

Shutesbury Planning Board Meeting Minutes
October 5, 2015
Shutesbury Town Hall

Planning Board Members Attending: Deacon Bonnar/Chair, Linda Rotondi, Jon Thompson, Jeff Lacy, and Steve Bressler

Planning Board Members Absent: Jim Aaron and Ralph Armstrong

Staff: Linda Avis Scott/Administrative Secretary

Guests: Attorney Donna MacNicol/Town Counsel, Attorney Michael Pill/Lake Street Development Partners, Becky Torres/Town Administrator, and Mickey Marcus/New England Environmental; Jean Christy/Tighe & Bond; see attached guest list

Bonnar/Chair calls the meeting to order at 7:00pm

Leonard Road/Northwest Realty LLC: Bob O'Connor/Northwest Realty LLC explains that the Department of Conservation and Recreation (DCR) will be purchasing Lot 1 of parcel P3/Leonard and Pelham Hill Roads; Lots 2, 3, and 4 will be donated to DCR and Lots 5, 6, and 7 will be marketable lots. Lacy confirms that the purpose of the O'Connor's plan is to demonstrate the indicated parcels for valuation purposes. Lacy confirms that all lots have the required 250' of frontage and that there are three marketable lots. O'Connor: Kestrel may be interested, although no one is interested in creating a Conservation Restriction at this time. Lacy explains that different layout options are available using flexible frontage zoning passed in 2008; for example, via special permit, such a layout with one curb cut vs. three may allow an extra building lot. Pill asks if the condition of Leonard Road is good enough to handle three new lots and recommends the Planning Board deny the Approval Not Required (ANR) based on this and require a special permit application; cites Ball vs. Leverett Planning Board though does not think Leonard Road meets the Ball vs. Leverett standard. Lacy states he believes Leonard Road meets the Ball test which requires that a 2-wheel drive vehicle is able to drive the road in the winter. Pill agrees that Leonard Road is not as bad as the road in the Ball case. Lacy: the Planning Board has done their due diligence by explaining the special permit options. All Planning Board members present agree to sign the ANR. Bonnar receives the O'Connors' ANR filing fee. The O'Connors leave the meeting.

Lacy leaves from 7:15 to 7:25pm.

Patton ANR: no one representing this case attends the meeting.

All members vote unanimously to approve the 7.27.15 and 9.9.15 Planning Board meeting minutes as presented.

Continue the Public Hearing for Warrant Article Citizen Petitions at 7:30pm

Thompson reads the original public legal notice, in full, into the record. Miriam DeFant/74 Pratt Corner Road presents testimony titled "Response to Planning Board Inquiries Public Hearing October 5, 2015" as a response to Planning Board questions identified during the 9.9.15 public hearing. DeFant provides copies, including "Attachment B," to the Board and submits a packet of research articles for the record. DeFant states that she will be referencing Michael DeChiara's document to be submitted later in the meeting. DeFant reads "Background" in full into the record. DeFant, regarding specific responses to Planning Board questions:

1. Refers to DeChiara's research to be submitted subsequently.
2. Read in full into the record.

3. Read into the record except the cited provisions of the Shutesbury Zoning Bylaw, 2.2-1 and 2.2-2.
4. Read in full into the record; c. references a research study included in DeFant's packet. 5. Read and references "Attachment B," various hypothetical ratio configurations; references research article about impervious surfaces and Rolf Cachet-Schilling's previously submitted testimony about carbon sequestration.
6. Read into the record.
7. Read into the record.

Lacy: what are Cachet-Schilling's credentials? DeFant: Cachet-Schilling is a professional ecologist and author of ecology texts and has submitted his credentials via email though he is not present tonight.

Michael DeChiara/56 Pratt Corner Road hands out hard copies of previously emailed testimony, "Towns' Solar Bylaws: A Summary, Research conducted by Michael DeChiara Fall 2015 for Shutesbury Planning Board." DeChiara states that he is representing only himself. DeChiara reads his document, "Towns' Solar Bylaws," into the record noting that he uploaded all the solar bylaws to Google drive and, as well, provided a DVD of these bylaws for the Board. DeChiara: the grid is a visual layout of the narrative summary and from his analysis, Heath is the most restrictive; there are a number of restrictions that other towns considered. DeFant: Blandford has a 500' setback.

Bonnar asks if there is any further testimony/questions.

Marcus/New England Environmental (NEE) states that he does a lot of solar projects in the state and has observed that towns alter the Department of Energy Resources (DOER) model to meet their own needs and that developers follow a town's bylaw though will ask for a zoning variance to argue a point in a bylaw, i.e. size/setback. Marcus: decommissioning funds were originally for projects on town property; if a project is done on private land, the decommissioning is negotiated with the landowner though the town could be a part of the negotiation. Lacy: is there a waiver or release in this bylaw for size/setback? DeFant: no. Lacy: the Planning Board follows the state law allowing a waiver/release for size/setback. DeFant, referring to the testimony submitted by email, asks if there are any questions for Cachet-Shilling. Lacy notes that the Planning Board has volumes of testimony and moves the Planning Board close the warrant article public hearings. DeChiara: a solar moratorium makes sense in light of the time needed to develop a solar bylaw and for the Planning Board to do their work. Lacy motions to close both of the warrant article public hearings. Thompson seconds the motion. There is no further discussion. Andrea Cummings asks what this means for next steps. Lacy: the Planning Board discusses and deliberates; confirms receipt of further testimony. All members of the Planning Board agree to close both the warrant article public hearings at 8:00pm.

8:05 pm: Continue Public Hearing for the Zoning Special Permit for Light Industrial Use: Six Megawatt Solar Array

Attorney Michael Pill representing Lake Street Development submits, on behalf of Marnin Lebovits, the 7.13.15 letter from Fire Department Chief Walter Tibbetts.

Mickey Marcus/NEE submits and provides copies of the "Alternate Site Plan Layout, 10.5.15" and the "Proposed Solar Project Update, 10.5.15" narrative.

Marcus presents: the alternate plan has been designed to meet the concerns of the Planning Board, Conservation Commission and public. He will explain some of the changes, seek input, then, so further plan revisions can be done, he will ask that the Public Hearing be continued. The project site has been moved 150' to the west to avoid the wetland buffer zone and steep slopes and to decrease stormwater discharge. It was logical to use the existing Reed Road as the access route from Pratt Corner Road, however, based on concerns, this plan shows three access road options: 1. Reed Road, 2. begins on Reed Road initially, then takes a right to the west thereby moving the access route further from the wetlands and removing the need for one storm water basin, 3.

creates a new access road at a distance from abutter Suter's property and other areas of concern. The 10.5.15 plan has not been engineered; all points are currently staked in the field. Marcus will address comments from all reviewers, etc. before re-engineering is done; the plan will be finalized when there is the most agreement.

Thompson confirms that the fence line is staked and all corners are actually marked. Bonnar: what is the length of option 3? Marcus: 1,200 ft. from Pratt Corner Road; array can be shifted closer. Lacy: a driveway length variance must show a hardship in shape, soils, or topography. Marcus: this is a very large parcel and the designers did not have a problem shifting the project location. Lacy: storm water structures were down gradient on the old plan; will these need to be re-configured? Marcus: yes, they will be in a different location and will go into the upland instead of draining east. Lacy: any wetlands? Marcus: yes to the east, 100' away. Marcus: driveway (option 3) will come out onto Pratt Corner near an undeveloped lot. Bressler, referring to option 3, does the road have to go as far into the array as is shown on the plan, the complete length is not totally driveway? Marcus: once inside the facility, it becomes a maintenance road. Marcus: the driveway should not be more than 1,000 feet? Lacy: this length is enforced. Lacy: have there been any thoughts about using Reed Road as an access to the rest of the parcel for recreation? Marcus: Cows, as the property owner, would need to be consulted; this project sits near their logging roads and they will need to develop additional access. Lacy: no drainage on the east? Marcus: no, in response to concerns about potential changes to hydrology. Lacy: it appears that even if the road for options 1 and 2 is not used, there are quite a few panels on the down gradient, is there a need for drainage? Marcus: stormwater engineering for this layout has yet to be done; it is more favorable and there will be a lot less need for drainage facilities. Bressler, referring to the Planning Board site visit, asks for clarity about how site was accessed. Lacy: what kind of road are they thinking of – will there be up contours and angling once near the slope, what about engineering and dimensions? Marcus: the road will be 12' wide and gravel; near Pratt Corner Road it will need to be 18' wide for about 50' in order for National Grid utility trucks to access and service the interconnection point. Lacy: additional wetlands within panels? Marcus: NEE has not found any; Stockman did not find any, though this is still an open question; there are wetlands south and west of the project site though they (NEE) do not believe they are anywhere near this proposed site. Lacy: would lease lines change with this proposal? Marcus: yes, ultimately, there will be site boundaries to confirm lease lines. Thompson: how does power get off site? Marcus: typically, panel wires go underground at the inverters then the cables run underground to the interconnection point within the driveway; close to the road, there will be three poles accessible to National Grid. Lacy: how will Cows access their property? Marcus: this plan has been shown to Cows, though no blessing yet; Cows will go up Reed Road and around the project site or create an access road through the site via gates though this has not been confirmed. Marcus: the fence around the project site is locked; the driveway would be available for access unless the town wants it gated; does not yet know what Cows will prefer. Lacy states that he is thinking about continued public access such as Cows currently allows. Marcus: cites the example of another site, under construction on forest managed land with three solar projects sitting in the middle of public access, that offered an additional access road; in this project, there is no reason why we couldn't show an alternate logging/access road laid out on the next plan. MacNicol: the Planning Board cannot require this. Rob Kibler/74 Pratt Corner Road: appreciates this new plan and asks if stormwater will be based on revised topography. Marcus: yes, additional topography has been done and yes, that is part of what needs to be done; this is an interim plan and NEE will make a more refined plan. Kibler: plan shows that issues that were raised have been considered; asks for permission to walk site. Miriam DeFant/74 Pratt Corner Road clarifies that several members of their group have been banned from access to the site. MacNicol: the Planning Board cannot give this permission. Pill: based on their conduct, they were and are banned and would need written permission from Cows via himself to access site; the group needs to address the request to him and he will take up the request with Lake Street and Cows and, if granted, there

will be specific conditions. DeFant: prior written request for access was not answered. Lacy requests and Pill agrees to answer the request one-way or the other. Marcus: site is staked, once further revisions are made will be a better time to walk site. Andrea Cummings asks for clarification on the 1,000-foot driveway length requirement. Thompson: per zoning bylaw, there is a 1000-foot length limit on driveways; it is only a driveway if there is something at the end of it. Cummings: if they are offering to move the project site in order to be a distance away from homes and wetlands, could this be considered a benefit? Lacy: the proposed solar bylaw will not have a variance built in.

Jean Christy/Tighe & Bond: thanks Marcus for options, based on comments, to minimize storm water and moving the site outside of the buffer which eliminates stormwater standards; creates a more holistic approach and less impact. Christy: a lot of her peer review content is technical and doesn't matter, as site will be moved, though there are some that will be important. Referring to 8.24.15 Tighe & Bond "Peer Review Services Ground Mounted Solar Array, Pratt Corner Road" Section 2.a. "Design Standard Compliance," Christy suggests a line of site exhibit could be requested by the Board. Referring to Section 3. "General Stormwater and Site Design," Christy would expect that as the design process proceeds, there would be soil exploration so that drainage infrastructure can be appropriately designed. Lacy: if freed up from state storm water standards, can the Planning Board require drainage infrastructure? Christy: the Conservation Commission only has jurisdiction in the buffer zone; it will be a best engineering practice. Lacy: the Planning Board will have storm water management responsibility. Marcus: there will need to be pre-post internal storm water controls; soil data is pending. DeFant, noting the conditions on Reed Road, appreciates the re-design as a step in the right direction; is still concerned about options 1 and 2 and the use of Reed Road proximal to Suter's land and the drainage impact on his property; Reed Road has steep slopes and the need for contour changes will take out a lot of soil; option 3 avoids all those issues and seems to be the most viable option. Pill: if they want option 3, a variance is tough to get and requires a separate ZBA proceeding and any one of the abutters has veto power over a variance. Bressler: the fence could be moved 200' causing the facility to start 1,000 feet in. Marcus: the next plan iteration will be much more developed; appreciates the good discussion and ideas. Christy states that she has no further specifics to point out relative to this plan. MacNicol: noting Christy's recommendations, asks if the Planning Board will ask for line of sight testing and notes that per Marcus, soil tests are in process. Marcus: all of Christy's comments will get addressed. Patrick Garner/Patrick C. Garner Company notes that the arrays running perpendicular to the south will go downhill. Marcus: the developers will work with the existing grade; row-to-row the racking system will allow them to work with the grade; there is wider distance between rows. Garner agrees with Christy on option 3, no stormwater standards and Conservation Commission jurisdiction; is concerned about runoff and would encourage the Planning Board to look at some stormwater management to decrease runoff down slope; pre-development runoff needs too match post and will be a concern during construction; the issue will mostly go away post-development and the site is stabilized. Christy agrees and suggests a draft storm water occlusion plan be required including how the site will be stabilized during construction. Pill suggests, and defers to MacNicol, that the Planning Board has broad powers to condition, especially via peer reviewer, to create a legally adequate document. MacNicol: environmental standards are under the special permit criteria. Garner affirms Christy's recommendations regarding erosion control; NEE is expert at doing these and the expectation is reasonable. Garner: in the southeast corner of the array site, there is an old logging road that has a long linear 500-600 sq. ft. wetland that may trigger the local wetland bylaw. Cummings: the best practice is to phase construction, i.e. cut ~2acres at a time with criteria for restarting the cutting and suggests that this would have to be required. Marcus: NEE promised the Conservation Commission phased construction, agrees this it a best practice to cut and stabilize and repeat with temporary controls. Michael DeChiara/56 Pratt Corner Road: the applicant is seeking a special permit, could they seek an Approval Not Required (ANR), subdivision, or variance; what is the process and are

these sequential? DeChiara appreciates flexible thinking, the floating of ideas, notes that there is now a looser alternative and asks at what point the plan is finalized. MacNicol: flexibility is determined by the developer and the Board; process can go on as long as it needs to; the Board will determine when a final plan is required as NEE works to accommodate requirements and conditions; at some point, they will get to a final plan that the special permit criteria will be applied to. MacNicol: an ANR can be filed at any time by the developer; there is no dependency on it. MacNicol: if a driveway length variance is approved by the Zoning Board of Appeals (ZBA), all the abutters could sign to not appeal the variance – does not think variance is a likely scenario; recommends, if the Planning Board wants to keep the project as far from Pratt Corner Road as possible and maintain 1,000 feet, the applicant agrees to moving the fence. MacNicol: a special permit can be granted conditional to a variance though moving the fence is simpler. Walter Tibbetts/Fire Chief: if the driveway ends at the fence, he agrees with moving the fence to meet the 1,000' driveway requirement. Pill: appreciates fence idea; has released variance idea. Lacy: if a straight line is drawn, the driveway is slightly over 1,000 feet; notes need to go around wetland soils and topography; may be able to make a soils, topography variance argument; does not agree with moving the fence. Thompson agrees. Cummings asks about wildlife. Bressler: driveway length increases buffer. MacNicol: guaranteeing that ZBA would grant a variance and that there would be no appeal because, if appealed, upholding the variance would be a tall order. Garner: timing? Marcus: in the next week or so, soil testing and data for drainage will need to be done; the designers need to consider the 1,000' issue, therefore needs about one month. MacNicol: if sending Marcus back to the drawing board, he needs to know the Board preference about the fence, as cannot do a final plan without guidance. Lacy: Planning Board guidance on the ZBA? MacNicol: if a majority of the Board feels that moving the fence is not an option. Pill: does not want to fool around with a variance. Marcus: will see what we can do, has heard all that has been offered and the next iteration will have a modified driveway length. Pill: Chapter 40A Section 10 statutory conditions are harder to defend. Marcus: NEE's view is to always follow regulations. DeFant: it looks like option 1 and 2 would be longer than 3. MacNicol: option 1 is an existing road that is why the 1,000' would not apply. Kibler: does the new road exist and where does driveway start? MacNicol: will need to look at the driveway bylaw; is there any extension? Lacy: it is a dead end measurement. Marcus reiterates, from what he has heard, there seems to be consensus that using Reed Road is not desirable and based on what he hears from ConCom, will work on a new driveway of less than 1,000'. DeFant notes the need for assessment of the isolated vegetative wetland area within array and that the wetland at the end of Reed Road is not marked on the map and asks if it will be delineated. Marcus notes that the NEE "Project Update" addresses concerns raised as the reason for avoiding Reed Road entirely; the wetland at the end of Reed Road is known but not delineated as on abutter's land. Lacy notes an odd feature on the left side of plan. Marcus: it's a little hill. Garner: in the southwest corner, there are 7-8 panels sticking out, could these be moved to reach the 1,000' driveway? Lacy: this would facilitate Cows access. DeChiara submits for the record "Testimony to Shutesbury Planning Board Regarding Wheelock Tract Proposal 10.5.15": his reading of the special permit bylaw calls into question whether the array is in harmony with the bylaw as energy costs will not be reduced, there might not be a net gain to town and the array is not consistent with the master plan. DeChiara reads section "B. Specific Findings" into the record and notes that there are lots of gray areas on the special permit checklist. DeChiara states that he wants the Planning Board to take into consideration what other towns have done. DeFant: what if lightning strikes the array? Tibbetts: the array is galvanized steel, panels, and wiring; a grass fire would be treated as a brush fire. Tibbetts reads the criteria listed in his letter including that there are shut downs on the inverters and on the street; if there is a grass fire outside of the active electrical field, it would be treated as a grass fire and would not spread. Tibbetts states that he does not see an increased potential for a fire; the Department will be trained to shut down the system and will not need any extra equipment; this is not an adverse

condition they are not trained to deal with; a solar array on a single family house causes much more danger. Cummings: what about the transmitter? Tibbetts: the three inverters have an above ground shutoff, National Grid has one pole off road and one pole back for safety; there are no transformers out on the road – this decreases this chance of an auto running into the pole; concerns are not above and beyond what we are trained for – single family homes with array are more of a concern. Marcus: it will be clear where the emergency shutoffs are located.

Christy: the Tighe & Bond agreement is used up tonight; will work on an extension that assumes they are reviewing the same magnitude of documents. Lacy: the escrow account will have to be added to.

DeFant: where are things at regarding the tax rate with the town? MacNicol: as it is not time to do so, this has not been addressed. Pill: \$50,000/year per Lebovits/Lake Street. MacNicol: the payment is up to the Select Board and the developer; a proposal/special permit is needed before this is discussed. Pill: how could Lebovits negotiate until the permit conditions and final designs are complete? DeFant: as a process issue, how do you evaluate the possible benefits of the project if you cannot know what the tax benefit is? MacNicol: \$50,000 has been thrown out as a possible amount; the Planning Board could use this amount as a benefit. Garner asks if Marcus will be at the 10.8.15 ConCom meeting? Marcus: yes, same presentation.

At 9:53pm, the Board, Marcus, and Pill agree to continue the public hearing to 7:30pm, Monday November 23, 2015.

Lacy reads into the record the 9.29.15 invoice from Tighe & Bond, which does not include tonight, for \$5,204.10. Lacy moves the Planning Board accept and agree to pay this invoice. All Board members agree to pay the invoice and agree a good job was done. Lacy notes the Tighe & Bond 9.10.15 “Lake Street Development Partners, LLC Ground Mounted Solar Array – Net Wildlife Habitat Benefit” report was not reviewed though it did its job.

Master Plan Working Group: Bonnar: Dave Kittredge has agreed to join the group.

All Board members agree to accept the list of those that have volunteered. Bonnar will ask for time on the Select Board meeting agenda to request appointment.

List of Documents and other Items Used at the Meeting:

1. DeFant “Response to Planning Board Inquiries” 10.5.15
2. Packet of support research materials compiled by DeFant
3. DeChiara “Town’s Solar Bylaws: A Summary” 10.5.15 including chart and DVD
4. Notice of the Warrant Article Citizen Petition Public Hearings
5. Fire Department Chief Tibbetts’ 7.14.15 letter
6. NEE Proposed Solar Project – Project Update 10.5.15
7. NEE Alternate Site Plan Layout 10.5.15
8. Tighe & Bond “Peer Review Services” report 8.24.15
9. Tighe & Bond “Net Wildlife Habitat Benefit” report 9.10.15
10. Cachet-Schilling “Determining a Carbon-Banking Compensation Ratio for Solar Arrays to Cleared Forest in Shutesbury, Massachusetts
11. DeChiara “Testimony to Shutesbury Planning Board Regarding Wheelock Tract Parcel” 10.5.15

Meeting is adjourned at 10:03pm.

Respectfully submitted,
Linda Avis Scott
Administrative Secretary