

**TOWN OF SHEFFIELD
PLANNING BOARD**

July 14, 2021

7:00 PM

Board Members Present: Kenneth Smith, Chairman
 George Oleen
 Robbie Cooper
 Sari Hoy
 Pat Levine, Alternate

Members Absent: Caitlin Marsden McNeill

Others Present: Members of the Public
 Lori Neil, Administrative Assistant

Chairman Smith began the Public Hearing at 7:05 pm.

The Sheffield Planning Board, as the Special Permit Granting Authority, will hold a Public Hearing for BVD Solar, LLC, located at 560 South Main Street, Sheffield, to act on the Special Permit Application for a Large Scale Solar Photovoltaic Installation, per Section 7.4 of the Sheffield Zoning Bylaws. The property is the Commercial District, Tax Map No. 20, Block & Lot 2-23.1 Book 2350 & Page 118. Chairman Smith and the Board reviewed the application and documents. Attorney Mike MacDonald represented the applicant. He stated this is an application after the fact. He explained back in the spring of 2020, he had reached out to the building inspector because by reading the bylaws, it was unclear to him whether this was a large scale or a small scale solar. At the end of 2019 the Department of Energy Resource, changed their state regulations relative to solar. One of the things they did was incentivize certain kinds of solar that do not require cutting trees. It's a specified solar either on buildings or they specifically created the carport solar designation. They also incentivized solar in agricultural areas where the installation is such where animals can still graze underneath the panels. Berkshire Fence stored material out in the open behind the building for the past ten years or so. M. MacDonald stated, if we had the carport, we would use it to cover the fencing materials and at the same time collect solar. This installation is a 250,000 kilowatt installation. It involves the roof of the building as well as the top of the three carports. M. MacDonald said when he reached out to the Building Inspector and went through the regulations, the inspector was of the opinion that this was roof or building mounted. With that interpretation M. MacDonald said he applied for the permit and it was granted. The project was built and in operation. Within the past month and a half he heard through the Building Inspector that the Planning Board had a different interpretation. M. MacDonald said he looked through the large scale solar requirements and believes all requirements have been met, have met in terms of liability insurance. He stated, the financial surety requirement is unnecessary in this instance, because the panels themselves are what make the roof of the carports. After thirty years, if the solar gets disconnected from producing energy, the panels will remain. R. Cooper asked if the panels were in operation now. M. MacDonald replied, yes. It was built, interconnected and sold. It is now owned by a different company called Sheffield Smart. Sari asked clarified that after the panels reach their life span they will stay in

place and is that normal for this panel. M. Macdonald described different types that are used. The end of useful life was thirty years. The technology will probably improve. It's a matter of disconnecting from the electrical panel the only thing on the ground is a square pad that houses the transformer. Ken said we have not allowed not getting the surety bond on any other panels in the town. Yours are the most gregarious panels in town. I don't think they would have been allowed if it came in front of the. I myself will be pushing for a surety bond for bringing the land back to the way it was. The panel is 12 feet at the low point. The Board reviewed the site plans. E. Garcia mentioned she saw the construction happening but was not notified. Chairman Smith checked the abutters list. E. Garcia was not on the list because she was over 300 feet away. M. MacDonald said that is why the public notice is placed in the newspaper.

S. Hoy said she would like to see that footage change at some point but that is a discussion for another time. S. Hoy asked of the incentives the state offers. M. MacDonald described P. Levine asked if there is a difference if the installation is for residential use instead of commercial use. M. MacDonald replied, yes, a residential solar is capped and is much smaller.

P. Levine made a motion to close the special permit hearing for BVD Solar, LLC. S. Hoy seconded the motion. Motion carried, 4-0. Chairman Smith abstained.

ANR request for Jordan Hamowy and Nancy Lasher for property located on Silver Street. Peter Nikitas of Fore Sight Land Services represented the owners. P. Nikitas said we need to tweak the footage on the front lot. We have added a 20 X 60 foot to bring it up to standards and a 60 foot right-of-way to give 100 feet of frontage to another lot so it is up to the current standard. The Board reviewed the site plans. The house is separated from the back lot. P. Levine asked if this was for Commercial property. P. Nikitas answered no; it would be used mostly for camping. G. Oleen made a motion to accept the ANR request for Jordan Hamowy and Nancy Lasher. S. Hoy seconded the motion. Motion carried, 4-0. Chairman Smith abstained.

ANR Request for Lime Kiln Land, LLC for property located at 49 Lime Kiln Road. Ira Kaplan, an attorney from Great Barrington was present to represent the owner of Lime Kiln Land, LLC. This property is set to close next week. The goal is to create 2 parcels of land. The first lot is 4.42 acres, and the second lot is larger, approximately 7 acres. There are 3 poles in from National Grid. They already have the easement to bring the electricity in. The Board reviewed the site plans. Chairman Smith asked if they have plans for the land. Attorney Kaplan said it is two solar fields under the same ownership Lane was the landlord before. It will be Lime Kiln Land who is the landlord. They have an access driveway. Lane is selling the entirety of the two parcels to lime kiln land. Lime Kiln Land wants to separate the solar area from the remainder. G. Oleen made a motion to accept the plot plans for Lime Kiln Land, LLC as presented. S. Hoy seconded the motion. Motion carried, 4-0.

Chairman Smith and the Board began the deliberation process for the Special Permit for BVD Solar, LLC. G. Oleen stated, we need to clarify the bylaw so this doesn't happen again. The Board agreed. They also agree that in looking at the plans, it would be hard to determine how it would actually look. P. Levine asked if we could ask for an elevation because that would give the Board perspective. G. Oleen stated, the thing that was dis-concerning was they called it a carport. It's the funniest looking carport I have ever seen. It's over 1/8 of an acre. It requires a Special Permit but they went ahead and built it anyway. P. Levine asked about the surety bond

and restoring the land back to the way it was. Chairman Smith said he believes after the thirty years, the panels should be dismantled and the land brought back to its original condition. S. Hoy stated, after the life of the solar, the panels will still remain because its main use is a carport. K. Smith said I would agree with that if the panels were put on a roof but the panels are the roof. R. Cooper said to clarify, the inspector never honed in that it was 1/8 of an acre, so once he heard the utility was going to be a carport that was the distraction from the footage? Chairman Smith stated yes, if this was just built as a shelter they would not have had to come before us at all. He stated 35 feet is the cap and they are clearly under that.

M. MacDonald said I know you are in the deliberation process but I may be able to help clarify. If you look at the definition of small scale, it says any size, now you disregard the square footage. Roof mounted or building. What does roof mounted mean if it is not a roof of a building? This is where the confusion comes in. Again the Board agreed the bylaw needs to be clarified.

The deliberations:

9.4.2.2.1 – The beneficial effects do outweigh the social, economic and community needs. The town will get personal tax. The value of the equipment will be added to the value of the property. It's money for the town for 20 years. **VOTE: 5-0.**

9.4.2.2.2 - Traffic impact, flow and safety, parking and loading an accommodation to pedestrian and non- automotive transportation. We found that the beneficial effects of the proposed use do outweigh any potential adverse impacts to the town or neighborhood and it applies to the general characteristics of the site and relation to that site. **VOTE: 5-0.**

9.4.2.2.3 - Adequacy of utilities and other public services. This is adding to the public utilities of the area water. The beneficial effects of the proposed use do outweigh any adverse impacts to the town or neighborhood. **VOTE: 5-0.**

9.4.2.2.4 - Appropriateness to proposed location, the neighborhood character and town land use objectives. The Board agreed it big and out of character for this town. The beneficial effects of the proposed use do not outweigh any potential adverse impacts to the town or neighborhood as it applies to the particular characteristics to the site and any relation to that site. **Vote: 5-0.**

9.4.2.2.5 - Environmental impacts including but not limited to visual effects, noise, odor, dust, vibration, fumes, smoke, light intrusion, glare, impacts on natural habitats, views, water pollution erosion and sedimentation. The rainfall was discussed. There are no gutters to catch the rainfall as there is on a house, which could impact the ground. The visual is also very large.

The beneficial effects do outweigh any adverse impacts to the town or neighborhood.

VOTE: 5-0.

9.4.2.2.6 – Potential fiscal impact including town services, tax base and employment. The benefits do outweigh any potential adverse impacts to the town or neighborhood as it applies to this particular characteristic. There is an increased value to the property. It is guaranteed money for the town for the next 20 years. **VOTE: 5-0.**

Conditions:

#1.) Tax Agreement

#2.) Surety Bond to cover the decommissioning of the system and all structural components.

Vote: G. Oleen – Granted, S. Hoy – Granted, R. Cooper – Granted, Chairman Smith – Granted
P. Levine - Granted

FINAL VOTE: GRANTED, 5-0.

Approval of minutes – G. Oleen made a motion to accept the draft minutes of June 23, 2021 as written. S. Hoy seconded the motion. Motion carried, 4-0. P. Levine abstained.

Updates from Lauren Hyde regarding marijuana bylaw change - Lauren Hyde spoke to say she has been deeply enrooted in the marijuana bylaw. Understanding it, navigating it and hoping for some changes to it. She gave an overview of how she formed her own committee. In that process we had a Citizen's Petition. I spoke with R. Wood and she said that any further bylaw views need to be looked at and discussed by the Select Board and Planning Board. I went to the Select Board meeting. It was decided I should come to the Planning Board. Pat Levine said as having been at that Select Board meeting, you should say what your recommendations are point by point. She stated, any further bylaw would need to be looked at and discussed by the Selectman and the Planning Board.

L. Hyde went on to say she had sent a revision of the Table of Use under the Section H. It shows having the Planning Board as being the Special Permit grantor of any type of establishments. The change was also taking it out of rural, taking it out of village center, except for retail, and then commercial and general business would be for the marijuana establishments. L. Hyde said that was the big take away. One of the thought processes was that it seemed not so controversial. It could be adopted with ease within the commercial or general district. K. Smith told L. Hyde to get the Planning Board the proposed changes and we will sit down and discuss it. L. Hyde asked if it was something you think should be discussed, because back in April, it seemed like the Planning Board thought the bylaw worked as it is. She stated, if everyone feels that it works, I will accept it. I want to know if it's something you want to take on in a tackling matter because I think more establishments are coming in. I know the state law might change. R. Cooper asked when it is on the state level; they are in favor of fewer restrictions? Even if it were legalized federally, we would still have our bylaws in place as a town. L. Hyde mentioned Selectman Kilmer had told her we would abide by the state law. I do think there are some bigger changes in the future whether it is in two months, two years, or twenty years but I wanted to come before you to see how you felt at this time.

Catherine Miller spoke up to say Lauren has worked hard on the topic. There are two or three other things that could be changed. If there are two or three things that could help the town, and you have been elected to represent the town, shouldn't those issues be brought here, and you weigh in within a reasonable amount of time? Because what we would like to do is be on the Warrant on the next Town Meeting which will be sometime this fall. We feel that we do not want to go over meeting after meeting and waste your time. Lauren can bring stuff here, she has a group working with her, and you can say yeah or nay. We want to know if the Planning Board can buy into and be behind supporting the changes. The Planning Board could put it on the Warrant and save us from running around to get two hundred signatures. But, not if you do not have any interest in it, we can move on without your support, but we want to work as a community. Chairman Smith said back in April, the Board did not want to be the driver of this, but by all means, we want to be involved. If there are tweaks you want to make, bring them for the Planning Board for review. Depending on what your changes look like, I don't know if we can meet September. G. Oleen stated to L. Hyde to take the bylaw and highlight the areas you want to change and how you want to change them. Make sure the fonts and background are sufficient to make your changes stand out. L. Hyde said she was curious to know if there is a

mindset change within the Planning Board. Chairman Smith said we know we didn't make a perfect bylaw and had zero input when we made the bylaw. I personally invite you to share any changes you may have about the bylaw. There was discussion regarding the Citizens Petition and Bull Hill Farm and what citizens actually thought the Petition was about. G. Oleen stated the bylaw works now. The question is can it work better. With the minimal amount of participation we had from the town people, I think we did a good job. If there is something that will make it easier on us, great, but if it makes it more difficult, you will not get my support. Catherine Miller said the Planning Board did a good job with the Marijuana bylaw. R. Cooper said his position is still the same as it was a couple of months ago. He stated to Lauren, you were happy with the results, thus far, from your area, correct, Lauren stated yes, but one of the issues we had was we want to increase the distance of the notifications that are being sent and that they are sent certified so there is record of it being received or not received. Chairman Smith said it would cost money. S. Hoy said I don't see why we can't go above the requirement? Will someone fine us if we send more notices out?

There was a brief discussion of why the voters had rejected the moratorium and how it allowed people to get in before our bylaws, without restriction.

S. Hoy discussed how marijuana establishments can't use synthetic fertilizers or chemicals it has to be organically grown. Marijuana is being grown in such a cleaner way than farmers grow corn. It is more like agricultural than a nursery product. It depends on how you determine the definition of agriculture. L. Hyde said it is healthier but it is more of a nuisance than a corn field. There needs to be security system. People have to be documented going in and going out. S. Hoy told L. Hyde, whether I agree with you or not it should not stop you from moving forward. Chairman Smith said all the bylaws should be looked at over time. I think what you are doing is great. It's a good topic there are people interested. It doesn't mean we will love every aspect of it. Chairman Smith asked Lauren if she had the answer she needs, she replied yes. Chairman Smith asked the Board if they were okay leaving Lauren Hyde on the agenda with updates. This doesn't mean she has to come every time.

5G Bylaw Update - G. Oleen asked if the notice was put in the newspaper for the 5G. Last week the Select Board was to meet and say yeah or nay. They have waited until the last minute so now it's too late to go in the paper. N. Anderson said she addressed each one of the comments. Frankly, I don't think the Select Board read our bylaws. N. Anderson compared the comments from the lawyer with the Select Board's comments. For example, the Special Permit process for small wireless facilities questions of being legal. I went to the Telecommunications Act and I cut out and copied down exactly what they said. In the beginning it says, they preserve the state of local authority over zoning land use decisions for personal wireless service facility. Then there are conditions which we have met. There is a link I put in, if anyone wants to read the entire thing. As far as Massachusetts goes, there are no bills right now on small cell deployment that have been introduced to state legislature as of this month. They are working on it but there are none on the docket right now. The legality that they are talking about here is totally baseless. I do have the Massachusetts General Law regarding Telecom about how the municipalities may permit, what they permit for, and also, that they need to hold a hearing and issue written notice. They are putting it on the Town Council. The lawyer hasn't done his homework and when I talked with him, he mentioned he doesn't know anything on the subject. We are telling him things and he is drawing straws. As far as permitting, they said the permit process isn't with the Planning Board; it's with the Select Board. The Americans for Responsible Technology is a

group I work with, they have a lot of attorneys. They deal with this all of the time. I put down a couple of their laws. The Town currently regulates all wireless telecommunication facilities through a public right of way, through a zoning/permit process. Another section of the document, the homeowners siting; N. Anderson stated, we didn't insert restrictions of homeowner units that are placed on private property. The MASSDOT, (this was addressed in our original bylaws) we never changed that, so I don't know why that is being questioned. N. Anderson continued to review the comments with the Board and explained what was already in the bylaw compared to the proposed changes. N. Anderson mentioned the liability was not mentioned. If they want to get rid of all of this, you would have to get rid of the original bylaw. Many of these that the Board is questioning have not been changed and are the original bylaw.

S. Hoy spoke to say she found it all very confusing. Basically, Town Counsel was saying the Select Board is responsible for the public right of way and they can put restrictions on the right of way, but then they talk about private small cell towers that can still fall under zoning. N. Anderson helped to clarify by adding, you can contact the homeowner and have them put up a small cell unit on their front lawn and that has nothing to do with zoning. The Select Board said the draft has editorial comments, but yet, didn't list them. I asked them to be specific with the language. From what I can tell from their letter, we did everything right. I think it is a stalling tactic. They know they did this and now we can't move forward and get on the September Town Meeting. N. Anderson discussed and showed a list of the fees at the bottom of the page for clarification regarding the liability insurance. We identified it through small cell but it is already in our bylaws. She said the very last part, in the draft, I told the reason we want to do this and showed the statistics. The other towns don't have any clarification in their bylaws. We are trying to protect the town. If you look at the Town Counsel's comments that were sent back to me, we have addressed everything. S. Hoy said she thinks there has been communications between the lawyer, the Select Board, Town Counsel, and the Town Administrator that you haven't seen. I think that a lot of what the Select Board is referring to is from the email we haven't seen. It is saying the right of way is controlled by the Select Board. The Select Board is commenting on something we haven't seen. N. Anderson said she had have spent hours on this. The lawyer I had been going back and forth with, he doesn't know anything about 5G or small cell. Chairman Smith said that is because he is a general practice lawyer. He is not a telecom lawyer. N. Anderson stated, we have lawyer that we could hire. He could give us a pre consultation. He is the one who is doing the Pittsfield cell tower. I have his name and contact information. R. Cooper asked if the tower in Pittsfield was 5G. N. Anderson said no, the thing with 5G is it doesn't go far. It needs to be every 500-1500 feet depending on the cluster of the houses. The units they are putting on front lawns are like transmitters. They are calling people to say we will give you free Wi-Fi and \$600 dollars if you put this on your lawn. But there is no compliance. The homeowner is liable for any lawsuits that come from a neighbor who might become sick or who knows what. Chairman Smith said the homeowner can say no. They will also put it in the town right-of-way and the homeowners can't control it. He proceeded to say the Select Board has made it very clear that either they are not in support or they are not in favor of this. If they are accurate that it is not in our purview, you need to take this up with the Select Board. They are the ones that authorize town counsels opinion. At this point they are not going to devote another dollar to the Planning Board through Nina Anderson for this, I'm reading between the lines but I think it is pretty clear this is a dead issue for the Planning Board. There was discussion of who is responsible for private property placement. N. Anderson asked what is

she is to do now. G. Oleen said you know what they did with the marijuana bylaw; they had a Citizen's Petition. Keep attending meetings and bring others to join you and keep asking what is going to be done about 5G. He told her to be persistent. Chairman Smith told N. Anderson to educate the Select Board as to why it is so important and his recommendation is for her to offer her help to the Select Board when they begin this process. R. Cooper mentioned she should ask to be put on the Select Board's agenda. N. Anderson commented; this was brought up to protect the town before Telecom comes through, because once it does, we won't have a thing to say about it. In Naples, Florida they stuck huge black poles through their Main Street in town ruining the ambiance for the tourists. G. Oleen spoke of how the original cable company was going to wire the whole town and put inter-active between Mount Everett and Monument Mountain. And told a few background details of how cable came to be in Sheffield and mentioned how there are still parts of Sheffield that do not have cable. He stated, I think 5G is a concern, but I don't think it's going to happen next week.

Recodification Bylaw Review will be discussed at the next meeting on 7/28/21.

Planning Board Mail: None

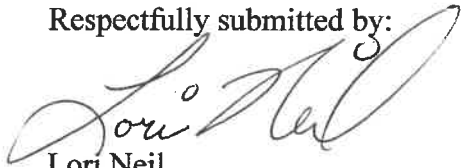
Public Inquiries: None

Member Items: G. Oleen discussed the Berkshire Regional Planning Board authorization that he will be signing. He wanted to bring it to the Board's attention before he signed the document. Chairman Smith said it is a standard thing, there is an executive committee that reorganizes every one or two years and signing the document allows them to re-enter contracts.

G. Oleen made a motion to adjourn the meeting. S. Hoy seconded the motion. Motion carried 5-0.

The meeting was adjourned at 9:42pm.

Respectfully submitted by:



Lori Neil
Administrative Assistant

Supporting Documents:

Special Permit

Site Map

Deliberation Guide

Draft Meeting Minutes