

Shutesbury Planning Board Meeting Minutes
May 4, 2017 Shutesbury Town Hall

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

Planning Board members absent: Steve Bressler and Ralph Armstrong

Staff: Linda Avis Scott/Administrative Secretary

Guests: Attorney Donna MacNicol/Town Counsel, Emily Boss/Franklin Land Trust, George Cooke/Harold Eaton & Assoc. Surveyors, Barbara Wurszt, Mark Rivers/Lake Wyola Advisory Committee, Theresa Rivers, John Redmond, Timothy Logan, Miriam DeFant, Rob Kibler, Mary Lou Conca, Bryan Hobbs, Carole Thompson, Audrey Lehane, Evan Jones, Laurieanne Wysocki, Mary Rice, Joe and Kathy Salvador, Joe Gorey, John Gorey, Michael DeChiara, Mark Olszewski, Pat and Norm Page, Lucy Gertz, James Burns, Rolf Cachat, Donna West, Miles Tardie, Kent and Jean Whitney, Bruce Hartley, Don LaRiviere, Frederic Hartwell, Nick and Sandra Yarmac, Jean Perkin, Howard Kinder, Kathleen Timpson, Donna McCallum, Gail Fleischaker, Josh Kingsley, Fran and Karen Merrigan, Carol Samuels, Chuck DiMare/ZBA Chair, Leslie Cerier, Mare Fox, Jonathan David, and Attorney Roger Lipton/representing Lake Street Development

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

29, 35, and 37 Leverett Road ANR/Pill: Per George Cooke/Harold Eaton & Assoc. Surveyors, no new parcels/lots will be created; the parcels are being added to existing lots to facilitate the installation of a ground-mount solar array. Lacy: there will be three newly configured lots; no new building lots will be created. Cooke: there will be no change in frontage; however lot areas will change. The fee is calculated to be \$210.00. Lacy moves to approve the newly configured lots as per the plan by Harold L. Eaton dated 4.27.17; motion is seconded by Rotondi and passes unanimously.

Site Plan Review Open Space Design/Olszewski: Site plan dated 3.13.17 is referenced. Town Counsel MacNicol has reviewed the draft Conservation Restriction (CR) and finds it to be acceptable. Boss: given that there is a setback requirement under the bylaw, no gain is achieved by having a 10' corridor; the house lot is a building envelope and the right to access the back lot for monitoring inspections will be granted by the owner. Lacy: the Conservation Commission has requested a corridor. Boss: given the setback requirement, the corridor will be maintained; having the CR go to the bound will make delineating the CR easier. Lacy: the building envelope could be shifted easterly to accommodate the acreage calculations and meet a portion of the Commission's request. Lacy: the holder, Franklin Land Trust, is specifically asking that the 10' wide corridor be removed. The Site Plan Review timeline is reviewed; the 65th day falls on 5.20.17, a Saturday, therefore the decision is due by 5.22.17. Bonnar: we have agreed that the lines need to be adjusted. Lacy: the Planning Board will approve the site plan showing the lot, the building envelope, and the CR; a revised site plan is needed. Boss: it is important to be clear that the building envelope is not a separate lot. Lacy requests that Olszewski make the appropriate notes on the site plan. Olszewski agrees to revise the plan. Lacy: a

draft decision could be prepared in advance of the next meeting that is planned for 5.15.17 at 7:45pm. It is the sense of the Board that the decision will be modeled after the Sumner Mountain Road Site Plan Review decision.

Public Hearing: Citizen Petition Zoning Bylaw Amendments: The public hearing to discuss amending the Shutesbury Zoning Bylaw at Sections 6.1-3(B)(1)(b) and 6.1-3(B)(2) by requiring a special permit for all increases in the height of a non-conforming structure is opened. Bonnar reads the proposed amendment in to the record: “Section 6.1-3 (B)(1)(b) is amended to read: the highest point on the roof line of these changes will be no higher than the highest point on the roof line of the existing structure, except that within the Lake Wyola District, the roof line of the proposed alteration shall be no higher than the highest point of the existing structure whether or not any portion of the higher roof line encroaches on a setback. Where there is no evidence of the height of the existing structure, it shall be assumed to have been one story. The last paragraph of Section 6.1-3 (B)(2) is amended to read: An alteration that increases the overall height, but does not encroach on any setback. This example proposes to add a second floor to the portion of the structure that does not encroach upon any setbacks. This alteration is permitted by right, except in the Lake Wyola District, where it will require a special permit.”

Lacy, as a Zoning Board of Appeals member: if a height increase will encroach on any setback, it requires a ZBA special permit; the proposal would require a special permit for any changes in height; any lot that does not have 250’ of frontage, would also require a special permit for a height change; the only by-right situation would be for a lot that is 90,000 square feet, has 250’ frontage, and no setback encroachments. Lacy reviews the Lake Wyola District setback dimensions. Evan Jones/64 Lake Drive: it seems there have been projects approved by the building inspector for lots that are less than 90,000 square feet. Lacy: this is currently allowed. Kathy Salvador/51 Merrill Drive asks for the rationale behind the proposal. Mare Fox of 18 Haskins Way/petitioner reads her statement regarding the reasons for authoring the proposed amendment into the record. A review of the permitting route is explained. Jonathan David/66 Shore Drive speaks in favor of the amendment that ensures adherence to the height requirements and allows neighbors to have a say; speaks about a personal experience with ensuring that height requirements were adhered to in a specific project via the special permit process; the special permit conditions require adherence and an appeal process is in place; increases in height affect property values.

Bonnar reads the ZBA 5.4.17 memo in to the record: “As per a majority vote take during their 4.20.17 meeting, the Zoning Board of Appeals is in favor of the proposed petition bylaw regarding height change increases in the Lake Wyola District for the reason that the ZBA feels citizens should be heard relative to height changes in the Lake Wyola District.”

Fred Hartwell/12 Merrill Drive states that his property will be burdened by the proposed amendment however he is in support of the amendment; height increases have direct impact on property values; this amendment does not favor one group over another group, it is about all owners; the ZBA mediates the special permit process which is discretionary; notes the special care and attention given to cases by the ZBA and cites the outcome of the 67 Shore Drive and 12 Wyola Drive special permits. Kathleen Timpon/14 Farrer Road supports owners having a say in what goes on in their

neighborhoods. Carol Samuels/19 South Laurel Drive states she is in attendance to learn more about the process; is in favor of neighbors having a voice; emphasizes the benefit of full communication. Gary West/59 Shore Drive: are abutters notified of a building permit application? It is clarified that abutters are not notified of building permit applications; abutters are notified of a special permit application. Joe Gorey/16 Lake Drive: Lake Wyola roads are private. Attorney MacNicol/Town Counsel: the lots are non-conforming. It is clarified that wetland permits require abutter notifications; these permits are not relative to height. Don LaRiviere/63 Shore Drive states his opposition to the proposal specifically because of the timing and the closeness of the public hearing to annual town meeting; those with second homes on the lake are unable to vote. Mary Rice/28 Merrill Drive speaks against the proposal; the ZBA may need to do better oversight; it seems the system works as it is. K. Salvador: the proposal does not improve communication between neighbors; what would stop other obstructive actions from taking place, i.e. large landscape plantings. Joe Salvador/51 Merrill Drive: owners of back lots have an advantage in increasing height; this creates less opportunity for those in the front to increase height. J. David notes that he was able to increase the height of his structure to 28'; notes his concern about changes to existing grade with increases in height. Lacy: has the Lake Wyola Association (LWA) taken up this question? Fox: the LWA, as 501c3, cannot vote on the issue. MacNicol: the LWA can vote on the matter. Fox was told by members of the Lake Wyola Advisory Committee (LWAC) to consult the Planning Board. Lacy: the LWAC was formed after a zoning dispute some years ago; it was created to deal with disputes and render an opinion. Mark Rivers/70 Lake Drive/LWAC Chair felt this matter was beyond the scope of the Committee's work; the general consensus was that the Committee was against the proposal; the matter was discussed but no vote occurred; currently, the LWAC deals with water quality issues and dam matters. Fox: Terry Smith/LWAC felt that the proposal needed to be more restrictive therefore she consulted the Planning Board. Hartwell states he attended the LWAC meeting and also assisted in drafting the petition. Hartwell notes the time constraint for submitting citizen petitions; the proposal is needed at this time. Barbara Wurszt/14 Merrill Drive reads her statement in to the record; disagrees with Hartwell noting that his property will not be impacted by the proposed change as he already has a two story structure; feels the proposal is discriminatory. Fox asks what the zoning was in 2008. Lacy: in 2008, the town was mono-zoned; the Lake Wyola District was created in 2008. Theresa Rivers/70 Lake Drive states her feeling that the citizen petition is being rushed through. Lacy: the ZBA agreed with the premise that abutters should have a say; the special permits related to height go through the ZBA. Norm Page/71 Shore Drive: the current zoning rules take the small lot size into account; the special permit is a time consuming and expensive process; feels the proposal is being hurried and without enough process therefore is opposed. Michael DeChiara/56 Pratt Corner Road: would it be appropriate for the Select Board to consider the scope of the LWAC during the re-appointment process? MacNicol: yes. MacNicol advises those present that she owns property in the Lake Wyola District. Jones: the sole purpose of the proposed amendment is to preserve the view for a few people; per his attorney, imposing zoning rules for aesthetic purposes is not appropriate; recommends the Planning Board table the article. Donna West/59 Shore Drive: as a seasonal owner, her family has a history of participation on the LWA; as a resident, she feels this proposal has upset the leadership of the LWA; the LWA has not had the time to

communicate with their membership; all owners pay their fair share of taxes and every owner should be able to add on; this proposal will prohibit some from adding a second story; it is unfair if some are allowed to add a second floor and others are not; the special permit process extends the time for a project and can be costly. D. West submits, for the record, three separate communications from Fox stating the Planning Board supports the amendment. Bonnar reads the highlighted portions of these statements in to the record: "This amendment is supported by the Planning Board". Fox: the Planning Board changed the amendment's language; she then interpreted this as support. Lacy states that he edited the language to bring it into conformance with the necessary language. Yarmac: if the Planning Board has not rendered an opinion, how did it get on the warrant? MacNicol: any ten citizens can support a petition warrant article; for a zoning bylaw change, a Planning Board process is required. Yarmac asks if the matter can be continued to allow the summer residents to participate. Lacy: the Planning Board has three options after their deliberation: to write a favorable report, to write an unfavorable report – both of these allow a vote during Annual Town Meeting this Saturday (5.6.17); if the Planning Board does not file a report, the article will not be voted on during the 5.6.17 town meeting; if 21 days elapse without a report, it could be voted on at a future town meeting. Bruce Hartley/25 Great Pines Drive: has had his lake view blocked; has mixed feelings about the process as the lake community has not had the opportunity to talk openly about the proposal; if it comes up on 5.6.17, he will oppose the article; in the future, he would support it. DeChiara: if it does not get supported, it will need to be resubmitted; did Lacy respond privately or as a Planning Board member? Lacy states that he responded as a private citizen; after his editing, the citizens submitted the petition. Lacy states his intention was for the language to be workable. MacNicol: the petition has to be voted on within six months from the date of submission; because the process is already in place, this petition could be voted on during a special town meeting in the fall; if it is not voted on within six months, the process restarts. MacNicol: ten signatures are required for an annual town meeting petition; signatures from 200 or 20%, whichever is less, of the voters is required for a special town meeting petition; if the Select Board or Planning Board placed the article on the warrant, the additional signatures would not be required. C. Thompson notes the current controversy and states that she is against the proposal, as more time is needed for others to weigh in. Josh Kingsbury/88 Shore Drive states he is a back lot owner and year round resident and that the current process seems fair; feels the process is rushed and more research is necessary. J. Salvador feels more time is needed; encourages the Planning Board to reach out to the LWA. Joe Gorey asks Lacy if he assisted with the language as a private citizen. Lacy restates he assisted as a private citizen. Fox: the first time she attended a Planning Board meeting, she had draft language. Lacy restates the process: the Select Board, after receipt of the petition, has to submit it to the Planning Board within 14 days; the Planning Board is working within the timeline given; the editing of language was done to ensure that the amendment, if it passes, will work. Hartley asks Chuck DiMare/ZBA Chair for his input. DiMare: the ZBA voted on the matter; his position is that the matter be tabled; to allow more citizens to have input, the Planning Board should not give a report at this time. Samuels: there are always losers; there has not always been peace within the Lake Wyola community; applauds the democratic process evidenced tonight. DeChiara: the Select Board did not take a position on the article; notes the process regarding the solar project citizen petition

and that the Planning Board did not assist in editing that language. A straw poll indicates that approximately three of those present support the amendment; a majority of those present are opposed. Tim Logan/15 Town Farm Road: if in fact the property values are reduced by passage of the proposal, other property owners will make up the difference. K. Salvador: inconsistent approval may result in litigation. At 9:03pm, the public hearing is closed.

Deliberation: Lacy has sympathy for the bylaw, however, the limited timeframe for processing has not allowed time for interfacing with the LWA and LWAC; other zoning approaches could affect less people in the district; suggests, given the truncated process, the Planning Board make no report for annual town meeting. Rotondi seconds the motion. Bonnar: the process has been way too short. Lacy moves the Planning Board make no report for the 5.6.17 Annual Town Meeting; Rotondi seconds the motion. Aaron: people feel they have not had enough time to consider the matter and that there are those who have not had the opportunity to voice their thoughts. Bonnar: there ought to be consideration of other ways to address the situation. Motion passes unanimously.

Wheelock Solar Project: Road Width:

Lacy states that he is not comfortable with the 20' construction width of the gravel roadway with ditches on either side; after construction, the width would be reduced to 12'; adding loam to the previously graveled area will result in the growth of weeds; has asked Lebovits to consider a 14' construction width. Attorney Roger Lipton/representing Lake Street Development: the entryway width will not change; the interior width will be 14' during construction and as a final width. Lipton agrees that the site plans will be adjusted to reflect this change. MacNicol: the relevant parties can agree to this change. Lacy moves the Planning Board, in agreement with Lake Street Development (LSD), approve that the driveway width during and after construction will be 14'; Rotondi seconds the motion that passes unanimously.

Bonnar notes the Franklin County Cooperative Inspection Program (FCCIP) building inspector's request for instructions regarding the issuance of the building permit. MacNicol states that she spoke with Lipton and LSD: if the building permit does not issue, LSD cannot complete financing; however, the Planning Board needs the pre-construction conditions to be met prior to the start of work; the Planning Board can issue the building permit subject to the Special Permit and that all the pre-construction conditions are met. Bonnar: how does this get memorialized? MacNicol: by a vote of the Planning Board and a follow-up email to the building inspector; as each pre-construction condition is met, the building inspector needs to be notified so he can ensure the pre-construction conditions are met. Bonnar clarifies that one notice for all the pre-construction conditions is sufficient. Lacy: in order to conduct the soil testing at the detention basin the access drive has to be constructed to that point (pre-construction condition #5). Lipton notes the clarity of the special permit. DeChiara suggests the communication with the FCCIP be in writing; refers to pre-construction condition #7: "No site preparation or construction shall be allowed until there is written, notarized evidence provided to the Planning Board that the utility company (National Grid) has approved the applicant's intent..."; there is no separation of responsibility if the building inspector is asking the Planning Board for the okay to issue the building permit.

MacNicol: this is a give and take to ensure the pre-construction conditions are met. Lacy: the building inspector is demonstrating collegiality and courtesy. DeChiara states his concern that things may get waived. Leslie Cerier/58 Schoolhouse Road appeals to the Planning Board to not issue the building permit until everything is lined up; there is no rush to take down the forest and increase the carbon footprint; there is the issue of pesticides possibly being used; this is a for-profit project; the real experts have not been allowed to be on site. DeChiara: it sounds like there are certain things that cannot be done without a building permit. MacNicol: National Grid needs to see the building permit, there are financing issues that require a building permit, and the test pit requires some construction. DeChiara: why not have all the pre-conditions that do not require a building permit be completed before the issuance of the building permit. Lipton: at this point, issuing the building permit does not get LSD any closer to the construction phase; the pre-construction conditions still need to be completed; this is a management issue. DeChiara objects to the process; the developer agreed to the process. Lacy wants the Board to notify the building inspector that the building permit can proceed. Lacy to DeChiara: you are asking us to exceed our authority; the building inspector is doing this as a courtesy as he could have already issued the building permit. Rolf Cachat/229 Leverett Road: how has pre-construction condition #1 been met as stipulated? Lacy: this question is related to old business. Cerier: where is the justice in this process; it could hold up the project until satisfied. Lacy asks MacNicol about pre-construction condition #6 regarding the installation of erosion control. MacNicol: #6 is similar to #5 in that some work is required to meet this pre-construction condition. DeChiara asks the Board to prioritize those pre-construction conditions that do not require physical activity. Lacy moves that the Planning Board notify the Building Inspector that the Board does not object to issuance of the Building Permit at this time and that the Building Permit references the Special Permit and the Pre-Construction Conditions and that the Planning Board shall certify that Pre-Construction Conditions 1, 2, 3, 4, 7, and 8 have been met and, at that time, the site can be entered in order to meet Pre-Construction Conditions 5 and 6; after these are complete, the Building Inspector will be notified before the Construction Conditions can begin. Mary Lou Conca/Shutesbury resident: you are saying you will certify that each pre-construction condition is met; how can I, as a citizen, see that the condition has been met. Lacy: the applicant will demonstrate completion of the conditions to the Board during an open meeting. MacNicol: "certify" means that, in the opinion of the Planning Board, the condition has been met. Aaron seconds the motion that passes unanimously.

Planning Board Meeting Minutes: Lacy moves to approve the 4.12.17 minutes as amended; Rotondi seconds the motion that passes unanimously.

Makepeace-O'Neil states her appreciation of the good work done by the Planning Board.

At 9:58 pm, Lacy moves to adjourn the meeting; motion is seconded by Aaron and passes unanimously.

Documents and Other Items Used at the Meeting:

1. 3.22.17 Zoning Bylaw Amendments Citizen Petition
2. 5.4.17 testimony from Mare Fox/18 Haskins Way
3. 5.4.17 Zoning Board of Appeals “Citizen Petition Zoning Bylaw Amendments”
4. 4.16.16 email testimony from Barbara and Richard Wurszt/14 Merrill Drive
5. Documents submitted by Donna West including statements from Mare Fox:
4.25.17 email, 4.23.17 Facebook post, and another undated item
6. 4.26.17 testimony from Evan Jones/64 Lake Drive
7. 4.26.17 email testimony “Proposed zoning change at Lake Wyola” from Harold Finn/42 Lake Drive
8. 4.26.16 email testimony “Lake Wyola Height Restriction Hearing” from Kent and Jean Whitney
9. 4.25.17 email testimony “Proposed Zoning change at Lake Wyola” from Elizabeth Perkins/16 Gass Lite Lane
10. 4.23.17 email testimony “Proposed Zoning Change at Lake Wyola” from Kimberly Quinn/67 Shore Drive
11. 4.23.17 email testimony “Re: Proposed Zoning Change at Lake Wyola” from Theodore Melfi/67 Shore Drive
12. 5.2.17 testimony re: “Public hearing to discuss amending the zoning bylaws regarding height of a non-conforming structure in the Lake Wyola District” from James K. Bodurtha/20 Merrill Drive
13. 5.2.17 testimony re: “Proposed Zoning Change at Lake Wyola” from Stephen Dallmus and Linda Bills/48 Lake Drive
14. 5.4.17 email testimony “Proposed changes to building height at Lake Wyola” from Arlene Clarke/13 Cove Road
15. 5.1.17 email from Attorney Donna MacNicol: “Fwd.: Confirmation of today’s phone call concerning Shutesbury Lake Street solar project”
16. 5.4.17 email from Jeff Lacy to Lake Street Development and New England Environmental “Wheelock entry width”

Respectfully submitted,
Linda Avis Scott
Administrative Secretary