

Shutesbury Planning Board Meeting Minutes  
November 9, 2015 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Jon Thompson, Linda Rotondi, Jeff Lacy, Steve Bressler, and Ralph Armstrong. Jim Aaron joins the meeting at 7:23pm. Staff: Linda Avis Scott/Administrative Secretary

Guests: Attorney Michael Pill, Town Clerk Susie Mosher, Sarah Patton, Michael DeChiara, Julie Stepanek, Chuck DiMare, James Cachat and Rolf Cachat

Bonnar/Chair calls meeting to order at 7:05pm.

Approval Not Required (ANR) Montague Road/Patton:

Due to a family connection, Bonnar recuses himself from discussion/decision. The Board reviews the ANR site plan. Patton completes Form A and fee is collected. Lacy: What is the will of the Board, one lot or two? Bressler and Armstrong: the two original lot configurations are being redefined by changed boundaries, therefore, no new lot is being created. All Board members, excepting Bonnar who is recused, agree to sign to the site plan. At 7:17pm, Patton leaves the meeting.

Common Driveway Special Permit Kettle Hill Road/DiMare:

DiMare attends the meeting to schedule a special permit public hearing date. The hearing is scheduled for 12.14.15 at 7:00pm; DiMare agrees to sign an "Agreement to Extend Public Hearing Date" as the 65 days to schedule the public hearing will have elapsed by 12.14.15; all Planning Board members agree to extend the date of the public hearing. At 7:26pm, DiMare leaves the meeting.

Warrant Article Petitions for Solar Moratorium and Solar Bylaw:

Lacy consulted Donna MacNicol/Town Counsel about public participation during deliberation: the Board is not supposed to accept any new material during deliberation; the public hearing has been closed.

Rolf Cachat/resident asks for references to materials being used by the Board. Julie Stepanek/resident requests the Chair for permission to audio record this portion of the meeting; permission is granted.

Lacy states that he has reviewed most of the materials that have been submitted including comments from Lebovits/Lake Street Development Partners, Miriam DeFant/resident, Michael DeChiara's/resident lists of bylaws and their summaries, the Department of Energy Resources (DOER), and various articles.

Lacy explains that the Board can deliberate as long as needed, can continue to a future meeting, and, if they decide to, can submit a report to town meeting. Lacy: the 14-21 day period for writing the report has passed; town meeting can act without their report if it wants to; since there is no upcoming town meeting, the Board can still write a report; the petition warrant articles must be acted upon as written. Lacy: if we accept the articles, we will write a report on them as they are; the town meeting vote must occur within six months from the close of the public hearing. Lacy: if the articles get to town meeting, the Board will either support the article or not, then the town will have to decide what it

wants to do; in some towns, the Planning Board has written its own solar bylaw; if that is the case, there will be two competing bylaws at town meeting. Bressler: could we support the article with "the following changes/conditions"? Thompson: the article before town meeting is either up or down. Lacy: if the Planning Board writes their own bylaw, the petitioners could prefer the Board's and pull their own. Lacy: if we do nothing, things will play out on their own. Thompson: if we were to draft our own bylaw, when would it need to be done? Lacy: we will have to hold a public hearing and comply with due dates for warrant article submission. Bonnar: the Select Board likes to have warrant articles for some time in March. Lacy: the Planning and Zoning Boards will have several articles for the warrant. Lacy: suggests adding "commercial solar" to the Use Table (page 9-10) in the Shutesbury Zoning Bylaw; the Board could list specific criteria for commercial solar, i.e. land preparation, shade buffer, decommissioning; we could then condition and amend plans according to these criteria. Bonnar: a bylaw lays out the criteria to be used and would be similar to those listed as special permit criteria. Lacy: we could enumerate criteria specific to solar or we could create our own bylaw similar to our wireless bylaw or we could accept the proponents' bylaw. Bressler: the benefit of a bylaw is that it would clearly spell out how solar installations are to proceed and make clear to developers what they have to comply with; notes that he is leaning toward a bylaw. Bonnar: waiver? Lacy: the submitted bylaw has no waiver condition, therefore, a variance would be needed; we have a waiver condition in the Zoning Bylaw; the weakness of the warrant article bylaw is that it does not allow waivers that are allowed by state statute and our Planning Board follows the law; the warrant article bylaw is inflexible. Lacy: this long, complicated bylaw is difficult to support; there are enough problems with this one that he could not support it; it is not what the Planning Board would have drafted; we don't have to decide tonight. Bressler: what are the problems that Lacy has? Lacy: size and setback restrictions, the 10:1 ratio that could leave out some potentially good sites, and the requirement to hire an acoustical engineer. Rotondi: we would never require that for a residential solar project; does not feel the commercial requirements should be so egregious. Lacy: all the setbacks are 200' and do you need 200' and an inflexible 200'? Bressler: due to issues of scale, you cannot compare to residential installations. Lacy: not using herbicides to control vegetation is a good thing, though not the use of pavers; he would be thinking more about field habitat. Lacy: Lebovits' article pointed out inconsistencies in the petitioners' bylaw; he would want to go through and verify Lebovits' points; is the 8 acres/site limit, the minimum threshold for economic viability, really fair? Lacy: would several small installations versus one be better? Bressler and Thompson: each one would have to be on an 80-acre parcel. Thompson: each one would need to be near a power line. Lacy: allowing installations only in the Forest Conservation District sort of makes sense; locations in the back land would not directly conflict with residential districts. Thompson: would the current proposal comply? Lacy: the revised plan scales out to being over 200'; it does not meet the 8-acre maximum facility area proposed in the bylaw. Bressler: is it possible to get a variance? Lacy: a variance hardship argument would have to be made based on soils, shape, or topography; it is difficult to grant a variance. Bressler and Lacy: the Planning Board has setback requirements that are easier to comply with. Lacy suggests deliberation be continued in order for all to review materials; the primary documents are those by Lebovits, DeFant, and DeChiara's bylaw summary.

Scott is requested to compile a list of articles in the file for Planning Board reference; the list will be sent to all members in order for them to identify which articles they may need. All agree to put item on the 11.23.15 agenda if time permits, as well as, the 12.14.15 agenda. DeChiara asks if the Board is going to talk about the moratorium article. Bonnar: the article is flawed and will most likely not pass the Attorney General's review. Thompson and Lacy agree. All agree to talk more about this during the next meeting.

Tighe & Bond 10.30.15 Proposal for Additional Review of Wheelock Solar Project:

Lacy: this is a continuation of peer review services for the revised plan/proposal with a new location, access route, and stormwater; most of the original budget of \$6,330 was expended on the initial proposal, this continuation budget of \$4,300 provides essentially the same services. Bonnar emailed Lebovits/Lake Street earlier today regarding the Tighe & Bond "Peer Review Services, Amendment 1" dated 10.30.15. Attorney Michael Pill/representing Lake Street Development states that he spoke with Lebovits who agreed to send this amount. DeChiara: in order to approve a special permit, why doesn't the Tighe & Bond proposal address the full scope of what needs to be addressed as per the zoning bylaw? Lacy: you are asking why the site plan review and special criteria are not included in the proposal? Pill: it is up to the Board to decide on the criterion to be reviewed; DeChiara's argument is not a reason disapprove this proposal. DeChiara states that he is suggesting expanding the proposal. Lacy, referring to the bottom of page 1 of the proposal, "the site plan will be evaluated for compliance with general engineering practices and the requirements of the Town of Shutesbury Zoning Bylaw, as well as land use guidelines and dimensional constraints;" the Board is interested in wildlife habitat, storm water, engineering, and environmental review. Lacy: the Planning Board does not have expert review in all areas though cannot ask for things that are not needed. DeChiara: this is a complex project. R. Cachat: if you don't require expert study of the named criteria in the bylaw it may be skipped. Lacy: of the nine criteria, which ones are you worried about? DeChiara: noise, traffic impact, effect on public water, more could be done on wildlife, erosion on the site and the road; need to go through the list and determine what reports and data are needed. Lacy: more issues may come up from the Planning Board, additional public feedback, new plans from New England Environmental (NEE); we can ask for more information/review as we go; attention has been focused on habitat, slopes, and drainage and NEE has been responsive to feedback thus far. Lacy: we have a hearing in two weeks though have yet to receive a revised proposal from NEE. R. Cachat affirms effort made to obtain information; is concerned that other than tree inventories, no amphibian, invertebrate, or flora inventories are included; wildlife seems to be thin in site area perhaps because of past heavy equipment use in the area; there is no systemized way to inventory amphibian, etc. Lacy: the hearing would be the place to address this concern. Lacy: the Conservation Commission peer reviewer has been out on site; not all the habitat and conservation review is in yet. Lacy: the Tighe & Bond contract is open enough to allow the Board to request additional information and, if needed, could be added to. Thompson agrees. Lacy moves, Thompson seconds and all Board members agree for Bonnar to sign the 10.30.15 Tighe & Bond proposal on behalf of the Planning Board.

Minutes for the 10.5.15 meeting: all agree to carryover approval to the next meeting.

Master Plan Working Group: Bonnar: appointment of Working Group members, as agreed upon by the Board during the 10.5.15 meeting, is on the 12.15.15 Select Board agenda at 7:00pm; some of the folks on the list signed up with Torres/Town Administrator, others signed up with him. Lacy: this is the group for the first phase. Lacy makes a motion that the Planning Board approve the list, Armstrong seconds, and all members of the Board agree.

Unanticipated Business:

Lacy: solar project special permit public hearing re: Armstrong and Aaron preparation to review materials. Scott: Armstrong and Aaron have received packets of materials and an email link to the audio file for the 10.5.15 meeting.

Meeting adjourned at 8:47pm

Respectfully submitted,

Linda Avis Scott

Administrative Secretary