

Shutesbury Planning Board Meeting Minutes
April 7, 2016 Shutesbury Town Hall

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

Planning Board members absent: Linda Rotondi

Staff present: Linda Avis Scott/Administrative Secretary

Guests: Miriam DeFant and Rob Kibler/74 Pratt Corner Road, Michael DeChiara/56 Pratt Corner Road, Marnin Lebovits/Lake Street Development Partners, Attorney Michael Pill representing Lake Street Development Partners, and Mickey Marcus/New England Environmental (NEE)

Bonnar calls the meeting to order at 7:08pm.

Wheelock Solar Project Special Permit Deliberation:

Lacy reports he is in the process of drafting a special permit and has received special conditions suggested by the applicant, Attorney Donna MacNicol/Town Counsel, and interested parties, as well as, standard Planning Board conditions. Lacy recommends the applicant think about the three sites that may be Native American in origin: the one closest to Pratt Corner Road appears to be real and is located 300' away from the project site, Lacy was unable to locate the second one that is supposed to be a flat plateau area near Reed Road about 200' away from the site – Lacy plans to do further research about this area, and the third site that is just west of the westerly fork of the trail running through the site - this mound is about the height of a table and extends 35' x 25' – on the site map, it is located on the edge of the project site – there is a pink flag near this area; Lacy asks Marcus for clarification. Marcus: this is an old flag. Lacy confirms that the solar panels would cover this mound; suggests a condition that this area be investigated to determine if it is an area of significance. DeFant: within the last week, has the Planning Board received any new information from Doug Harris/ Narragansett Indian Tribal Historic Preservation Office? Lacy: no and has tried to obtain more information from Harris about the northerly site. DeFant: more sites may have been identified; states she has not spoken with Harris or others from the tribe. Lacy: if the Planning Board receives more information from Harris or others that assist in writing conditions it will be considered. DeChiara, referring to an article in the 4.7.16 *Daily Hampshire Gazette*, recommends the Planning Board require documentation that energy produced by the solar farm can be purchased by National Grid. Attorney Pill: both of these comments are an attempt to add new information; National Grid has nothing to do with zoning; the public hearing is closed and no new information can be added; some of the people going out on the land (Lot ZG2) did not have permission to do so; the information about possible Native American sites should go to Lebovits and Marcus – they are the ones who will determine if further research is needed; they have the obligation to determine if there are Native American sites. Bressler: has anyone gone out to the site? DeChiara states he has not been on the land since he was told not to and has not talked to anyone from a tribe. Lacy: prior to the close of the public hearing on 3.7.16, some evidence on the subject was introduced by Sarah Kohler – her input allows us to condition. Marcus: an archeological

survey has not been done; the Massachusetts Historical Commission (MHC) survey/database does not list any sites for this property. Lacy: Harris/NITHPO sent the Planning Board a map with boxes outlining the three sites and a photo; also, Rolf Cachat-Schilling provided a map of regional sacred landscape sites showing "Pratt Corner features". Bressler: who provided the map of a designated area? Lacy: Doug Harris. DeFant states she believes people working for Doug Harris have been on-site; they did not do so with her permission as she has not spoken with Harris; she has not been on-site since permission was taken away; others areas have been found believed to be Native American sites though they have yet to write a letter regarding them. Bressler: as Lacy said, this is a matter for the applicant to consider. DeFant: the applicant's mandate is based on federal law; she is not sure the MHC database is accurate for Native American sites. Lacy: if there is another letter, provide it to the Planning Board and it will be considered for conditions. Armstrong reinforces that such a letter needs to go to the applicant. DeChiara: the tribes are sovereign. Bonnar asks how the Board wants to proceed with deliberation noting the goal of making progress on the solar bylaw draft in order for it to be complete by 4.18.16/Patriots' Day; in lieu of meeting on 4.18.16, the Board agrees to meet on 4.11.16. Bonnar reviews the 4.11.16 agenda: marijuana dispensary inquiry and open space design plan education/guidance prior to the 8:00pm continuation of the Wheelock special permit deliberations and further review of the Planning Board solar bylaw.

Planning Board Draft Solar Bylaw:

Lacy: the 4.6.16 version of the draft was sent out for review; the next version will be clean; notes need to ensure references to "large and small" are correct. Lacy refers to the 3-1.1 "Use Table" noting that use was changed to "no" for the Lake Wyola (LW) district; large-scale is permitted in Town Center* (TC); * "Except that proposals at a distance of greater than 500 feet from a public way, excluding access roads or driveways, may be proposed within the TC district." Kibler: wasn't one-acre for small removed? Lacy, referring to definitions (p. 14): "occupies one acre or less of land". Kibler: a small array is defined as up to one acre; what if someone in LW wants to put up a small array? Lacy refers to 8.9-2 "Applicability". Lacy reads the definition of "Solar Electric Installation" (p.14) into the record. DeChiara notes the need to clarify the definition to allow homeowners to have their own arrays. Lacy: we are looking at the definition for small-scale - if the whole shade area is to be considered, more land would be needed. Marcus: Lebovits and I have worked on a number of projects in towns with solar bylaws; a small residential system is one or two ground mounted arrays such as the ones outside town hall; one acre or larger is commercial; in other towns, the "project area" is the fenced area; Hadley has a ten-acre fenced area limit; community solar projects end up being in the 7-10 acre range. Lebovits: usually there are about 10 acres in shade management for 20 acres of arrays; 1:3 ratio of shade to total acreage. Lacy: we want to include the whole project. Bonnar: the ratio of shade area is a function of the size of the array. Marcus: has seen as little as 5' up to 100' setbacks; the most successful bylaws are those that have the same setbacks as for other uses. Lacy: we made the setbacks deeper, however, there will be a waiver condition. Bressler: why are we making a distinction between large and small? Lacy: small systems can be everywhere but LW; there are some specific standards for large systems that do not apply to small; on two acres, one could use 1/5 of the

acreage for the actual solar array; no matter where an installation is proposed, there will be sequestration requirements. Bressler: we could see a number of small-scale solar arrays throughout the town. Lacy: because a special permit is required, the Planning Board will have discretion. Kibler recommends 1.5 acres for a small-scale installation. Lacy: for a 1.5-acre installation, 7 acres will be needed. Kibler states that he feels the waiver should be capped. DeFant: part of our thinking was to make it easier for residents to have small commercially productive solar arrays. Lacy: site plan review allows the Planning Board to evaluate aspects of the proposed site. DeChiara: per 8.9-2, there could be residential arrays, could residents get together and build an array? Lacy: that would be a policy decision for the Board - if a small business wants to power themselves with solar, do they have to comply with a special permit or would site plan review be enough? Lacy: the Planning Board will consider this further on 4.11.16. Marcus states his agreement regarding individuals and businesses powering themselves. Lacy and others suggest that Lot O32/Leverett Road may be a potential site for a community solar project. Bonnar: have we decided on the size of small-scale installation? All Planning Board members agree to a limit of 1.5 acres for a small-scale installation. Aaron: could we determine size based on the power to be produced? Lacy: size will be much easier to determine with dimensions. Lacy regarding "The Planning Board may waive or reduce any requirement of this section upon findings of: 1) special circumstances of the site or proposal; and 2) that such a waiver or reduction will not derogate from the purposes of this section" (p.3): suggests including "will not derogate from the entire bylaw". DeChiara suggests including rationale for the waiver, i.e. define the special circumstances and define the term "derogation". Kibler suggests such a special circumstance could be waiving a side setback requirement with permission from the abutter; agrees with DeChiara that there needs to be a list of what constitutes a waiver. DeChiara: there needs to be a value for a waiver. Lacy: there are all kinds of site plans; the Board uses siting principles. DeFant: if this gets passed at town meeting, the Wheelock tract project would be subject to it. Lacy: it would not because there is a carve-out in Section 8.9-2 - "This section 8.9 shall not apply to any special permit duly applied for prior to its effective date". DeChiara: there needs to be criteria that constitute legitimate circumstances for a waiver. Lacy cites an example of a waiver: a landowner does not have enough acreage for sequestration however is willing to purchase and permanently preserve the acreage elsewhere in town. Armstrong: when you make conditions for a waiver or an excluding list, there would need to be a section for amendments; it would be very difficult to come up with a list. Lebovits: special circumstances will change with the times therefore recommends leaving it to the Board to decide. Lacy states he is comfortable with leaving the waiver "as is" because the Planning Board is an elected body; suggests language such that "with a waiver, the project will accomplish the objectives of the bylaw". DeFant and DeChiara agree with this suggestion. Lacy regarding other of DeChiara's editorial comments: required fees are on the application; use of consultants is in the bylaw; mitigation with sequestration is supposed to set parameters for the amount of land needed around the solar facility and matches the open space ratio; the sequestration would not be permanent - it would be for the life of the project - to make it a permanent conservation restriction (CR) would not be appropriate as arrays are not permanent in the way housing is; we can tailor the sequestration to a particular property. Pill: demanding a permanent CR is unconstitutional. DeFant: Rolf Cachat was trying to come up with an analysis to

see if sequestration would balance out the carbon loss; the overall policy is to not use forests for solar arrays; the 80:20 ratio does not feel sufficient to her. DeFant: if you take part of a tract and put it into partial protection, it can still be clear-cut in 25 years (after the array is decommissioned). Lacy: when you replace forest with panels, you are losing sequestration however you are replacing it with renewable power versus fossil fuel use; with solar farms, you have a carbon benefit. Pill: the proper analysis is how much the solar power is saving; refers to historical land clearing. DeChiara: our state is saying do not build solar on forestland; acknowledges there is an emotional component to cutting trees; if we cannot do permanent restriction, there has to be some offset to cutting the forest; recommends more land for sequestration. Thompson: Shutesbury has forests. DeChiara: the only reason Wheelock is being built where it is, is because there is forestland to be leased; if we are going to let arrays be built on forestland, something needs to be required. Lebovits: we have been incentivized to build on forestland by the state; this is managed forestland – there is no sequestration required; we are adding to the environment by building solar. Lacy: we cannot require folks to build on certain pieces of land. DeFant: the Planning Board will make a decision on what they consider is most appropriate; notes that there is a lot of community concern about the scale of projects – a conservative approach would be to require a greater than 80:20 requirement; the 1:4 ratio is arbitrary. Lacy: if the Wheelock project were subject to this bylaw, 150 acres would be needed – they have nearly 800 acres to work with; with 20 acres, only 4 acres might be needed for such a project. Lacy: the Board needs to think about whether an upper limit is needed. Bressler states he is on the fence about an upper limit and asks if the sequestration multiplier is sufficient for a large-scale project. Armstrong states that he likes the 80:20 ratio; since we are on top of a hill, the Board might want to put an upper limit; refers to DeFant's "it might just be aesthetics" – part of this is how we treat the land around the array - keeping it in early succession will allow the forest to bounce back. Kibler recommends preventing forest cutting for five years after decommissioning in order to allow the forest to regrow. Lacy: each site will be different; the conditioning is to maximize sequestration; keeping requirements open, allows the Board to require a consultant under Chapter 44 Section 53G. Bressler: sequestration becomes a quantifiable effort. Lacy: mitigation occurs inside the project; sequestration is outside the project site. Kibler: mitigation could be outside the project. Armstrong: regarding limiting cutting afterward, one may want to thin the growth of certain trees. DeFant: if there is a provision to allow the Wheelock project, why not have a reasonable dimensional requirement that still allows commercial development. Lacy: dimensional limits are used because going beyond them is detrimental. Bressler suggests this topic be reconsidered on 4.11.16. Lacy: landscape architects recommend the color black for the fence. All Board members agree with the color black and the waiver. Lacy: what he excluded from the previous draft of the solar bylaw is included elsewhere in the zoning bylaw; does not know why the Board needs to know if the applicant has insurance. DeChiara: seems the town would want to know the developer is insured. Marcus: it is the solar contractor that is the insured entity. Lacy: the contractor will be gone after construction. Marcus: after construction, there is an entity that will be insured. Lebovits states he does not understand why there would be such an insurance requirement. Pill: there is no basis to look to the town; requiring the operator to have insurance makes sense. Thompson: one cannot receive a building permit without insurance. Bressler asks if one is injured on the site and

the company is out of business, who would be sued? Pill: you would be out of luck. Lacy: are you saying there should not be any reference to an insurance requirement? Lebovits states he has not encountered any bylaw with an insurance requirement. Marcus concurs. Thompson: it is not in the law, however, no insurance, no building permit. DeFant: once the project is operational, what is the requirement for insurance? Pill: with commercial lending, insurance is required. DeChiara states he will look at other town solar bylaws regarding insurance. Lacy reviews 8.9-9.1 "Dimensional Requirements"(p.5). Marcus: it costs about 50% more to put up a vinyl-coated fence. Lacy: a vinyl-coated fence is required only if the project is visible from the road or a dwelling in a winter view. Lacy will create a clean draft version for 4.11.16 though will note anywhere he uses discretion. Lacy: regarding DeChiara's comment about visual impacts, any large and small scale solar structure will have a deeper setback than town zoning. Lacy: Shutesbury has a noise bylaw therefore noise requirements have been deleted from this one. Lebovits: 8 out of 51 bylaws have a noise reference; the project does not make noise. Lacy: the Shutesbury noise bylaw came into play with a windmill proposal. Marcus: the array does not make noise at night; the state did noise studies – inverter sound dropped off at 100'; at 8', the noise is like a conversation; the way you are structuring your setbacks, you will have buffer for noise; the inverters are usually in the center of the project. DeChiara: if the invertors are making noise, maybe it is a matter of stipulating where invertors are located within the project site. Lacy: the invertors are within the fenced area then there is the shade buffer and the setback. DeFant states she is commenting on process: you are deliberating on the framework of a bylaw – Attorney Donna MacNicol/Town Counsel suggested the Planning Board sit down with the interested parties and work out a bylaw; takes issue with participation by Chicago (Lebovits) and Amherst (Marcus) – this bylaw exempts them – this is about our zoning. Lacy notes that Sarah Kohler from New Salem commented. Bressler: the Planning Board understands Lebovits' and Marcus' input – they have experience; we will take their comments and put them into context; they are not stipulating – we have an opportunity to listen to those with experience. DeFant: agrees with their experience; is concerned about a tone of advocacy. Lacy appreciates the process. Armstrong appreciates DeFant's comments; acknowledges the input and notes that tonight, the Board has more information than is normally received. Bressler: the Board could include the noise section, so, if needed, it is there. Armstrong: we do have a noise section in the zoning bylaw. DeChiara appreciates the discussion and feedback regarding his comments. Lacy agrees to make note of the changes the Board did not review tonight; the biggest decision is whether the Board wants an upper limit.

All Planning Board members agree to adjourn the meeting at 9:26pm.

Documents Used During the Meeting:

1. 3.20.16 email from Doug Harris/NITHPO "Solar Development Project, Parcel ZG-2"
2. 3.28.16 email from Rolf Cachat-Schilling "Map of Sacred Traditional Cultural Practice Features"
3. 4.4.16 email from Michael DeChiara "Proposed Special Condition Regarding Protection of Native American Ceremonial Stone Landscapes"
4. 4.4.16 email from Michael DeChiara "Targeted Waiver Regarding Adjacent Large Sites"
5. 4.7.16 Draft Warrant Article "Proposed Zoning Bylaw Changes for Ground-Mounted Solar Electric Installations"

Respectfully submitted,
Linda Avis Scott
Administrative Secretary