

Shutesbury Planning Board Meeting Minutes  
May 2, 2016 Shutesbury Town Hall

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

Planning Board members absent: Jim Aaron

Staff present: Linda Avis Scott/Administrative Secretary

Guests: Zachary Schulman/Lake Street Development Partners, Mickey Marcus/New England Environmental (NEE), Becky Torres/11 Wilson Road/Town Administrator, Penny Kim/187 Leverett Road/Town Moderator, Sarah Kohler/New Salem Planning Board Chair, Alejo Zocarins/Wendell Historical Commission, Miriam DeFant and Robert Kibler/74 Pratt Corner Road, Mike Vinsky/391 West Pelham Road, Michael DeChiara/56 Pratt Corner Road, Loril Moondream/Wendell, Hannah Tarr/Athol, Michael Pill/37 Leverett Road

Bonnar calls the meeting to order at 7:07pm.

Wheelock Solar Project Special Permit Deliberation:

Review of draft Special Permit is facilitated by Lacy: the public hearing was closed on 3.7.16; the Planning Board has 90 days to deliberate and come to a decision; this decision needs to be filed with the Town Clerk by 6.6.16; the draft being reviewed this evening is not complete - it is for the board to review and consider for a vote at a future meeting.

Lacy: this draft was done in consultation with Attorney Donna MacNicol/Town Counsel who advised that each of the criteria be dealt with individually. Lacy regarding the "Findings": the "General Findings" are followed by the "Specific Findings", then the "Site Plan Review Criteria", "Rural Siting Principles Criteria", and "Special Permit Criteria"; all responses are in italics. Lacy: "Votes" will include what each member's vote is. Lacy: the conditions have yet to be completed; this section begins with "General Conditions" followed by "Pre-Construction", "Construction", "Operation", and "Decommissioning Conditions" followed by signing and appeal documentation. Lacy: there are conditions missing, specifically, how to deal with the identified and suspected Native American sites. Lacy states that he has emailed individuals who worked for and do work for the tribes and their responses are pending; he is looking forward to hearing from them and has also consulted with MacNicol on this matter. Bonnar: the Planning Board needs to review and digest this document and will need another meeting in order to be prepared for 6.6.16. Lacy: the conditions need to be fleshed out; there are valid ones that have yet to be added; if an activity is contained in the plans, it will not be included in the conditions; there will be a general condition requiring adherence to the plan. DeFant to Lacy: regarding pending response from the Tribal Historic Preservation Office (THPO), with whom have you had some give and take? Lacy to DeFant: Eva and Doug Harris; if you are speaking with a THPO please have them forward proposed conditions. DeFant states she forwarded a document related to the bylaw that could be used for conditions. Lacy requests DeFant resend this document; will confer with MacNicol about conditions proposed by outside entities. DeFant asks about a condition requiring further

involvement by Tighe & Bond. Lacy: the Planning Board cannot name a firm in a decision; the Board can condition that, with a phone call, any Planning Board member can monitor the site; the Board has yet to condition monitoring by an outside firm. DeFant: a condition to evaluate one mound has been included; Doug Harris said there might be as many as 40 mounds. Lacy explains that he visited three specific sites – two have been ruled out, the third has been established to be within the project site – a specific condition has yet to be written regarding consultation with a tribal resource about this site. Bressler: in Harris's letter, he said many of the mounds could be hummocks from tree fall. Sarah Kohler/New Salem states she understands that Harris has yet to walk the site and only saw video; David Tall Pine White/Nipmuck (THPO per DeFant) walked the site and, to the best of his experience as a tribal resource, it is a substantial burial ground; the mounds are all set in the direction that bodies are historically known to be placed according to cultural practices; how they are to be treated needs to be evaluated by experts. Lacy: the Board needs a condition for how these should be treated; MacNicol, whose guidance will be followed, will evaluate submitted conditions. DeFant offers to work with Kohler on draft conditions. DeChiara states his support for being conservative and determining what is on-site before the start of work. Lacy: this would be a pre-construction condition. Bressler: ground-penetrating radar may be needed. Kohler: if internment was done after cremation, it will be more difficult to determine a burial site with ground penetration radar.

Marcus/NEE: the latest site plan set is dated 2.26.16; NEE suggested a pre-construction meeting with the contractor before any work; contact information can be shared at this time; Lacy has yet to go through all the conditions; the applicant does not object to review of erosion control. Marcus: the Conservation Commission cannot use Chapter 44 Section 53G when the work is more than 100' away; NEE made a commitment to provide SCC and the Planning Board with weekly monitoring Storm Water Pollution Prevention Program reports (SWPP); these are done weekly and after any rain event. Marcus regarding Construction Condition 15: within the array, the soil profile will not be changed; where the racks go, there will be more disturbance than other areas; ask to have "no work" areas called out; mowing is done once per year - if grasses grow higher than the array, they will be weed whacked; decommissioning means all equipment will be removed from the site - the site will be left bare. Lacy: the site could continue to be a solar farm. Schulman: our lease is for 25 years. Lacy to the Board: the next time we meet, the special permit decision will be largely complete and worked out with MacNicol and will be our last opportunity to review the document. Lacy will ask MacNicol if individual Board members can email him their thoughts on the conditions without any discussion. Lacy: when the document is sent to the Planning Board members, it will be sent to the interested parties; once the Planning Board votes, the document will be finalized and filed with the Town Clerk within ten days. Bonnar notes the need for adequate time for the conditions to be written and reviewed. Lacy notes the need for five qualified Board members to vote. All members agree to meet on 5.23.16 at 7:30pm.

Public Hearing for Planning Board Warrant Article 4.14.16: "Proposed Zoning Bylaw Changes for Ground-Mounted Solar Electric Installations": Lacy: the Wheelock solar project special permit application has been in process since last June; this may have spurred to submission of two citizen petition bylaws; the Planning Board found some

problems with these bylaws (12.29.15 & 1.11.16) and decided to draft their own; there will be three versions on the warrant – one with missing text (12.29.16). Lacy: the Planning Board version used the citizen version as a resource; the Board bylaw has pared down language in order to use as few words as possible and is dovetailed to language already in the zoning bylaw. Lacy states he consulted the state model, to which the Board version largely comports. Lacy highlights components of the proposed Board bylaw: deeper than normal setbacks, sequestration requirement, minimum of 15 acres for large-scale, requirement for Native American tribal notice regarding mapped or suspected archeological/ceremonial activity sites, limits to tree cutting and grading, requirement for native wildflower meadow habitat, addressed fencing color when visible, and prohibition on lighting and herbicides; the Board added a waiver provision to waive and/or reduce certain requirements as well as an exemption for solar special permits that have been previously applied for – the Wheelock project was applied for under duly existing law. Lacy: in some senses, the Planning Board version is stricter than the citizen petition bylaw – small-scale projects are defined as 1.5 acres or less, large-scale have a 15 acre limit; in all cases, a special permit is required; these projects are prohibited in the Lake Wyola district (LW), no large-scale projects in the Rural Residential district (RR), large-scale is allowed by special permit in Forest Conservation districts (FC) and in the Town Center (TC) district if 500' from the roadway. Lacy: the Board also made clear that installations accessory to an existing residential or non-residential use are permitted by right and will require site plan review by the Zoning Board of Appeals (ZBA). Lacy reads the third paragraph of “Applicability” into the record: “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 a waiver or reduction will not derogate from the purposes or intent of this Zoning Bylaw.” DeFant ask if she may comment. Lacy asks for any Board comments. None are offered. DeFant appreciates the work done on the bylaw by the Planning Board and the incorporation of concerns raised over the last months. DeFant: this accomplishes some of what we sought to accomplish with the citizen petition bylaw; concern is that the proposed special permit conditions (regarding mapped or suspected Native American sites) do not match those in the bylaw; if these are not consistent, citizens may require them to be; many residents may be concerned that there will not be a formal process required by the special permit conditions and we will move to remove the exemption. Pill: his firm, Green Miles Lipton is handling the preliminary subdivision plan; removal of the waiver will require more Planning Board work; the land on the plan is grandfathered and removing the waiver on the floor of town meeting will not accomplish what removal is intended to do; Lake Street will comply with the existing law; it is important for the citizens to know there is no leverage in removing the exemption. Lacy: Native American concerns were introduced on 3.7.16 therefore the Board feels we can condition them. Schulman: it is hard to accept the evidence, as it is so broad. Lacy: the Board will seek guidance from Town Counsel. Pill acknowledges the efficacy of reliance on MacNicol. DeChiara, noting that he is representing only himself, appreciates work of the Board and the compromise; feels good about work done to create a bylaw that can be relied on. Bressler states that he is surprised that DeFant and others are thinking about recoupling the bylaw with the Wheelock project because a decision was made to not do so at a previous meeting. Bressler notes that Lacy has yet to write the condition relative

to this concern. DeFant: if the project is grandfathered, it will be built under different conditions than future projects; it behooves the Planning Board to condition this project; there is nothing in the current bylaw. DeFant state that her concern is multifaceted; she has long been concerned about Native American sites; take offense to Pill's comments and is horrified that the town might not stand up to protect sites. Bressler: the Planning Board can ensure proper investigation is done; we might not have undertaken this bylaw without the agreement to decouple. DeFant: timing is of concern; is surprised by language in conditions – though does acknowledge they are incomplete – advocates for adequate language relative to Native American ceremonial sites. Pill: state law is clear, if you find human remains, the medical examiner is notified and will determine the age of the remains – whether they are less than 100 years old or older than 100 years determines the path of legal procedures to be followed; Lake Street is required to follow state law; a grave site cannot be bulldozed. Pill shares his concern about the attempt to couple the bylaw and special permit; this action will cost Lake Street a lot of money. DeChiara to Bressler: his sense is to build protections into the special permit. DeChiara to DeFant: notes the need to replicate bylaw language in the special permit; keeping them uncoupled is a benefit; there is a difference in the protective element between public and private land. Lacy states he knows how to condition the identified mound; does not know how to condition the possibility of forty others and will seek guidance regarding this. Lacy: if there are no more comments, suggests the Board close the public hearing and consider the report. Bonnar asks for further comments; none are given. Loril Moondream asks a question relative to the special permit that is not addressed at this time. Lacy moves the Planning Board close the public hearing on zoning for ground-mounted solar electric installations; Thompson seconds the motion; Board members unanimously agree to close the public hearing.

Lacy presents “Shutesbury Planning Board Report on Solar Zoning Bylaw Articles” as a draft report on the three solar bylaws. Lacy: before town meeting can vote on a zoning article, it has to wait 21 days from the close of the public hearing or receive a report from the Planning Board; the report is to be voted on by the Board and presented to town meeting. Kim/Town Moderator requests receipt of the document in advance of town meeting. Lacy reads the “Shutesbury Planning Board Report on Solar Zoning Bylaw Articles” into the record; requirements of the Planning Board bylaw were learned from experience with the Wheelock project. Bonnar asks for any comments from the Board; none are given. Armstrong moves the Planning Board adopt the 5.2.16 “Shutesbury Planning Board Report on Solar Zoning Bylaw Articles” as written; Rotondi seconds the motion. All Planning Board members unanimously agree to adopt the 5.21.16 “Shutesbury Planning Board Report on Solar Zoning Bylaw Articles” as written. Bonnar signs the document on behalf of the Board; signed document will be delivered to the Town Clerk.

Master Plan Update: Lacy: the next meeting of the Master Plan Working Group will be 5.11.16; the Group will be considering how to construct a request for proposal (RFP) for hiring a consultant; the consultant will provide guidance on how to proceed with the Master Plan; Meryl Mandell is the Group's chair. Lacy affirms that there will be opportunities for public input regarding the Master Plan update.

Bonnar refers to the "Senate to consider zoning reform legislation" article from the April 2016 issue of *The Beacon* included in the meeting packet. Lacy reports that the reform bill made its way out of the House committee and is before the Senate Ways and Means Committee; Senator Rosenberg has asked stakeholders to work out the details. Lacy: with this reform, an application received before a zoning change would be allowed to continue under the zoning in effect when the application was received.

Need for qualified voters at the 5.23.16 meeting is reviewed.

Thompson moves the Planning Board approve the 4.7.16 minutes as presented; Bressler seconds the motion; the Board unanimously approves the motion.

All Board members agree to adjourn the meeting at 8:36pm.

List of Documents and Other Items Used at the Meeting:

1. Draft "Special Permit" for Case PB-SB-6/5/15 Wheelock Solar Project
2. 4.14.16 "Proposed Zoning Bylaw Changes for Ground-Mounted Solar Electric Installations"
3. 5.2.16 "Shutesbury Planning Board Report on Solar Zoning Bylaw Articles"
4. April 2016 *The Beacon* "Senate to consider zoning reform legislation"

Other items in the Planning Board packet:

1. Leverett Planning Board legal notice re: 4.27.16 public hearing for proposed changes to Section 4970 regulating ground mounted solar electric systems
2. 4.21.16 email from RG Cachat: "To Whom is the Planning Board Accountable"

Respectfully submitted,  
Linda Avis Scott  
Administrative Secretary

