



**Town of Whitingham  
Planning Commission**

**MINUTES OF FEBRUARY 12, 2018**

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*These Minutes will be accepted into the public record (with any corrections noted) at a future meeting of the Whitingham Planning Commission.*

## Action Summary:

- Signed a Letter of Approval for the Solid Waste Implementation Plan.
- Voted to set the permitting fee for a cell tower at \$200.

## Present:

*Planning Commission:* Bradford Lackey (Chair), Linda Donaghue, Phil Edelstein, Kristen Breeden, Peter Barus

*Zoning Administrator:* Gig Zboray

*Windham Regional Commission:* John Bennett

## Call to Order

The meeting was called to order at 6:36 PM.

## Hearing of Visitors (none)

## Zoning Administration

## Review Solid Waste Implementation Plan and sign Letter of Approval

There was discussion about Whitingham leaving Windham Solid Waste Management District and becoming our own Waste District, as indicated in the draft Town Plan. The Selectboard will file a Solid Waste Implementation Plan with Vermont ANR and update the Solid Waste Ordinance. Mr. Bennett explained that the Selectboard would simply adopt the Ordinance, no hearing would be required, and there would be a sixty day appeal period during which citizens could petition for repeal or modification.

Mr. Lackey Moved that the Planning Commission sign the Letter of Approval. Second by Mr. Edelstein.

**All in Favor.**

## Review Fee Schedule for Telecommunications Tower & Bylaw

Ms. Zboray discussed the Zoning Permit Fees Schedule, noting that the Planning Commission would suggest the fee schedule and the Selectboard will enact it. A fee of \$200.00 was suggested for Telecommunications Facilities. In discussion it was noted that the tower at the Transfer Station did not go through the local zoning process. Mr. Bennett explained that across the state some cell towers had been permitted under Act 250, and later under Section 248a "Siting Approval Option For Telecommunications Facilities":

[This process was created as an option for telecommunications facilities instead of approval under 10 V.S.A. chapter 151 (Act 250) and local bylaws. Facilities approved under Section 248a are exempt from Act 250 and local land use permits. Before issuing a CPG, the PSB must find that the facility will promote the general good of the state consistently with 30 V.S.A. 202c(b), which sets out state telecommunications policy.] - VERMONT'S "SECTION 248a" SITING APPROVAL OPTION FOR TELECOMMUNICATIONS FACILITIES - Aaron Adler, Legislative Counsel Jan.10, 2017

He explained that under local bylaws, the PSB is not involved, however there are circumstances that can trigger Act 250, such as proposing a new structure more than 20 feet higher than a building it is affixed to; but if the site is less than an acre, and the town has both zoning and subdivision regulations, Act 250 is not invoked; the Town used a model telecommunications bylaw developed by Vermont League of Cities and Towns (VLCT). There was discussion of the scale of the project.

Mr. Edelstein noted that this project has been in process for three years and is of vital benefit to the Town; it is on private land; the lawyer for VTEL had provided a copy of the ordinance, which was not referenced in the Town Plan; the Public Utility Commission oversaw the tower at the Transfer Station; this situation has never arisen before; and the Selectboard supports this installation.

There was discussion of whether Act 250 would be triggered. Mr. Bennett noted that several towers have been proposed under Act 250, and several others, in remote areas, were not. Mr. Edelstein explained that VTEL has built 152 towers in the area. Mr. Bennett noted that they all went through Act 250, and some did not if the respective towns had adopted the local bylaw; Act 248a had been created so that applicants could avoid the permitting process under both Act 250 and local bylaws. One in Putney had been tried under Act 250 and failed. It was confirmed that VTEL's attorney had proposed to take the local route. Mr. Edelstein discussed the location and explained that the landowner and VTEL have signed an easement specifying that a tower will be no taller than 90 feet, and the location is such that a 90-foot tower it is unlikely to be visible from any other properties.

In discussion of fees it was noted that there is none currently listed for a Telecommunications Facility. Mr. Edelstein explained that Gordon Matthews is VTEL's attorney and wants to go through the local ordinance. Mr. Edelstein recommended allowing this. \$200.00 was again the suggested fee. Ms. Breeden asked if this is a cell tower only for VTEL customers; Mr. Edelstein explained that VTEL rents space on the Transfer Station tower and owns one in Halifax; he noted that the Town had asked VTEL to build this new tower.

Mr. Lackey moved to set the fee at \$200. Second by Ms. Breeden. **Passed with one against.**

Ms. Zboray noted that there will be a Joint Hearing on this matter.

## Review of Zoning Regulations edits

There was discussion. Ms. Donaghue had questions about formatting and definitions; Ms. Breeden asked about enforcement. Mr. Bennett read from statutes, finding nothing about whether a case should go before civil or criminal court; he will research this issue. There was discussion of the enforcement process, and the Zoning Administrator's ticketing authority. Mr. Bennett suggested looking at Stratton's zoning bylaw, as this has recently been updated.

The Commission discussed Article 4 (establishment of districts), 4.4.3 (prohibited uses); the meaning of "use not provided for"; clarifications were made. The Commission then discussed Article 4, 4.4.2 ("grandfathering"). Mr. Bennett explained the distinction, citing the statute allowing local bylaws; possible clarifications were noted for research; it was assumed that the regulation was not expected to be retroactive. Article 4, 4.1.1 (conservation) was also discussed and updates were proposed.

Article 3 will be on the next Agenda. Mr. Bennett will review Article 4.

## **Chair's Report and Correspondence**

(No report)

A copy of Marlboro's zoning bylaw revision was received.

## **Other Business (none)**

## **Schedule next meeting**

After discussion, first Thursdays were proposed for regular meetings. The next meeting will be Thursday, March 1, 2018.

## **Adjourn**

Mr. Barus moved to Adjourn. Second by Mr. Edelstein. The meeting was Adjourned at 8:09 PM.

Respectfully submitted, Peter Barus, February 15, 2018