

Shutesbury Planning Board Meeting Minutes  
April 11, 2016 Shutesbury Town Hall

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

Planning Board members absent: Linda Rotondi

Staff present: Linda Avis Scott/Administrative Secretary

Guests: Attorney Michael Pill representing Lake Street Development Partners, Zachary Schulman/Lake Street Development Partners, Lucy Gertz and Michael DeChiara/56 Pratt Corner Road, Miriam DeFant and Rob Kibler/74 Pratt Corner Road, Rolf and Jim Cachat/187 Wendell Road, Mark Olszewski/174 Locks Pond Road, Gian DiDonna/86 Pratt Corner Road

Bonnar calls the meeting to order at 7:20pm.

Armstrong moves and Aaron seconds a motion to approve the 3.28.16 Planning Board minutes as presented; motion passes unanimously.

Medical Marijuana Inquiry/Chris Acosta: no attendance

Olszewski Open Space Design/Lot D18 Locks Pond Road: Olszewski: Shutesbury Conservation Commission (SCC) has approved his driveway plan; Bonnar and Lacy have walked the property; seeks guidance on next steps. Bonnar: the next step with the Planning Board is to develop a site plan showing slopes, contours, and wetlands; at this stage a survey is not required. Olszewski: the whole site has been delineated. Bonnar: subsequently, a conservation restriction (CR) will need to be developed. Olszewski: a contact at the State advised that a survey is not required; agreement about monuments is required. Bonnar: the site plan for approval not required (ANR) must be surveyed; ANR provides the right to build. Olszewski: can he obtain slopes from MassGIS? Bonnar advises Olszewski to give the plan his best effort; if more information is needed, the Planning Board will advise him; this plan needs to show the whole property. Olszewski: who will hold the CR and conduct annual monitoring visits? Bonnar: the holder of the restriction conducts the annual monitoring visit; CRs have administrative costs. Olszewski: what happens if the SCC is unwilling to hold the CR; Kestrel is unwilling to hold it. Planning Board advises Olszewski contact Franklin Land Trust and Mount Grace Land Trust as possible holders. At 7:38pm, Olszewski leaves the meeting.

At 7:49pm, Lacy joins the meeting.

Planning Board Warrant Article: Proposed Zoning Bylaw Changes for Ground-Mounted Solar Electric Installations 4.8.16 Draft:

Lacy: the 4.8.16 draft was sent to interested parties; 8.9-1 "Purposes" refers to all "Ground-Mounted Solar Electric Installations"; small and/or large are referenced where indicated; definitions provide consistency; "appropriately regulate" was added to the Purpose. Lacy: 8.9-2 "Applicability" – "Small-Scale systems accessory to existing

residential and non-residential use require site plan review by the Zoning Board of Appeals (ZBA); in Shutesbury, the ZBA handles small discrete projects while the Planning Board handles larger, more complex projects. Armstrong affirms ZBA review of small-scale systems accessory to existing residential and non-residential use which generate electricity principally used by such residential or non-residential use are permitted by right; all Board members agree. Lacy: the bylaw will not apply to solar arrays that come under ZBA site plan review. Lacy reads the expanded waiver: "The Planning Board may waive or reduce any requirement of this section upon findings of: 1) special circumstances of the site or proposal; or 2) the objectives of this section may be met in alternative manner; and 3) that such waiver or reduction will not derogate from the purposes of this Zoning Bylaw." DeChiara suggests including "improving" into waiver, i.e. "we will grant 1 or 2, if you are making X better". Armstrong recommends leaving the waiver as written by Lacy. Thompson: the Board needs to work with the lowest bar possible. Lacy: "special circumstances of the site or proposal" could be improvements such as additional habitat enhancements and/or more space between panels. DeFant recommends "in an alternative or improved manner" for 2. Lacy: the alternative does not have to be better; it has to be at least equivalent. Kibler: what might constitute a special circumstance? Lacy: a project proposal for a degraded site, such as Lot O32, a site of old pollution, if part of plan is reversing degradation. Kibler: it seems a list of special circumstances is needed. Lacy: listing is not advisable. Pill: the Board must be careful about listing – the Board may agree a circumstance is reasonable however, because it is not listed, the circumstance could not be considered. Armstrong reaffirms his recommendation the waiver section stay as is. Bressler joins the meeting at 8:08pm. Bonnar, Thompson, and Aaron state their agreement with the waiver section as written. Lacy refers to: "This section 8.9 shall not apply to any special permit duly applied for 'and active' prior to its effective date." Pill suggests conferring with MacNicol/Town Counsel about this language. Lacy states that earlier today MacNicol was sent a draft to review for feedback. Pill: "active" is intended to mean an active application? Lacy: yes. Planning Board members agrees that Lacy may confer with MacNicol regarding this language and proceed as advised. Lacy reviews the formatting for Section 8.9-3. Lacy: B. "Mitigation for Loss of Carbon Sequestration and Habitat" is not referring to CR land; regarding "unauthorized tree cutting", the Board will decide at the time and authorize what is appropriate. R. Cachat: how can the Board allow tree cutting/removal of biomass on land set aside for sequestration? Lacy: this will be determined at the time of application perhaps based on expert testimony. DeChiara: with responsible forestry, some logging is necessary; it does not come under the concept of mitigating for carbon sequestration. Lacy states that he does not want to exclude forest management and will not write a bylaw that will knowingly tie the Planning Board's hands. DeFant: the Planning Board already has a waiver. Lacy: the waiver is for unanticipated circumstances. Bressler: it could read "tree cutting" instead "or logging" which goes against this subsection. Lacy suggests a revision: "including unauthorized (by special permit granting authority/SPGA) forestry/tree cutting" and remove "logging". All Board members agree. Bonnar explain to the guests: this is a Planning Board document; the Board will take comments however may not agree with them. Kibler sites examples of reasons why authorized cutting may be indicated: detritus, invasive species and woolly adelgid. Lacy reads "E. Mitigation for Disruption of Trail Networks" into the record.

Schulman, referring to the Wheelock site, asks if the bylaw refers to documented trails. Lacy: when the Board visits the site, it will be determined whether there are currently existing woods roads, cart paths, etc. Bressler to Schulman: your project has been decoupled from this bylaw. Pill: if the bylaw becomes applicable to the Wheelock project at town meeting, Plan B is to file a preliminary subdivision plan. Lacy: because trail networks are part of Shutesbury, recommends "E". All Board members agree. DeFant referring to 8.9-4 A3: "known" is not defined, i.e. known by whom, what maps are being referring to; recommends bringing the language in alignment with MGL Chapter 114. Lacy: the Natural Heritage Endangered Species Program has a program and maps; National Historic Districts has maps; this section provides instruction to the applicant as to what is needed on the site plan. DeFant: the applicant needs to contact a tribal entity and one intertribal council. Lacy: the applicant needs a reliable place to go for reference; asks DeFant for a referral/contact; will also speak with MacNicol regarding this matter. DeChiara: need for "known or suspected" as it ties into MGL Chapter 114. Lacy: the applicant has to be able to contact a capable entity. DeChiara: without including "suspected" the town is opening itself to litigation. DeFant: the language might be "known, mapped, or suspected". Lacy: the applicant has to have a resource in order to be diligent. R. Cachat: MGL 114 Section 7 does not narrow down who determines; two Federally recognized and four tribes recognized by the State have authority. Lay: maybe the Planning Board needs to stay out of this and let the law do its work. R. Cachat: the law seems to indicate the town has some authority. Lacy re-emphasizes the need for a resource. DeFant agrees to obtain a sufficient resource and suggest language for noting the resource in the bylaw. R. Cachat: there could also be pre-Colonial sites. All Board members agree that Lacy may include language as approved by MacNicol. Lacy regarding "F. Financial Surety", MacNicol will approve this language. Lacy: language from the Blandford bylaw was used for "G. Utility Notification"; this was also in the state model. Schulman: this information can be easily obtained; has in place for the Wheelock parcel. DeChiara: 31 bylaws/75% have a liability insurance requirement; it does not make sense to not have this requirement. Lacy: proof of liability insurance is in the state model. Thompson: who collects this annually renewed documentation? DeChiara: the documents are to be attached to the required annual report; the Planning Board is supposed to be protecting the town. Lacy: "continued proof of liability insurance" could be added to "Annual Reporting" (8.9-8 B). DeChiara: if other towns and the state have this requirement, Shutesbury should include it. Thompson asks for clarity: we are asking for a certificate from the developer then a certificate from the operator. Lacy: liability insurance protects the operator not the town. DeFant: it protects the town if there is an underinsured situation or an adverse circumstance. Thompson: the town is indemnified. DeChiara: this is in the state's model bylaw. Lacy: this bylaw both adhered and deviated from the model. Bressler: is there a situation, worse case scenario, when the town is on the hook for an injury? Lacy: in 8.9-4 F, financial surety is required. Kibler: if an insurance requirement is included, include a value – how much liability is enough? Bressler suggests seeking guidance from Town Counsel regarding whether the town is liable under any circumstance. Armstrong agrees with Bressler's recommendation. Lacy notes that the state model reads "proof of liability" insurance and asks if the Board agrees for him to consult with MacNicol regarding who needs to have the insurance. Bressler states he is thinking about when the project is up and running. DeFant: what liability

could there be, given the operator has to submit annual reports, and there is a problem? All Board members agree that Lacy may consult with MacNicol on this matter.

Armstrong: until the size of the project is known, you cannot know how much liability insurance is needed. Schulman offers to find out operating assurances. Armstrong: will the law of unintended consequences take effect? Thompson: the Board does not require certificates of assurances from other businesses.

Lacy: an acreage cap was not included; we have setbacks, no construction on greater than 15% slopes; many bylaws do have an acreage cap, maximum sizes are common, though he does not see a rationale for a cap; there are no limits on housing developments. Bressler: appreciates safeguards; is concerned that someone will look for loopholes therefore supports an upper limit. Lacy: then use the waiver? Kibler: the zoning bylaw does establish some limits; supports a generous limit and suggests a 15-acre maximum.

DeChiara: many towns have limits based on power generation; there is always the waiver; Marcus/NEE said that bylaws are helpful guidelines. Armstrong: let's say we put a 15-acre limit. Lacy: the limit would not include setbacks; it would include the shade area. DeChiara: what if a subdivision plan is filed? Schulman: you cannot divide to benefit solar. Armstrong states that he is interested in the concept of a limit, however, does not want to limit the possibility of another 6-megawatt system. Lacy notes the limits for sequestration and slopes greater than 15%. Thompson: most parcels will regulate the size of the project. Lacy seeks to allow full-sized projects/6-megawatts. Thompson agrees. Bressler: a similar site could generate a lot more power; is practically concerned that town meeting may seek to deny the Wheelock project if there is a 10-acre limit; the Planning Board has agreed to decouple, however this could occur. DeFant: the Planning Board is to come up with language that is in the best interest of the town.

Kibler: yes, somebody could propose an amendment to make the bylaw applicable to the Wheelock project. Thompson agrees the document could be amended from town meeting floor. DeChiara states that he does not see that happening; if you put in a ten-acre limit, if it does not derogate, you have the waiver. Lacy: the one weakness of the waiver is that if we waive a maximum, it could invite an appeal. Pill: any maximum invites difficulty under Chapter 40A Section 3 Paragraph 9; to hem the board in, is not good bylaw drafting. Lacy: all of the other constraints are rationally based; ten acres seems arbitrary. Thompson agrees. DeChiara: you are choosing what you want to be arbitrary; the 4:1 sequestration ratio is arbitrary – you cannot argue both. Lacy: the 4:1 ratio has a sequestration and habitat benefit. DeFant: a ten-acre limit is not arbitrary; with current technology, that is the size needed to have a financially viable large-scale project; our goal was to permit some commercial solar. Bonnar notes the need to move forward on this topic. Lacy: the state does not set an upper limit. Bressler: 51 towns have decided to set an upper limit; we have other safeguards in place; does not see a problem with 10 acres. Lacy: today, 10 acres will produce 2 megawatts. Schulman: keep in mind the need to have 4x the acreage to meet the requirements; 2 megawatts works. Kibler: ten acres was the fence enclosure in the citizen bylaw. Armstrong concurs with Bressler and Kibler - likes the idea of 15-acre cap setting an upper limit. DeFant agrees. Bonnar: the Planning Board needs to decide on this matter. Armstrong moves the Planning Board make the upper limit of a solar facility/large scale of fifteen acres. Bressler seconds the motion. Lacy reads "Ground-Mounted Solar Electric Installation shall mean a Solar Electric System that is affixed to the ground (not roof mounted) and all appurtenant fencing,

access driveways, drainage infrastructure, electronics, and any surrounding shade management.” Aaron notes the need to embrace solar energy in Shutesbury – Lot O32 has the potential to be much larger than 15 acres and we should not close ourselves off. Schulman: for 15 acres, a project will need 60 acres. Bonnar states that he does not see any reason to make the current rules more restrictive than the state maximum of 6 megawatts; this is what the state will subsidize. Bressler states that he is interested in supporting smaller projects. Thompson: the other limiting factor is the need for three-phase power – Pratt Corner Road is the only place in town with three-phase power. Schulman: there are smaller systems that can leverage a single-phase power line. Bonnar: any further observations? Armstrong concurs with Aaron. Lacy states that even though he personally does not want a stated upper limit, an upper limit will help this article pass at town meeting; putting in a 15-acre limit and including the waiver will enhance its chances of passing. Lacy moves the Planning Board add “no greater than 15 acres of land” as the very last words of the article. Motion is seconded. Bonnar calls for the vote: Thompson and Bonnar opposed; in favor: Bressler, Aaron, Lacy, and Armstrong. Motion passes.

Bonnar: 8.9-6A replace “may” with “shall”. Kibler: agrees with dark-sky policy; is there a need for maintenance lighting? Schulman: for security, we use infrared monitoring. Lacy: 8.9-7 B has been reworded to include “even if not in production” because we have very few fields in Shutesbury; if we include forest, we are setting up a conflict; will take out “large and small” – added “heavy cutting”. Aaron: heavy cutting could be quantified. Board agrees that Lacy may contact Dave Kittredge/UMass professor and Extension Forester for guidance on a definition for “heavy cutting.” All Board members agree with the wording “sites shall be selected where construction may be accomplished without substantial disturbance of the existing soil profile and structure.” DiDonna: many solar arrays that “go under” do so because they cannot make the desired power and subsequently use diesel-powered generators. Schulman states that he has not heard of the practice of using generators. Lacy: top of page 8, should read Special Permit Granting Authority rather than Site Plan Review Authority. Bonnar: does the annual reporting requirement apply to ZBA site plan review? Lacy: no, the bylaw does not necessarily apply to small scale/site plan review projects. Thompson suggests adding language about “only solar power” after 8.9-6 E. Lacy: “power shall be derived only from solar photovoltaic array”. Board agrees that Lacy may determine the specific language for this. Armstrong: is the annual reporting, 8.9-8B, required for small projects? Lacy: no annual report is required for a small system that serves a house or business that comes under ZBA site plan review. Thompson: if MacNicol recommends adding the liability insurance requirement, include language that requires recertification be included in the annual reporting requirement. Lacy will clarify with MacNicol when lapse of approval occurs; the timing of which most likely begins after lapse of the appeal period. All agree that Bonnar may provide grammatical corrections to Lacy. Lacy requests DeFant provide language relative to Native American sites by 4.12.16. Lacy agrees with DeFant’s proposal to provide language by the morning of 4.13.16. Lacy notes need for a motion to approve the bylaw with agreed upon changes and to take necessary steps needed to get the bylaw to the Select Board and to the Town Clerk in order to advertise the public hearing; the legal ad needs to appear 14 days in advance of the public hearing. Bonnar: the public hearing needs to occur on 5.2.16. Lacy: the Planning Board needs to make a

report on our proposed bylaw as well as the two citizen petition bylaws; town meeting cannot vote unless we have the public hearing and create the report on the night of the hearing; floor changes can be made.

Lacy: the Select Board is planning to receive the bylaw on 4.19.16. DeChiara: the Select Board is accepting the bylaw on 4.19.16; is unclear the bylaw can be on the warrant without a public hearing. Lacy states the he has already reviewed this matter with MacNicol; suggests DeChiara confirm with MacNicol on 4.12.16. Lacy: on 5.2.16, the Board will need to compose a report on the citizen petition warrant articles and the proposed Planning Board bylaw. The Board agrees to consider special conditions for the Wheelock project special permit at 7:00pm and begin the public hearing for the Proposed Zoning Bylaw Changes for Ground-Mounted Solar Electric Installations at 7:30pm on 5.2.16.

Lacy moves that he make the changes agreed upon by acclamation and the Planning Board vote to approve the bylaw along with the changes made after consultation with Attorney Donna MacNicol/Town Counsel and to consult with Bonnar about date for public hearing and noticing; Armstrong seconds the motion that passes unanimously.

All members of the Planning Board agree to adjourn the meeting at 10:00pm.

Documents and Other Items Used at the Meeting:

1. 4.8.16 Draft "Proposed Zoning Bylaw Changes for Ground-Mounted Solar Installations"
2. 4.7.16 email "Why the PB Proposal for a Solar Bylaw Does Not Compensate for Forest Clearing" from RG Cachat-Schilling with attachment "Why a 25-Year Cut Ban Does Not Compensate for Clearing of a Forest Lot for Solar Array"
3. 4.8.16 email "research on outstanding questions: other solar bylaws" from Michael DeChiara
4. 4.9.16 email "For Consideration: Suggestions on Remaining Items for PB Solar Bylaw from Michael DeChiara

Other items in the Planning Board packet for 4.11.16:

1. 4.11.16 letter regarding "Tribal Cultural Resources/Area of Potential Effect" from Doug Harris/Narragansett Deputy Tribal Historic Officer
2. 4.11.16 letter regarding "Shutesbury Solar Array" from Bettina M. Washington/Wampanoag Tribal Historic Preservation Office

Respectfully submitted,  
Linda Avis Scott  
Administrative Secretary