

February 4, 2021

PC Members Present: Julie Potter (Chair), Zach Sullivan, Clarice Cutler, Scott Hess, Siu Tip Lam, Mark Lane, Paul Eley  
Others Present: Kristi Flynn (Recording Secretary), Dan Burke, Erin Brennan, Michael Dworkin, Gianna Petito, Michael DeGeorge, Carl Etnier, Dan Smith, Andi Colnes, Laureen Gauthier, Ron Koss, Carolyn Shapiro, Juan Ernesto

**Call to Order:** 7:03pm

**Roll Call Attendance**

The Chair took roll call attendance; the PC members noted above were present.

**Statement Regarding Remote Public Meeting**

The Chair noted that as a public body, the PC must still follow open meeting laws. Vermont is allowing remote meeting. The Chair read the recommended statement from VLCT regarding meeting remotely.

**Changes to Agenda:** None

**Public Comment:** None

**Cell Tower Discussion with Dan Burke, Special Counsel, VT Dept. of Public Service**

Dan Burke is an attorney with PUC for 6 years and has worked on some Act 248A cell tower cases. Ms. Brennan has worked on these types of cases more recently. Act 248 was passed in 2007 to expedite the permitting process for cell providers. Cell providers simply need a Certificate of Public Good from the PUC; they don't need a permit from the town. The PUC can consider local bylaws but are not bound by them. The PUC is a 3-member commission with significant staff and legal resources. The process is more formal than Act 250 or local zoning processes. Cell carriers have to come before the commission for new applications as well as amendments. Typically they provide a 60-day advance notice and are compelled to go to local board meetings on the proposal; the PUC can also attend local meetings. Mr. Burke noted that in his experience, Verizon and AT&T are very responsive to local residents; they generally withdraw an application if there is opposition. PUC gets involved after the application is filed; this is when the town can also get involved, either by writing a letter with comments, views and concerns or applying for intervener status. Intervener status gives the town the right to appear as a party, file testimony, ask for evidence and have legal counsel. While considering an application, the PUC does objective, neutral evaluation/analysis, called the Quechee analysis. During the process, they can decide if other towers can be used instead. The PC members and residents had the following questions and comments:

- Can towns ask about conditions, for example, environmental concerns?
- Yes; ANR also looks at issues that need to be mitigated
- Please elaborate on issue if town and/or residents oppose a project
- Carriers generally want to be good neighbors and are averse to legal issues; AT&T has a contractual obligation to provide coverage for first responders
- How is the town's role different than residents, particularly regarding Act 248 that was passed to rapidly place towers on the ground
- Act 248 is a much expedited process because of federal law; a permit must be issued in 180 days; only carriers can waive this timeline. Between the Town Plan (TP) and the zoning regulations, the TP carries more weight and the more specific, the better. When the town files comments, they get substantial deference, which puts the burden on the applicant. Residents can win against carriers but this is rare.
- Could carriers file discovery against the town?
- They usually file against witnesses who have already filed testimony
- What is the relationship between carriers, do they often force co-location?
- Most carriers work well together. Most towers are owned by a third party and they want to lease as much space on the towers as possible. The co-location criterion is fairly narrow.
- What is the town prohibited from doing?
- Federal law prohibits states/towns from prohibiting wireless utilities based on health concerns; PUC cannot take testimony on this issue. The best thing you can do is have a strong planning document, the greater degree of specificity the better. The documents don't have to specifically call out cell towers, just call out prominent locations where the town doesn't want development. Aesthetics are a significant concern.
- Knowing that our zoning regulations pre-date the federal law; does it make more sense to move the telecommunications section into the TP or work on a better, stronger planning document?
- The town can write comments citing criteria in the zoning regulations, so that conditions might be put on the application
- Is there an environmental justice component to the Act 248 review?
- This is not directly addressed by the PUC, they look at the analysis from a public good perspective; property value is not a relevant criteria.
- Are there restrictions on proximity to schools, fire stations, or health issues?
- Can be considered based on FCC and OSHA requirements. Mr. Burke is not aware of any school or hospital restrictions.
- Is the need for cell coverage part of the application review?

- Not necessarily, except co-location criteria. Clay Pervis at PUC handles policy issues, community by community.
- Does the Act 248 process deal with issues such as proximity to structures?
- Yes, can be asked to comply with zoning requirements such as setbacks
- Have there been any issues with towers falling?
- Mr. Burke is not aware of any collapsing in Vermont; they have drop zones about 2/3 of the way up.

#### **Status Update on Cell Tower Siting Research and Town Plan Amendment Drafting**

The Chair noted that she had reviewed some Town Plans to see how they deal with cell towers. Three TPs mention cell towers and two plans mention siting. The Chair asked for volunteers to look at TPs to see what other plans are doing, good or bad. The volunteers were Ms. Lam, Mr. Hess, Ms. Petito, Mr. Hertz and Mr. Smith. Mr. Sullivan agreed to draft some language. The time frame is a week or so. The Chair suggested that the volunteers search for language that protects scenic views/resources, not just cell towers. It would be great to have a template to work with. Ms. Petito wondered what the appetite of the town is for saying where cell towers should be and shouldn't be. The Chair noted that this would put a bulls-eye on certain areas and it might be better to look at where we don't want them. Ms. Cutler suggested focusing on the language in the TP, looking particularly at the Renewable Energy preferred siting section. Ms. Colnes reminded the PC to make sure to remedy the Longmeadow/Horn of the Moon/Sanders Circle ridge discrepancy.

#### **Discussion of Proposed Technologies Net-Metered Solar Array**

The town received the 45-day notice this week on Monday. The PC can reach out to the applicant with questions/comments:

- How tall are the panels once mounted
- Any landscaping (no screening on the plan)
- Have neighbors raised any concerns
- Currently in Residential/Commercial district, will be in Mixed Use
- Taking potential development property out of the village
- Smaller than industrial solar array, but a lot of power out of a little space
- Not a lot of markers on actual size; need clarification on use and size
- Smaller than the project on Route 2 but more visible

The Chair will invite Sun Common and Ruben Bennet to come to a meeting to discuss the proposed project.

#### **Discuss Village Zoning**

The Chair noted that the ZA mentioned that regarding the Brown parcel (#17) where the PC put the front part in MU and the back part in Medium Density, the Browns want to build a bigger structure further back and this proposal would preclude them from doing that. The PC will review at a future meeting.

#### **Updates**

- Capital Improvement Committee – no update
- Energy Committee – Mr. Hess reported that the SB is perhaps interested in reviving this committee
- Resilient Roads Committee – no update
- Central Vermont Regional Planning Commission – meeting next week, speaker is the Director of the Central Vermont Career Center regarding careers in the future

#### **ZA Report**

- 1 new permit since last meeting

#### **DRB Report**

- Approved reconfiguration of Messier subdivision – they removed the view easement
- Approved conditional use for Morrison's on Route 2 for a doggie day care with condition regarding dog waste
- Approved deadline filing extension for All Together Now for condominium paperwork

#### **Review Minutes**

January 21, 2021

**Motion: I move to approve the minutes as amended.** Made: Mr. Hess, second: Ms. Lam

**Vote on Motion:** Passed 7-0

#### **Other Business**

- SB meeting – Chair meeting with SB at 7:15pm on Monday, will probably revolve around the cell tower issue

**Motion to Adjourn.** Made: Mr. Hess, second: Ms. Cutler. Passed unanimously. Meeting adjourned at 8:56p.m.