

**Planning Board/Zoning Board Joint Meeting
Minutes
October 4, 2021**

Virtual Meeting, 6:30 pm

Present for the Planning Board: Steven Bressler, Deacon Bonner, Linda Rotondi, Jeff Lacy, Nathan Murphy, Michael DeChiara, Robert Raymond

Present for the Zoning Board: Jeff Lacy, Charles DiMare, Herb Gilmore

Also present:, Mark Rivers, Rob Kibler, Ken Holt, Jan Rowan, Mare Fox, Miriam DeFant, Bob Blanchet, Dennis, individual identified as “Joseph’s ipad”, Timothy Garcia for Nextera, Stacey Theriault

Deacon called the meeting to order at 6:30pm and read the Governor’s announcement regarding virtual meetings. The agenda was reviewed.

Stacey Theriault query on frontage:

Stacey Theriault was referred to the Planning Board from the Building Inspector. Stacey was looking at potentially purchasing a lot at the intersection of Pine Drive and Shore Drive at Lake Wyola. She is interested in building a house/studio on that parcel and was looking for guidance from the Planning Board regarding compliance with the Zoning Bylaws. The parcel predates the Zoning Bylaws so it is considered legally nonconforming. The Planning Board will need to determine if the parcel fits the standard as set out in the Definition of a Street/Road – meaning that it has “sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use”. The board will conduct a site visit on Sunday, October 10, at 11:00 am and make a determination about the property at their November meeting.

6:40 Meet with Zoning Board of Appeals

Zoning Board (Present for Zoning Board,)

The ZBA consisting of members, Chuck DiMare, Herb Gilmore, Jeff Lacy, requested a meeting with the Planning Board to discuss several issues that the committee has been grabbling with and is seeking input from the Planning Board. These issues are: height limitations for houses on Lake Wyola; the accessory apartment bylaw; and the number of members on the Zoning Board of Appeals. Chuck shared that there were differing opinions among the ZBA members.

In regards to house height requirements, it was suggested that there may be discrepancies in the zoning bylaws between the written text and the example diagrams. Herb also stated that he did not think the written text was clear in expressing what was intended and would benefit from clarification. In particular, the issue was whether all homes on Lake Wyola could be allowed to build “up” to the maximum height of 28 feet rather than making a determination on a case by case basis. The ZBA is looking for more clear guidelines that it can apply. It was stated that homeowners on Lake Wyola are concerned about houses being built in front of them which can block the view of the lake. It was also noted that larger houses have an impact on the environmental issues and “feel” of the Lake Wyola neighborhood.

The Zoning Board raised the question of increasing the allowable size of accessory apartments from 800 square feet to either 900 or 1000. The increase was seen by some on the Zoning Board to be a way to provide some tax relief to homeowners; others felt the current size was adequate. Steve said that the Planning Board spent a lot of time discussing the optimum size to recommend to Town Meeting when the Zoning bylaw was amended and did not support the idea of increasing the square footage of accessory apartments.

Finally, Chuck shared that the Zoning Board was interested in increasing the ZBA membership from 3 to 5 members. All agreed this was a good idea.

Mare Fox asked that the public be given more time to share their ideas. She suggested a public meeting at the Lake Wyola Association. She also brought up a past request to deal with a loophole that if a homeowner on the lake knocks down a home, they are then free to build higher without a special permit being required and no notice to neighbors. She suggested that a site visit would be beneficial to the boards to understand the siting dynamics.

Joseph's iPad asked that before any decisions are made by the boards, that they gather input from residents of Lake Wyola.

Deacon reiterated for the public that discussion of these topics will be continued at subsequent Planning Board meetings.

The Planning Board agreed to conduct a joint site visit to Lake Wyola on Nov. 6 so that members could see a range of homes where house height was addressed by the ZBA. A subsequent discussion was planned for both boards on Nov. 10, following the site visit.

Robert Raymond left the meeting.

Follow-up to Wheelock Site Visit with Nextera

Timothy Garcia was present by phone to address the site visit to the Wheelock tract solar installation. Jeff had reviewed the opinion and three areas of concerns of the Planning Board

The Access Drive: The access drive in a number of locations has experienced erosion that affects its serviceability and jeopardizes entry by emergency vehicles. This is a particular concern at the steepest portion just after the first basin, resulting in deep ruts and generation of sediment that washes down into the basins

Access Drive Ditches: These drainage ditches have eroded away whatever materials they were originally constructed with. They need to be stabilized and hardened so they may conduct runoff without contributing sediment themselves.

First Basin: This basin is always partially-water-filled and doesn't work as intended. This is problematic because having water always present leaves only limited volume available for

stormwater storage before it overtops at the weir. It was proposed as a retention basin that accepts runoff water but doesn't regularly discharge it except to the soils immediately below the bottom of the basin. The outlet weir is only there to handle major storm events. This basin may have accepted sediments from the construction period that have come to rest on its bottom and have clogged up the pores in the native soils, thus preventing infiltration.

It was agreed that Tim would consult with the Nextera team and report back to the Planning Board about next steps at the Nov. 8 meeting.

Associate Members

The Planning Board received notice from the Attorney General's Office approving the Associate Member amendment to the Zoning Bylaw but limiting the approved activities to those related to special permits. Members of the board felt that this was an incorrect and wrongly narrow interpretation of state statute. It was noted that Town Counsel, Donna MacNicol had worked with Jeff and Michael in the development of the amendment and supported the final version that was forwarded to Town Meeting. This version had expanded duties for Associate Members. Jeff reported that he spoke with Bob Ritchie, former municipal law attorney/employee of the AG office who shared the belief that ruling was a narrow interpretation of the law. The Board supported Jeff conferring with Bob Ritchie about whether the town can officially appeal the AG's decision. Deacon pointed out that the immediate need of the Planning Board was for Associate Members to assist with possible Special Permits, so in the interim, the practical needs will be met.

The Planning Board considered the three people who submitted written expressions of interest in the Associate Member positions - Michael Pill, Rob Kibler, and Ken Holt. Michael reviewed the process: at this meeting the Planning Board would vote to recommend individuals to the Select Board for appointment as an Associate Member. At a subsequent joint meeting of the Select Board and Planning Board, a vote to appoint would occur based on the members of both boards present.

The board heard statements of interest from Rob and Ken, both of whom were present. Michael Pill was not in attendance.

- Rob stated that he feels it is his duty to assure that there is little to no harm to the environment and property values of Shutesbury residents. He felt his 40+ years of reading engineering plans would be helpful to the board and said he is able to follow the rules and be an impartial participant.
- Ken Holt, stated that as a scientist, he would need to look to the science to guide the decisions of the board and would support seeking out experts who could offer relevant, objective data. The board asked follow-up questions and engaged in discussion about both applicants.
- Michael Pill in his statement of interest indicated that he would need to recuse himself from all projects associated with Cows, Inc. since he represents them on legal matters.

Michael moved to recommend Ken Holt to the Select Board as an associate member. Seconded by Steve. Vote: Nathan; nay, Jeff; nay, Steve; aye, Linda; aye, Deacon; aye; Michael; aye. Motion passes 4-2. Ken Holt was recommended for appointment.

Michael moved to recommend Michael Pill to the Select Board as an associate member. Seconded by Jeff. Vote: Nathan; nay, Jeff; nay, Steve; nay, Linda; nay, Deacon; nay; Michael; nay. Vote: Motion fails 0-6. Michael Pill was not recommended for appointment.

Michael moved to recommend Rob Kibler to the Select Board as an associate member. Seconded by Steve. Nathan; aye, Jeff; nay, Steve; aye, Linda; aye, Deacon; aye; Michael; aye. Motion passes 5-1. Rob Kibler was recommended for appointment.

Deacon will work to arrange a joint meeting of the Planning Board and the Select Board to vote on appointment for the recommended individuals. This meeting will either be Oct. 12 or 26.

Vertex Cell Tower

Stephen Keleher (Vertex Cell Tower) stated that due to supply chain issues related to the pandemic he was having trouble securing conduit to run power underground for the cell tower, as designated in the special permit application. He asked if the board would “administratively” allow him to run it above ground. The Planning stated that the conditions of the permit were that the utilities be underground and that any change to the cabling would require a new special permit to be submitted. This would also require a new hearing and public comment. The board discussed the other option of granting the project an additional extension (there has already been an extension that resulted in the Governor’s emergency declaration due to COVID19). Stephen stated that he wasn’t sure when the conduit will be available. He will check with his partner about what step to take next.

Other business:

Michael suggested that if the Planning Board should consider following up on the recommendations of the Municipal Vulnerability Preparedness (MVP) report, specifically the possibility of upgrading the town’s Master Plan in regards to climate issues. It was recognized that if the five solar special permits are submitted, the board will likely not have the ability to proceed with this idea.

In terms of funding for MVP related activities, the state has not yet released an RFP for a new round of Action Grants; the recent announcement is only for planning money which Shutesbury has already secured.

Michael moved to adjourn. Steve seconded. A motion to adjourn was made and seconded to adjourn. Michael – aye, Linda –aye, Jeff – aye, Nathan – aye, Steve – aye, Deacon – aye. Motion passes. Meeting adjourned at 8:59 pm.

Minutes taken by Lisa Stratford, interim Land Clerk. Edited by Michael DeChiara