

Shutesbury Planning Board Meeting Minutes
April 12, 2017 Shutesbury Town Hall

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

Planning Board members absent: Linda Rotondi

Staff: Linda Avis Scott/Administrative Secretary

Guests: Attorney Donna MacNicol/Town Counsel, Thornton Carson, Zachary Schulman/Lake Street Development, Attorney Roger Lipton/Green Miles Lipton LLP, Mike Vinsky, Mary Lou Conca, Tim Logan, Mickey Marcus/NEE-SWCA, Becky Torres/Town Administrator, Michael DeChiara, Leslie Cerier, Emily Boss and Will Sloan Anderson/Franklin Land Trust, Mark Olszewski, John Gorey, Bruce Hartley, Don LaRiviere, Gary and Donna West and Worthy Rae.

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

Carson/162 West Pelham Road Approval Not Required:

Carson proposes the removal of the old lot line between Map 6 Parcel 11(162 West Pelham Road) and Map 6 Parcel 88 as depicted on the Subdivision Not Required plan by Harold L. Eaton dated 4.5.17. Fee is determined to be \$70.00 for one lot. Armstrong moves the Planning Board accept the proposal to remove the old lot line as depicted on the Subdivision Not Required plan by Harold L. Eaton dated 4.5.17; Aaron seconds the motion that passes unanimously. Planning Board members sign the documents.

Wheelock Solar Project Drainage Design Changes:

Bonnar notes the Planning Board's receipt of the 4.5.17 Tighe & Bond (T&B) Peer Review Services of the New England Environmental (NEE) Site Plans dated 2.11.17 and the NEE 4.7.17 "Response to April 5,2017 Peer Review Comments". Lacy: the T&B report stated a concern with the northernmost basin (Comment #3). Schulman: at the last meeting, Pre-Construction Condition #1 was approved with the condition that T&B approve the stormwater changes. Marcus: T&B stated that the stormwater plan works and that final approval rests with Planning Board; the unneeded swale (Comment #2) was removed because the solar site runoff is decreased; MacCaffery was able to reduce the size of the basin (Comment #3) subsequent to consultation with DEP; T&B is deferring to the Planning Board. Lacy: if the stormwater regulations were to apply, would the requirements be met? Marcus: regulatory compliance is not required however they (Massachusetts Stormwater Standards) are met; originally, DEP required calculations as if the access road and panels were impervious surfaces which resulted in large basins; subsequently, DEP allows the basins to be sized differently as long as the area under the panels is grass. Lacy: are there area changes to any of the other basins? Marcus: the swale along Pratt Corner Road and one to the rear of the site are not necessary as there will be no drainage. Marcus: once construction access is achieved, the deep-hole test pit will be evaluated. Lacy notes that the basin will not be observable from Pratt Corner Road (Comment #1). Marcus: it is a long basin with long sides. Lacy, referring to T&B Comment #3: there is a lot of capacity in this basin; if it overflows, there is less chance of

it flowing into a wetland than the prior configuration. Marcus: if the Planning Board does not approve visibility once the array is constructed, landscape plant screening will be installed. Lacy states concern about roadway width: the Planning Board specified a 12' width - all the logging trucks in town use this width; at a point during construction, this roadway will be 20' wide; the Board needs assurance the width will be reduced to 12'. Marcus: the contractors feel a wider road is needed for construction; after construction, the width will be reduced to 12' with the exception of the entrance width of 16' for utility vehicles. Marcus: after construction, moving the gravel into the road reduces the width then the sides are loamed and seeded. Aaron: does the 20' width allow passing of trucks? Marcus: the width allows a factor of safety; all solar contractors are asking for a 20' width during construction. Lacy: this Planning Board expects a stable 12' wide trap rock gravel final surface with viable loam, no invasive species, installed at a sufficient depth. Marcus: the detail for final road construction indicates crushed gravel with a final width of 12'; referring to sheet #5: "after construction, restore both shoulders with 2-3 in. topsoil, seed with conservation seed mix and stabilize". Lacy moves the Planning Board accept the "Solar Development, Parcel ZG-2 Building Permit Application Site/Civil Drawings Town of Shutesbury Revised February 11, 2017", the 4.5.17 T&B comments and the 4.7.17 NEE response to the T&B comments and for the Planning Board to deem the westerly basin a satisfactory replacement for the previously proposed basin for that area subject to successful soil testing. Armstrong seconds the motion that passes unanimously.

DeChiara, speaking as a resident and a taxpayer, states that he is appalled by the Planning Board's lack of due diligence regarding approval of Pre-Construction Condition #1; the motion to approve this condition was raised after most of the public left the meeting; this action seemed preconceived; the quid pro quo was the review by Tighe & Bond; your paid consultant (Eric Johnson/UMAS) stated that more research was needed relative to #1 - you ignored your paid consultant; you did not discuss ignoring Eric Johnson's recommendations however considered T&B's recommendations. Lacy: the Planning Board has conducted months of review. DeChiara: there was no discussion that the applicant ignored what was required; you did not conduct due diligence. Bressler: our consultant, in his opinion, stated that what we were talking about was the result of natural causes. DeChiara: subsequently, Johnson stated he did not have the expertise to make the distinction. DeChiara states that he did not expect a different decision, his exception is to the process. Mary Lou Conca states that she is in total agreement with DeChiara and that she is in a state of disappointment and embarrassment that the town did not allow a proper assessment of the property; only Lacy really speaks for the Board and she is unsure why Lacy wants the project to happen; it is not true that the THPO would not work with the Board.

Lacy: Lake Street Development Partners will return to the Planning Board relative to the remaining pre-construction conditions. DeChiara: at the last meeting it was stated that the pre-construction meeting will be held on the property and is not a public meeting; how will the Board convey the results of this meeting to the public. MacNicol: the pre-construction meeting is not a public meeting and will be held on private property; the following Planning Board could provide a summary of the pre-construction meeting

however there is no requirement to do so. DeChiara asks that this summary be required. Lacy: the Planning Board could answer the public's questions. Marcus: often, the public attends the pre-construction meeting discussion when it is held in a public place. Lacy: the Planning Board would not object, if allowed, to having the public attend on site. Marcus, referring to the pre-construction conditions: the Planning Board meets with the contractor and there is an erosion control inspection; there are certain steps the contractor needs to follow including weekly and "after rain event" inspection reports. Bonnar: is there any reason not to conduct a portion of the site visit on Pratt Corner Road? MacNicol: this would still be considered a site visit not a public meeting. Lacy: practically, on the road, there would only be discussion relative to the entrance. Armstrong does not support conducting a portion of the site visit near the entrance with the public. Bonnar: the Board is trying to be as transparent as possible. MacNicol: site visits are, almost always, not attended by the public and are excluded from the Open Meeting Law for practical reasons. DeChiara restates that he is looking for a report. Lacy: the site visit will be a topic of discussion during the subsequent Planning Board meeting.

Lot D18 Open Space Design/Olszewski:

Bonnar notes the Shutesbury Conservation Commission (SCC) 4.6.17 response to the proposed Conservation Restriction configuration. Emily Boss/Franklin Land Trust asks for a process update. Lacy: Site Plan Review is a 65-day process. The SCC comments are reviewed. Lacy: is this the largest area allowed for the building envelope? Olszewski: yes. Boss: the concern about moving the building area is topography; doing so would bring it closer to the stream and to an area of greater slope with the potential for greater impact on the stream; the current site has the least impact. Relevant maps from the application are reviewed. Olszewski: the building site is on a knoll. Boss: the envelope will be tied to the rest of the land; it cannot be severed and sold separately; this will be a condition of the Conservation Restriction (CR) and part of its enforcement. Bressler supports adding 15' to the width of the wildlife corridor. Olszewski: there is no public access to the back lot of the property. Will Sloan Anderson/Franklin Land Trust: this is a fairly small parcel for a CR and for the monitoring of these CR values, practically speaking and from a landscape perspective, why is the corridor necessary. Bressler: if the corridor is left alone, it could be a viable wildlife pathway. Lacy: the corridor area is covered with mountain laurel. Bressler: the laurel could be removed; a naturally vegetated area would create a corridor. Olszewski: animals will walk wherever. Bressler: considering this was a "dead property" under the old bylaw, he sees no reason the corridor could not be expanded. Boss: a lot of this property is significant farm soils; expanding the corridor is not the management intent for this land; practically, it would be difficult to mark the boundary due to the mountain laurel; there are setbacks that would keep the area open. Bonnar: increasing the width to 50' would bring the corridor up to the proposed house area. Olszewski: the strip to the back portion was put in place per the Commission's request to create one CR parcel. Anderson: to monitor, the corridor would have to be marked. Lacy confirms that access for monitoring could be gained via the house lot. Anderson: Franklin Land Trust would prefer the house lot go to the bound. Bonnar: if the house lot goes to the bound, will the line be moved? Olszewski: yes, to meet the requirement. Boss: the building envelope will remain un-surveyed; we do not want it legally separable from the CR. Anderson: rebar and GPS points will identify the

boundaries. Boss: all of this will be recorded in the CR; Franklin Land Trust's primary responsibility is protection of the natural resources. Lacy: will the 10' corridor remain? Boss: the CR going to the boundary is preferred; the goal is a strong defensible CR and a good relationship with the landowner. Anderson: our preference is to not have a corridor. Lacy notes that an abutting property could be developed; if it is and an open space design is necessary, the corridor would be ensured. Boss: the site plan shows where Olszewski is allowed to build; he cannot build in the corridor – which is also a setback; the CR could be extended to the property boundary. The Board will take the plan under advisement and reconvene.

Citizen Petition: Proposed Lake Wyola District Building Height Zoning Bylaw

Amendment:

Lacy: the Planning Board receives the citizen petition to amend “The Town of Shutesbury Zoning Bylaw” regarding zoning in the Lake Wyola District relative to height by changing the way existing structures are handled; any type of nonconformity would require a special permit via the Zoning Board of Appeals (ZBA) giving the ZBA more discretion as to whether proposed height increases are appropriate; this proposal more highly regulates height. Lacy: the next step in the process is for the Planning Board to schedule a public hearing to allow a presentation by the petitioners followed by questions/comments from the public and the Planning Board. For the record, Donna MacNicol/Town Counsel owns property that could be affected by this bylaw. Donna West: to add a story to a one-story dwelling, an increase to 28' is now allowed; will this still be allowed? Lacy: if setbacks are met on a conforming lot, 28' is allowed by right. Lacy acknowledges he is a member of the ZBA and notes that with this bylaw, any height increase will be by a ZBA special permit. To allow this petition to be considered during the 2017 town meeting, a public hearing is to be held and a Planning Board report written; 2/3rd vote by those present at town meeting is required to pass the proposed bylaw. LaRiviere notes that many of the interested parties do not live at the lake. Hartley would prefer the vote be held next year to allow the Lake Wyola Association annual meeting to consider the proposal. Lacy explains that these comments are relevant for the public hearing. MacNicol explains that once received, the Select Board has 14 days to forward the petition to the Planning Board. Hartley confirms that statements can be made during town meeting. Lacy: given the timing, if the Planning Board does not write a report, town meeting cannot vote on the petition. MacNicol: there is a law allowing that a taxpayer can request to be notified of any proposed zoning changes; written comments can be submitted to the Planning Board. The public hearing is scheduled for 5.4.17 at 7:30pm, the legal notice will be published on 4.9 and 4.26.17; the Planning Board meeting will begin at 7:00pm.

Planning Board Clerk Job Description:

Bonnar: the Personnel Board has yet to approve this description. Lacy: formalizing the position is necessary. Armstrong: the Planning Board reviewed the description, however, has yet to approve it. Lacy suggests: “attends meetings and prepare minutes as needed”. Armstrong states he is in support of the job description; suggests dropping “as needed” because members taking minutes are at a disadvantage. Lacy: there are meetings where a clerk is not needed. Scott: “maintains file of email correspondence...” is not the process at

this time. Bonnar: this is function is not relevant at this time; currently, he provides the relevant emails to Scott for filing. Board considers email management procedures. Lacy notes the importance of the clerk being present for site plan review and special permit cases; suggests omitting “email” and letting this activity be considered under “Other as assigned”. Lacy moves the Planning Board approve the Planning Board Clerk job description as amended; motion is seconded by Bressler and approved unanimously.

Planning Board Meeting Minutes:

Lacy moves the Planning Board approve the 8.17.16 minutes as amended; Armstrong seconds the motion; Armstrong appreciates Torres for her willingness to take the minutes for this meeting. Lacy, Bonnar, Aaron, and Armstrong approve the motion; Bressler abstains as did not attend the 8.17.16 meeting.

Armstrong moves the Planning Board approve the meeting minutes for 2.13.17, 2.21.17 and 3.13.17; Lacy seconds the motion that is unanimously approved.

Provided the Board receives the minutes with adequate time for review, Lacy recommends the Board take time to consider approval each meeting.

Meeting adjourns at 9:29pm.

Documents and Other Items Used at the Meeting:

1. 4.5.17 Tighe & Bond Peer Review Services of the New England Environmental Site Plans dated 2.11.17
2. New England Environmental 4.7.17 “Response to April 5,2017 Peer Review Comments”
3. Solar Development, Parcel ZG-2 Building Permit Application Site/Civil Drawings Town of Shutesbury Revised February 11, 2017
4. 4.6.17 “Conservation Commission Comments on Olszewski Open Space Design
5. 3.22.17 Citizen Petition: Zoning Bylaw Amendments
6. April 2017 Planning Board Clerk Job Description

Respectfully submitted,
Linda Avis Scott
Administrative Secretary