use, she noted that a 100 kw would produce way more than one house could use. Premises use could be the smallest wind turbines, maybe only 65 feet high. She can't emphasize enough that the range of wind turbine heights keep changing as the technology evolves.

Matt noted that there were many issues involved in the votes at the last Annual Town Meeting which were clearly affected by an existing proposed project. It was very clear to Matt that there were people both for and against large scale wind, and there were many people who wanted to have wind power options studied. Therefore, the Planning Board is trying to understand the whole picture of wind power and what the impacts, both positive and negative, could mean for Shelburne.

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He feels that it is a misrepresentation of the Town Meeting to say that 77% of the Town voted against commercial. Beth concurred with Matt. John noted that whatever the Planning Board prepares will still have to go back to town meeting and have to be passed by a 2/3rds vote of the town. Matt concurred that the Planning Board has no authority to pass bylaws on their own authority.

Ray Hartman: asked if the planning board feels there is no ban on commercial wind. Matt said that of course there is a ban and he resented the implications that the Planning Board was ignoring he Town bylaws. The Board is looking into all wind power issues so that this board and the rest of the Town can have an in depth discussion about the merits of wind power without a proposal in front of the town. The Planning Board has the right and responsibility to study the full range of wind power issues. The Board presently has their hands full dealing with premises use but there needs to be a process to discuss the full range of wind power options.

Ray asked Briony for clarification relative to the height of turbines. In terms of interpreting health studies conducted in Europe, he is looking at trying to understand how to compare them based upon the height of the structures. Briony noted that it is very unusual to have premises use associated with wind – it is usually associated with solar. In general under 200 feet is considered a small turbine in the industry. She would say a 750 or 900 kw turbine would be considered a small turbine. There is no rule or common language as to what is a small or large turbine.

Matt noted that the PB will have the ability to define small/large/premises use in our bylaw. The Board will also have to consider the Town’s terrain which can determine how high a turbine needs to be for even a low kw turbine to work. It could be that the Board will look at all the issues and find that there is no appropriate site in town for wind facilities.

Beth noted that large turbines at Mt. Wachusetts produce only enough kw for use on that site, would that situation be considered premises use? Matt noted that developing a definition will not necessarily be easy since you could be looking at a wide range of turbine size. We may want to look at businesses in town and how much electricity they need to use each year to help develop the definition.

Briony said that we also need to consider the intermittency of wind power. Is the Board going to require an applicant to submit their consumption records per year and explain how the wind is going to be used to meet that need?

Deborah Andrews, Bridge St.: It is her understanding that the Board will examine all the issues related to premises use turbines, then set parameters, set definitions, and that will be the basis for the bylaw. Matt replied that the short answer is yes. The goal is to develop a very specific bylaw for the town of Shelburne. Given that, Deb said it is irrelevant to try to determine height since that will be the result of an analysis of other factors. We need to substantively look at all the sub-issues. Deb noted that ultimately all of this will be sifted through the preamble of our bylaw on the quality of life, presented in the beginning of our bylaw. In the end of the day, the town will decide on what they want to do with it and it is the job of the Planning Board to give them a good choice. Matt agreed that it is premature at this point to set a height requirement.

Matt closed the public comment period and thanked Briony for her presentation.

**Matt moved that the Board take a ten minutes recess.**

This motion was seconded by Beth.

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

**Matt reconvened the meeting at 8:57pm.**

Matt noted that under New Business there is to be a presentation by Whit Sanford to discuss long range planning strategies relating to energy and Matt suggested moving to that agenda item and the Board concurred.

**New Business:  
Long Range Planning Strategies**

Whit Sanford moved here two years ago from Ashfield where she served on several boards/committees. She is a regional planner by training and she looks at big pictures. She thinks long range planning is important for every small town since it helps you prepare for issues that may become important in the future. She approached the Planning and Selectboard in May with a proposal to look at developing committees for:

Long Range Energy Planning

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Master Plan Development  
Capital Improvement Planning

Whit is proposing an energy committee to look at the big picture of renewable energy in Shelburne and its relationship to sustainability and economic development in town. Because of the past wind turbine proposal we have become something of a divided community which is not healthy. The energy committee could be a forum for the community to come together and talk about our Town’s future.

Whit gave the Board an outline of nine purposes for an Energy Committee

1. Insure Shelburne’s energy future by creating a plan for energy development and conservation in Town.
2. Serve as a neutral and unbiased group that looks to the Town’s welfare and common good concerning energy.
3. Complement and reduce the workload of the Planning Board by studying and understanding energy issues.
4. Research the different sources of renewable energy to learn the pros and cons of each – solar, hydro, wind, geothermal, and others.
5. Begin mapping Shelburne for possible sites for placing renewable energy facilities.
6. Develop criteria for commercial solar and/or wind farms.
7. Research other communities for successful installations of wind and solar farms and hydro and geo-thermal facilities to learn the reasons for their success.
8. Be the forum to discuss the development of renewable energy facilities in Town.
9. Seek Green Community designation for the Town of Shelburne.

White noted that the energy committee in Conway just recently earned the Green Committee designation for that town. She said it was a diverse committee that represented many different viewpoints with the common goal of doing what was good for their town.

John said it sounds like a good idea but how would the committee be picked and organized? Whit responded that in Conway the Selectmen appointed the committee. Matt said he had recent conversations with Joe Judd on the issue of who appoints committees, but noted that Whit’s proposal is for three planning efforts some of which are not under the purview of the Planning Board. He suggested that it could be a case of the Planning Board making recommendations to the Selectboard about the energy committee. Whit noted that John Payne had responded to her previous letter.

Beth asked if it would be three separate committees? Whit said yes, her experience in helping the Arms Library brought to her attention the need for Shelburne to do more long range planning regarding their building needs, where the police dept. is going to be housed, etc. Beth asked how independently the committees in Conway worked. Whit said they were given a charge and then the committee ran with it.

Matt thanked Whit for bringing this forward. He supports the entire concept. At this point he asked the board how they want to proceed--make a decision tonight or discuss it at the next meeting? John said he would like to think about it--it makes a lot of sense but we need to figure out how to do it the proper way. Beth asked about who has responsibility for each of these issues? Matt noted that there are areas in which the Planning Board works and areas in which the Selectboard would have the responsibility.

Matt noted that he had been approached by Jim Barry regarding Shelburne applying to be a green community, Matt referred him to the Selectboard and has not heard back. Whit said that she could email us a powerpoint presentation on how to become a green community. Matt noted that it ultimately gives you access to some grants and funding that could help you achieve specific goals.

Beth felt it would be important to get the Selectboard on board. Matt felt the consensus of the Board was to table this until next meeting. John suggested we should also get Selectboard input since the Planning Board also has a lot on our plate right now.

**Matt moved to table further discussion of Whit Sanford’s proposal until our next meeting under old business.** This motion was seconded by Beth. Vote was 4 in favor, 0 opposed, 0 abstentions.

Whit will send the green communities powerpoint to our email and Liz will distribute it via email to Board members.

**Old Business:**

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

## Update on Windpower Advisory Committee

Matt reviewed the motion the board passed relative to establishing a Windpower Advisory Group at their meeting on Sept. 12, 2012:

*Matt would move that the wind advisory committee invitations would be sent to each member of the existing boards, committee, and departments in town and we also request interested residents of the Town of Shelburne and that any request should be in writing, explaining first if they have any expertise in wind and the reason for their interest in participating, in (1) wind, specifically premise use, (2), their ability to be open minded in deliberations, and (3) why they would like to serve, and lastly non-town members who may have expertise that this board could call upon if this board felt necessary if they could put that in a written request identifying their area of expertise and interest*

Matt said that he had a discussion with Joe Judd regarding whether the Planning Board had the ability to establish a committee without the approval of the Selectboard and Matt's understanding is that we can. He said that he feels it is appropriate to keep the Selectboard aware of the tasks assigned to the group.

Matt read the names of applicants that offered to serve:

Eugene Butler	Nancy Albertson	Robert Jaros
Ken Eisenstein	Mike Parry	Kevin Parsons
Raymond Hartman	Deborah Andrew	Lowell Laporte (ZBA liaison)
Judy Truesdell	Thomas Webler	

Given our presentation tonight, the next step is to develop a timeline for between now and the end of December. He wants to stress to the Board that we don't have to appoint a committee tonight, we should include the letters in the record. He asked the board how they want to proceed. Doug said he thinks we should have a chance to read the letters. Beth and John concurred that we could read the letters into the record and then make appointments at our next meeting since at this point we do not yet have a task to give them but will shortly. Matt noted that as we review the applicants, if there are any conflicts of interest with current Board members, that those Board members should say so and if necessary contact the Mass Ethics Commission for a determination.

All the letters were read into the record. The consensus of the board is to think about it and work on establishing this committee at the next meeting. Matt thanks all applicants for taking the time to respond and for offering their services. Matt asked Liz to send a note to all the applicants to thank them for responding and to let them know the Board will be forming the committee at the next meeting.

**Status of draft Subdivision Rules & Regulations for the Town of Shelburne --** Matt asked the board to let him reach out to the Selectboard to get ideas on who could help the board review and assess the draft subdivision regulations. The Board agreed to this approach.

**Update on the joint meeting with ZBA held on September 13 –** Matt reviewed a board "to-do" list prepared by Liz. Beth suggested starting with the more obvious zoning bylaws revisions; each year taking up a few more. Matt assigned the Board members homework – take the list and identify which are the ones to address first. Matt noted we already have a list of questions for Town Counsel who will have to review any proposed bylaw revisions but we don't want to contact her until we are organized and prepared.

### New Business:

**Committee Updates --** Open Space – Doug reported that at the last meeting the discussion was on finishing up the signage for the trails and doing a survey of town landowners. The survey would ask what the landowners would like to see or have help with to manage their open space. Matt asked if they are following up on the survey that has already been done and Doug said yes. Tom Minor said that the Open Space Committee is holding a forum on the Open Space Plan update, a community exercise to explore the town's future, next Wednesday from 7-9pm at the grange.

**FRCOG –** Beth was unable to attend the last meeting

**Other Business :** none presented.

**Public Comments:** no additional comments presented.

**Read Mail:** Matt noted that the Board received several articles from Ray Hartman regarding wind power.

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Jan Carr from Heath forwarded the Board a copy of their draft large scale solar zoning bylaw. The Board members read several public meeting notices from adjacent communities. Liz noted that she had copies of the public notice regarding the AG’s approval of the zoning revisions which were posted in the Recorder by Town Clerk, Bev Neeley –the final requirement to ensure their legality.

**Schedule next meeting** – Wednesday, November 14<sup>th</sup>, 7pm town hall. Matt said he is asking Tighe & Bond to prepare a schedule of meetings that are needed in order to have a public hearing on a draft bylaw by the end of the year. The Board may need 2 meetings in November and 2 in December.

**Motion to adjourn was made by Doug and seconded by John.**

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

The meeting was adjourned at 10:13pm.

Respectfully submitted by:

Liz Kidder

Administrative Assistant

**Documents referred to during meeting:**

Wind Bylaw Review Powerpoint presentation by Briony Angust, Tighe&Bond

Wind Bylaw Comparison Tables presented by Briony Angust, Tighe&Bond

Draft Heath Large Scale Solar Zoning Bylaw

Dutch Province Tilts at Windmills – article submitted by Ray Hartman

Sept. 13, 2012 Letter From Raymond Hartman on windpower research

Presentation to the Fairhaven Planning Board submitted by Ray Hartman

Some information on expected capacity factors for premises use wind turbines in Shelburne submitted by Raymond Hartman

Approved: \_\_\_\_\_ Date: \_\_\_\_\_