

**Town of Shelburne  
Planning Board  
Minutes of Public Hearing  
April 3, 2013**

A duly posted hearing of the Shelburne Planning Board was held at 7pm on Wednesday, April 3, 2013 at the Buckland Shelburne Elementary School, 75 Mechanic St., Shelburne Falls.

**Present:** Matt Marchese  
Beth Simmonds  
John Wheeler  
Doug Finn  
Liz Kidder, Admin Asst.

**Absent:**

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

**Audience:** John Payne, Selectboard, John Taylor, Zoning Board Appeals, Tom Miner, Conservation Commission

**Call Meeting to Order: 7:00pm**

**Introductions:** Matt welcomed all those in attendance and stated that the Planning Board was holding a Public Hearing on Proposed Draft Amendments to the Shelburne Zoning Bylaw and that all required legal notices had been published in accordance with Mass General Law.

**7:00pm.** The public hearing on proposed draft amendments to the Shelburne Zoning Bylaw was opened by Matt Marchese. He noted the full text of the draft amendments had been available for review at the Town Clerk's office and copies were available on the table by the door.

**Proposed one-year extension to wind power moratorium**

*ARTICLE \_\_\_\_\_:*

*To see if the Town will vote to amend Section 17.b) Temporary Moratorium of the Town of Shelburne, Massachusetts, Zoning By-Law to read:*

*"Notwithstanding any other provision in the Town of Shelburne Zoning Bylaw to the contrary, no special or building permit may be issued for the construction of any wind turbine energy system, until Annual Town Meeting, 2014. The purpose of this temporary moratorium is to allow sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives."*

Matt stated that the Planning Board had obtained a grant from the FRCOG with which they had hired Tighe & Bond to prepare a draft small scale wind bylaw. The Board had established a Wind Advisory Committee (WAC) and charged them to review the bylaw and conduct sufficient research to enable them to submit a report to the Planning Board that will assist the Board in developing a draft bylaw designed to meet the needs of Shelburne. Matt asked John, the planning boards' coordinator for the WAC for an update on their progress.

John noted that the WAC has had trouble getting everyone together to finish their report. They have done extensive research and site visits to communities where there are wind turbines in use. They would like to get their work done as soon as possible but were not able to finish in time for this year's annual town meeting. John said they hope to get their report to the PB in just a few months. John confirmed that the WAC is in support of this proposed moratorium extension. Beth supported the moratorium as well to allow the WAC to finish their work.

Matt noted the WAC has been meeting regularly and has done a great deal of research on behalf of the Town but needs just a little longer in order to finish. Matt had talked with Town Counsel who had indicated that asking to extend the moratorium by one year should not be a problem. After the Board gets the report from the WAC, their

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material and the resulting proposed draft bylaw will be circulated giving everyone a chance to fully review it and then present it for a vote at next year's Annual Town Meeting.

Matt asked if there were any comments from the Selectboard or ZBA. John Payne asked if the delay was due to any contentious issues or is it just due to logistics. John Wheeler said it was mainly due to some members being out of town and hard to get everyone together for a meeting; he noted the meetings have not been contentious. The WAC has visited many sites and has gathered a lot of information and talked with officials in other communities that have turbines -- asking them what is working and what isn't. The big issue seems to be noise and therefore setbacks. He said the WAC is close to being able to summarize their findings. Matt commended the WAC for the tremendous amount of work they have been doing and the Board is looking forward to getting the summary of their research.

John Taylor asked if they are addressing all scales of premises use. John W. noted that they have not found other examples of premises use. Matt noted that premises use in regards to wind seems to be unique to Shelburne. Based upon discussions at past meetings, the Board decided to focus on small scale wind power. John W. noted that the WAC had been researching how much capacity is needed for farms as a way of determining what size/capacity of turbine would be practical to address in a Shelburne bylaw. However, it is hard to decide on capacity due to differences in height, location etc. John T. asked if the WAC is going to prepare a draft bylaw. Matt noted that the Board already has a draft, prepared by Tighe & Bond, and the WAC is helping to refine it. Matt stated that once the Board has a revised draft, that draft will be distributed to other boards and will be the subject of public hearings; establishing a dialogue to ensure the best review possible.

No further comments were made and no additional handouts or materials were submitted or distributed.

**Clarifications/amendments suggested by Attorney General's Office:** Matt reported that this year the ZBA and PB had held a very productive joint meeting looking at possible reviews to the zoning bylaw. That meeting resulted in a 3 page document of items to work on relative to updating the bylaw. The ZBA took on the cell tower bylaw and the PB took on suggestions that had been made by the Attorney General's office as part of her approval letters regarding bylaw changes in the past. Several suggestions were also made based upon situations observed by the ZBA as they implement the bylaw. These proposed revisions include the following:

**ARTICLE \_\_\_\_:**

*To see if the Town will vote to amend the following sections of the Town of Shelburne, Massachusetts, Zoning By-Law as follows:*

**Section 6.2 Special Permit Rules and Regulations:** *The last sentence of this paragraph shall read, "Copies of Special Permit Applications and related documents shall be submitted to the Board of Health, the Planning Board, and the Conservation Commission, who shall have 35 days within which to comment."*

**Section 2.5 Bed and Breakfast:** *Delete the last sentence of this definition – "Bed & Breakfast establishments which can accommodate five or more persons per night will be required to meet additional Building Code requirements related to fire safety."*

**Section 2.27 – Municipal or Non-Profit Trail:** *The first line of the definition should be changed to read – "Any trail, walkway or pathway open to the general public and intended for non-motorized, except mobility assisting devices used by handicapped persons, recreational use."*

**Section 12.0 Mobile Homes and Campers, General Regulations.**

**Section 12.1.3:** *in line 4, change the word "ordinances" to "bylaw".*

**Section 12.1.6.4.4:** *in line 1, change the word "ordinances" to "bylaw".*

**Section 4.3. Table of Use Regulations:**

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1. For these three special permits in the RA district add an asterisk that says "Except as land designated as Chapter 40a Section 3, as allowed by right."

**Agricultural & Recreational Uses**

"Agricultural Manufacturing with 5,000 square feet or less of enclosed floor area"

**Business Uses**

"Kennel or Animal Shelters"

**Industrial Uses**

"Sawmill"

2. Rename "**Business Uses**" section to "**Commercial/Business Uses.**"

3. Rename "**Automotive Repair Garage**" to "**Motor Vehicle Service or Repair**" and move it from the Industrial listings to the Commercial/Business Lists.

|  |                  |                  |                  |                 |                 |
|--|------------------|------------------|------------------|-----------------|-----------------|
|  | <u><b>RA</b></u> | <u><b>VR</b></u> | <u><b>VC</b></u> | <u><b>C</b></u> | <u><b>I</b></u> |
| <b>Motor Vehicle Service or Repair</b> | <b>N</b>         | <b>N</b>         | <b>SP</b>        | <b>SP</b>       | <b>SP</b>       |

4. Add a new classification to Industrial Uses:

|                                     |                  |                  |                  |                 |                 |
|-------------------------------------|------------------|------------------|------------------|-----------------|-----------------|
|                                     | <u><b>RA</b></u> | <u><b>VR</b></u> | <u><b>VC</b></u> | <u><b>C</b></u> | <u><b>I</b></u> |
| <b>Welding or Metal Fabrication</b> | <b>N</b>         | <b>N</b>         | <b>SP</b>        | <b>SP</b>       | <b>SP</b>       |

Matt asked if there are any comments or questions from PB members. Doug, John and Beth said they had already discussed them and had no additional comments. Matt asked if any members of town wanted to speak to any of these changes and no comments were offered. Matt asked if anyone else had any comments; none were offered. Matt asked if anyone had any documents they would like to submit into the record; none were submitted.

**Clarifications/amendments to the Telecommunications Bylaw:**

**ARTICLE \_\_\_\_:**

*To see if the Town will vote the replacement of **Section 16.0 Telecommunications Bylaw** of the Town of Shelburne, Massachusetts Zoning Bylaw. The proposed replacement Section 16.0 Shelburne, Massachusetts, Telecommunications Bylaw is attached to this warrant as Attachment A.*

Matt noted these revisions were also the result of discussions at the Sept. 13<sup>th</sup> PB/ZBA joint meeting. The ZBA took on this task and noted that John Taylor is here to answer any questions. John T. said the ZBA had developed a list of areas in which the bylaw could be improved over the past several years:

- clarification of what is a structure/facility/building/tower,
- a gap in the language regarding regular maintenance of existing towers,
- several other minor items such as who pays for engineering studies or bonds,
- changing the word "ordinance" to "bylaw".

The revisions are throughout Section 16 of the bylaw and were available for review at both the Town Clerk's office and during the public hearing.

Matt asked the Board if they had any questions of John T. Doug, John W. and Beth all thought the revisions were very clear and well done. Matt noted he felt the ZBA had done an excellent job and the PB appreciated their efforts. Matt asked for comment from other boards and John Payne also thought it was a job well done.

Matt asked if there were any other comments or additional documents to be considered. None were presented.

**Draft one-year moratorium on Medical Marijuana Treatment Centers:** Matt noted that late last week, the Planning Board received a request from a citizen to place a moratorium on the town meeting warrant relative to Medical Marijuana Treatment Centers. There are going to be up to 35 treatment centers registered in the first year after new MDPH regulations are finalized. There will be a least one in each county but no more than 5 in a county and the registrations will be distributed by the state based upon need/population. The Planning Board prepared

language for a one-year moratorium since there is a question as to how this law is going to be implemented. The Board is not presenting this with the goal of banning such a facility. Rather, the Board felt it might be appropriate to have a period of time in which to review the new regulations and see how our bylaws may need to be adjusted to be responsive to the intent of the new law and the interests of the citizens in Shelburne.

**ARTICLE \_\_\_\_:**

*To see if the Town will vote to amend the Zoning Bylaws of the Town of Shelburne, Massachusetts by adding to Section 2.0 – Definitions, a new Section, numbered 2.41, to read as follows:*

**2.41 Medical Marijuana treatment center:** *any not-for-profit entity, as defined by Massachusetts law only, registered under this law, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosol, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.*

**ARTICLE \_\_\_\_:**

*To see if the Town will vote to amend the Zoning Bylaws of the Town of Shelburne, Massachusetts, by adding Section 18.0 (?) – Medical Marijuana Treatment Center Moratorium to read as follows:*

**Section 18.0 Medical Marijuana Treatment Center Moratorium**

**a) Purpose.**

*In November 2012, Massachusetts voters approved a ballot question which allows qualifying patients with certain medical conditions to obtain and use medical marijuana. This law, Chapter 369 An Act for the Humanitarian Medical Use of Marijuana, took effect on January 1, 2013. The Massachusetts Department of Public Health (DPH) is currently developing regulations governing numerous sections of the law. In the first year after the effective date of this law, the DPH shall issue up to 35 registrations for Medical Marijuana Treatment Centers. Of these 35 centers, at least one shall be in each county and not more than 5 shall be in any one county. The Town of Shelburne is a rural Town with much undeveloped land and there currently are no medical marijuana treatment centers in the Town. There is an identifiable community need to study this new law and any regulations developed by the MDPH to determine if the Shelburne Planning Board needs to amend the Town's Zoning Bylaw in order to accommodate medical marijuana treatment centers in a responsible manner.*

**b) Temporary Moratorium**

*Notwithstanding any other provision in the Town of Shelburne Zoning Bylaw to the contrary, no special or building permit may be issued for the construction or development of any medical marijuana treatment center until after June 30, 2014. The purpose of this temporary moratorium is to allow sufficient time to engage in a planning process to address the effects of such centers and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives and in a manner responsible to the purpose and intent of Chapter 369 An Act for the Humanitarian Medical Use of Marijuana.*

Liz noted that both the PB and the BOH had received the email and had discussed the different concerns that each board may need to address in response to the new law. Deb Coutinho of the BOH later obtained additional information from the regional health agent and notified the PB that she felt it was premature to consider a moratorium. Liz further reported that late last week, draft regulations were released from the Mass Dept. of Public Health. These regulations are lengthy and she noted she has only scanned them; the only issue that she noticed which may be typically of concern to a PB was signage; the draft regulations restrict the size of signs at the treatment centers. She noted that one example of how the BOH might address the new law was to add medical marijuana smoking to the new Shelburne Tobacco Control regulations that limit smoking within 20 feet of public buildings and in sidewalk restaurants.

John, Doug and Beth all felt that a moratorium could be appropriate at this time since there are still a lot of questions on how the law will be implemented. Matt noted that if Shelburne has a moratorium, once the state had finalized the regulations it would give the Planning Board the time to review them and consider whether there is something that needs to be addressed through zoning – such as in the use table. For example, is there a concern in town about allowing treatment centers in some parts of town and not others?

Matt asked if members of other town boards have any comments. John Payne noted this article was presented to the Selectboard and they were considering it when Deb Countinho of the BOH came into the room and said they were not sponsoring it. Therefore, the Selectboard decided not to include it in the town meeting warrant. If the PB wants to sponsor it, then the Selectboard would include it on the warrant. If the PB decides not to sponsor it then any resident would have the option of using the citizen petition process, which requires just 20 signatures, to add it to the town meeting warrant. If any citizen wanted to pursue this option, they would have to submit the petition to the Selectboard by Monday.

John Taylor and Tom Minor noted their boards hadn't discussed it. Tom Minor asked why it was before the Planning Board as he thought it was more in the bailiwick of the BOH. John Taylor noted it could be a planning issue. If it is addressed in the bylaw, it makes it easier for the building inspector to issue a permit or direct the applicant to apply for a special permit. Tom Minor asked if we knew what the vote was by residents of this town. Matt said he thought voters were overwhelmingly in favor of the act in Shelburne. Beth noted that the planning board has a narrow focus and it is an option for a concerned citizen to bring it forward. John Taylor noted that it could be as simple as adding a definition and then a spot in the use table. That would at least give the town some input during a town meeting.

Matt asked John T. which board should be the SPGA in this circumstance. John T stated that it seemed easier to streamline the process to just one board granting special permits. Matt noted if a special permit is required it would help to have some criteria on which to base the granting of that permit. John T. noted that if the criteria currently in the bylaws are too general for certain circumstances, then you do need to identify specific criteria in the related section of the bylaw. John Payne noted that the Selectboard has not spent much time discussing the special permit process but they keep hearing it is a preferable to have the PB develop the rules and then have the ZBA issue the special permits.

John W. felt that it may be a good idea for the Board to discuss where in town it would be appropriate to site a treatment center. He also noted Shelburne may not get a treatment center but that doesn't mean the town shouldn't prepare for it. Matt noted it is almost a Catch22 – are we being too proactive or should we wait until the final regulations are issued; should the PB be the board sponsoring this when there is also the option of a citizen petition.

Matt asked if anyone wanted to submit additional materials or documents; none were presented.

**The public hearing was closed at 7:53 pm.**

Respectfully submitted by,

Liz Kidder  
Administrative Assistant

Documents discussed during the meeting:  
Proposed Draft Amendments to the Shelburne Zoning Bylaw  
Proposed Amendments to Section 16 Telecommunications

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