

Shutesbury Planning Board Meeting Minutes
March 14, 2016 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Jeff Lacy, Jon Thompson, Linda Rotondi, Ralph Armstrong, and Jim Aaron

Planning Board members absent: Steve Bressler

Staff: Linda Avis Scott/Administrative Secretary

Guests: Chuck DiMare/34 Sumner Mountain Road, Paul Jacobs/26 Sumner Mountain Road, Michael DeChiara/56 Pratt Corner Road, Rolf and Jim Cachat/187 Wendell Road, and Gian DiDonna/86 Pratt Corner Road.

Bonnar calls the meeting to order at 7:08pm

7:08pm Common Driveway Special Permit Application/DiMare, Antonino, & Antonino-DiMare:

DiMare refers to the common driveway site plan "Proposed Plan Layout" stamped on 9.21.15 by Jason O. Skeels/Civil Engineer: the driveway is a minimum 16' and a maximum of 22' wide with an overall easement of 50'; all of the common driveway is within conservation land except where it abuts building lots; notes conservation areas and potential building lots on the plan. Lacy: if a building lot is less than one acre in size, only four bedrooms are allowed per the Board of Health. DiMare: the building lots will be a minimum of one acre. Lacy: be advised that you are in a rocky area and wells need to be located 100' from septic systems. DiMare: on the first page of "Reciprocal Easement and Driveway Maintenance Restrictive Covenant", fourth line from the bottom, 16' is to be substituted for 16"; the 16' width will be used where it makes sense given the terrain. DiMare: the common driveway will serve three proposed building lots, conservation area #1 and to the extent that access is granted to this area, and conservation area #2; generally, the Reciprocal Agreement contains provisions for maintenance the cost of which will be divided per/house. At 7:15pm, Jim Aaron joins the meeting. DiMare states he believes all the special permit criteria are met. DiMare provides the Planning Board with the most current version of the Conservation Restriction (CR), dated 2.16.16, approved by the Conservation Commission (SCC); another meeting with the SCC is scheduled for 3.24.16 to finalize the financial agreement consisting of a \$3,000 donation, up to \$1,000 for the baseline report paid for by the owner, plus a \$1,000 donation for each property conveyance; final approval of the CR rests with the Planning Board. DiMare: right now, the driveway is in good condition; any washouts are quickly repaired; there is some shared maintenance of Sumner Mountain Road; we are already bound and will bind the additional two building lots to the Kettle Hill Road Homeowners' Association. DiMare: if it is an issue, we can make it a condition that the owner of private lot #3 allows access via a small path to the conservation area or a new path could be made; it is de minimis. Lacy, referring to page 2 of the Reciprocal Agreement, suggests there be a condition requiring the 50' easement to run all the way through. Bonnar asks about the division of lot #3. DiMare: the easement remains. Lacy requests the easement be indicated on the plan with dash lines. DiMare agrees to do so. Thompson agrees with this recommendation. DiMare recommends this be made a condition. Lacy states that he does not want to condition what a plan should show. DiMare: we cannot obtain an

Approval Not Required (ANR) until the CR is approved by the State who requires a Planning Board approved CR and Reciprocal Easement; their timeline is a couple of months; notes that he has a buyer wanting to build a house. DiMare: it is in our interest that the easement be maintained. Lacy: is there a note indicating the 50' easement on the plan? Bonnar refers to "Survey Note" #7, on the plan, stating the overall easement of 50'. Lacy: maybe the Board will condition the final plan. DiMare suggests conditioning the plan be modified before the ANR. Lacy: if a special permit is conditioned to a plan, the Board will want to receive a modified plan. Lacy reads the 3.14.16 email comments from Attorney Donna MacNicol/Town Counsel into the record (see file). DiMare, referring to MacNicol's "Please make sure that Lot 1 is designated on the plan and that it is the termination of the common driveway": the previous plan did not include lot #1. Lacy: regarding section 2, paragraph #3 of the Reciprocal Agreement and MacNicol's note "If an ANR is necessary to add this land to Lot 2 (which I believe it is) then they should reserve the same right for adding to Lot 2." DiMare agrees to an inclusion regarding an ANR and refers to notes on the plan relative to the ANR - reconfiguring the boundary between lots #2 and 3 and reserving the right to an ANR. Bonnar: in the present, aren't the lots configured as either buildable or conservation? DiMare refers to the lot owned by Jenna Antonino DiMare that is not included in project. DiMare: we will return with an ANR. Abutter Paul Jacobs states that he has no comments. Bonnar: the financial agreement is not in the CR. DiMare states he unsure if the State will want the financial agreement included in the CR; MacNicol suggested it be included; notes MacNicol's concern that unless you can show that the CR benefits lots 1,2, and 3, it could be extinguished via the rule against perpetuity. Bonnar: how will SCC enforce payments? DiMare: the financial requirements will be attached to the deed. Lacy: final financial requirements will be considered at the 3.24.16 SCC meeting. Lacy: the procedure is such that we close the public hearing then go into deliberation; prior to closing, we get a sense of the Board and then one member is assigned to draft the special permit. DiMare wishes for the process to proceed. Bonnar: timeframe? Lacy: the plan will be to continue deliberations on 3.28.16. Armstrong moves the Planning Board close the DiMare special permit public hearing; Thompson seconds the motion. All Planning Board members agree to close the public hearing at 7:48pm. The sense of Board is that they will want a special permit with conditions. Thompson moves to have a special permit with conditions drafted for 3.28.16 Planning Board meeting; Armstrong seconds and all Planning Board members agree. Deliberation on this case will begin at 7:00pm on 3.28.16.

Update on Wheelock Solar Decision:

Bonnar: Lacy was tasked with working on the solar decision. Lacy: when it comes time to vote, the Board needs five members to agree; anyone who has missed a meeting must listen to the audio and sign the affidavit. Lacy: the earliest we can make a decision is the 3.28.16. Rotondi may not be present for that meeting. Bonnar: proposed conditions are to be submitted by 3.21.16.

Lacy: Cowls has been resistant to the development of trails; regardless of how the owner feels, he was considering proposing a condition for a trail via Reed Road that would allow access to the back of the parcel; on recent site walk, he observed a cart path that allows access to the larger Wheelock parcel, so, perhaps, because access is possible, we do not have to ensure a condition. Lacy states he is pretty confident this existing path will

allow access around the array. Thompson: Cows will create their own forestry access. Armstrong states his support for not engaging Cows about a trail condition. Lacy states that he is thinking of a condition such that while the site is being stabilized, the meadow is being grown, erosion control is still in place, and the array is in operation, and there is a violation, the solar production is shut down. Bonnar suggests researching the law relative to this suggestion that was cited by New England Environmental. Lacy: in the case of a violation, the Planning Board needs to have as much power as possible. Bonnar: the SCC is proposing a condition requiring a hired monitor. Lacy asks if the Planning Board could use the same provisions (Chapter 44 Section 53G) that were used to require the applicant to pay for third party review, i.e. Tighe & Bond. Lacy suggests a condition allowing Planning Board site access by phone notice, approval not required. Bonnar: would this include our agent? Lacy: yes and any Planning Board member; it would be good if we could hire Tighe & Bond or a like firm; we live nearby and it would be efficient if we could visit the site when needed. DeChiara submits into the record his document dated 3.7.16 and titled "Suggested Conditions for Special Permit Regarding Wheelock Tract" and refers to Sarah Koehler's testimony of 3.7.16 and the possible presence of a burial mound on the site; suggests the Planning Board be made aware of the likelihood of her documentation. Lacy: is that a suggestion for a condition? DeChiara suggests including a condition requiring compliance with any state/federal regulations. Lacy points to the potential site of the "mound" on the plan located roughly 300' from the project. Lacy cautions the guests in attendance about offering testimony; recommendations for conditions can be made. Bonnar reinforces that the Planning Board cannot hear testimony. Rolf Cachet-Schilling offers to provide more information. Lacy: if there are laws that you are aware of, provide a suggested condition; no further new information can be provided about the site. Lacy and Armstrong reinforce the need to provide conditions. Lacy summarizes condition topics thus far: how to enforce, Planning Board and monitor site access, and use of 53G funds for monitoring; the trail situation seems to be accounted for. Thompson: who enforces the special permit? Bonnar: the Building Inspector. Rotondi: what is the entirety of our purview and do we have any ability to stipulate the safety of how trucking of the wood off site is managed? Lacy: would this be any different than Cows logging activities? Rotondi: no, cites concerns about school bus safety relative to logging trucks. Lacy: this is a "conversion of use" cut not a Forest Cutting Plan cut, so, yes, we could condition. Lacy reminds that all suggested conditions are to be submitted to Scott. Bonnar suggests the Board could condition the hours of cutting and the hours of transport. Planning Board members will contact Scott to arrange access to special permit file.

Solar Bylaw:

Bonnar: the Planning Board will have to make a decision as to whether the Board supports or not the citizen petition bylaw and whether there will be any amendments. Lacy suggests the Planning Board draft a third version using the final citizen petition which contains many things that do not to be included in a bylaw as they are already included in the zoning bylaw; we need to include those things that are specific to solar; there are too many changes to the citizen petition to be made on the floor of town meeting, therefore suggests the Board create a hybrid version including a "cut out" – the

bylaw would apply to projects going forward. Lacy: one acre or less ground-mounted solar installations appear to be allowed by right; one acre is the size of a football field. Rotondi: do we want the size limitation to be uniform or do we want different size limits for different locations? Bonnar: more important than size limitation is the total acreage in town that is devoted to solar. Aaron: restrictions need to be limited to individual characteristics; suggests that authority for siting be given to the Planning Board. Lacy: maybe we could link sequestration to generation and define a conservation ratio obligation. Bonnar: the citizen petition has no waiver provisions; suggests the Planning Board consider a waiver provision. Lacy: it could certainly be discretionary but with certain rules, i.e. nothing on a slope greater than 15%; the current project has no panels or drainage basins on slopes greater than 15%. Armstrong: it is important to have something in the bylaw describing the topography the Planning Board will allow. DeChiara: the ratio in bylaw version #1 was opposed. Lacy: we are referring to conservation in perpetuity - more of a sequestration than a harvest forest. Bonnar: timeline for proceeding? Lacy: would like to try drafting a bylaw. Bonnar: if the Planning Board is proposing a bylaw, we will need to hold a public hearing before town meeting. Rotondi: do we need to be ready for town meeting? Lacy: yes, unless we want to do floor amendments. Thompson: it is better to be prepared for town meeting. Bonnar: there is so much that we would want to change in the proposed bylaw that amending on the floor would be unwieldy. Rotondi: if the proposed bylaw will not affect the current project, could it be withdrawn? Armstrong makes a recommendation the Board create a party of individuals interested in creating a bylaw, not in a compressed timeline, and who will use the current resources to create a good product. Aaron: Lacy is a professional bylaw creator; we could quickly reduce the current version to essentials. Bonnar: the Board will need to hold a noticed hearing in advance of town meeting; the Select Board can add to the warrant as late as seven days before the annual town meeting; a first draft would have to be done before the 3.28.16 meeting. Lacy agrees to have a draft of a hybrid compromise bylaw for 3.28.16. The Board has consensus regarding Lacy's proposal. DeChiara: if a draft is ready for the 3.28.16, could comments be solicited? The Planning Board agrees and encourages comments.

At 8:41, Armstrong makes a motion to adjourn the meeting; the motion is seconded by Rotondi and is passed unanimously.

Respectfully submitted,
Linda Avis Scott
Administrative Secretary