

Shutesbury Planning Board Meeting Minutes
June 11, 2018 Shutesbury Town Hall

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

Planning Board member absent: Michael DeChiara

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Emily Boss/Franklin Land Trust, Mark Olszewski/Lot D18 Locks Pond Road; Kevin Sullivan and Jeff Macel/Lodestar; Penny Jaques/Shutesbury Conservation Commission, Becky Torres/Town Administrator; Mary Jo Maffei and Jeff Quackenbush/533 West Pelham Road

Bonnar calls the meeting to order at 7:05pm.

Public Comment: None offered.

Olszewski/Lot D18 Locks Pond Road Open Space Design: Emily Boss/Franklin Land Trust presents the revised version of the “Grant of Conservation Restriction” being granted by Mark Olszewski to Franklin Land Trust; this document has been approved by the State however has yet to be reviewed by Town Counsel (see file). Boss reviews changes, highlighted in yellow, made by the office of the Secretary of Energy and Environmental Affairs; the Building Envelope section on page 8 uses language recommended by the State; the Best Management Practices and Site Restoration are new sections. Boss reviews the purposes/values of the Conservation Restriction (CR). Boss, referring to Exhibit C of the CR document: as voted by the Planning Board, it was considered acceptable to have the building envelope go straight to the lot line. Bonnar asks about the CR monitoring procedure. Boss: a baseline survey document with photos and maps will be created once the CR is recorded; the annual monitoring visit by the Land Steward will compare their observations to the baseline survey; access to the property is part of the CR document. Lacy asks about Section B (1) Recreation Activities. Boss: no motorized vehicles for recreational use are allowed though snowmobiles are an exception; motorized vehicles are allowed for forestry and/or agricultural use. Raymond asks for clarity about the two areas depicted in Exhibit C. Boss: the building envelope remains with the rest of the land; Exhibit B is the survey that will be recorded at the Registry of Deeds. Penny Jaques/Conservation Commission asks if there is a minimum number of acres for a CR. Boss: it all depends on the parcel and the values and particular features of the parcel. Lacy recommends the Planning Board carry over consideration of the CR document to the next meeting to allow time for review by Town Counsel Donna MacNicol. Plan: Boss and Olszewski will provide a full-size survey for the 7.9.18 Planning Board meeting; the Planning Board will vote on the Grant of Conservation Restriction at this time; the Select Board will have the opportunity to review the document during their 7.10.18 meeting. Lacy: the site plan, in the form of an Approval Not Required, will be signed off on by the Planning Board on 7.9.18. Boss: the building envelope will not be recorded on the survey as it is not a separate lot; Exhibit C, depicting the building envelope, will be recorded as part of the Conservation Restriction. Boss

requests the Planning Board inform herself and Olszewski of any changes. Boss re-explains that the building envelope is not typically shown on the survey as it is not a separate parcel.

533 West Pelham Road/Maffei-Quackenbush Driveway Query: Jeff Quackenbush: the question is whether the driveway spur is considered a travel portion of the driveway; a travel portion cannot be closer than 15' from the lot line. The site plan for 533 West Pelham Road, depicting the spur, is reviewed. Mary Jo Maffei: the purpose of the spur is to allow a driver to back out of the garage and turn around. Lacy: the ZBA approved a Special Permit for the new garage that encroaches on the property line; the driveway does not encroach on the setback however the spur does. Lacy refers to Section 8.6-2 A. 2. "The traveled portion of the driveway shall be located no less than fifteen feet from any abutting property lot line unless a Special Permit or a permit for a Common Driveway is granted by the Planning Board": the question is, what does the Planning Board mean when referring to the "travel portion of a driveway"; the travel portion of a road is the lanes – where the tires go and the auto goes the speed limit. Raymond: if there were no spur, one might backup on the grass. Bressler agrees with Raymond that the main driveway is the traveled portion and that the spur is not a traveled portion. Lacy moves, with respect to the proposal by Mary Jo Maffei and Jeff Quackenbush at 533 West Pelham Road, that the Planning Board deem the driveway spur not to be a travel portion of the driveway and not subject to the fifteen-foot setback; motion is seconded by Raymond and unanimously passed.

Wheelock Solar Site Update: Kevin Sullivan/Lodestar: The proposal is to locate battery storage and equipment storage adjacent to each transformer pad as depicted on "Site Plan Northwest Portion" (Sheet #4.1) and "Site Plan Southwest Portion (Sheet #4.2). Jeff Macel/Lodestar: metal cargo containers are typically used for equipment storage on site; in this case, the additional storage is for batteries; the plan is to site the containers on cement pads to keep rodents out. Macel refers to *Shutesbury Zoning Bylaw* Section 3.3-1, and suggests the battery storage is a use accessory to what has already been permitted; the battery storage will be for approximately 1/3 of the total site megawatts. Raymond: storage is a more efficient use of the generated solar energy. Macel: the stored power can be used for peak shifting, resiliency and frequency regulation. Lacy reads Section 3.3-1 into the record and notes that the Section does not apply in this case: "In addition to the principal uses permitted in a district, accessory uses and structures which are subordinate and customarily incidental to such permitted uses shall be allowed the same terms as the principal use (i.e. by right, with Site Plan review, and/or by Special Permit." Macel: the battery storage could be considered an additional structure as part of the "as built" plan – the original approved plan was for an impervious panel area which is now considered pervious by the State. Lacy: the addition of battery storage does not expand the footprint of the project because the original plan considered each panel surface to be impervious. Macel: to add the battery/energy storage, Lodestar will have to bid into the Department of Energy Resources Solar Massachusetts Renewable Target program (SMART) lottery. Jaques: the whole project is smaller than it was originally proposed to be. Sullivan: yes, there is less square footage, as a whole, due to inner row shading on the eastern side where panels were eliminated. Torres: will there be new issues related to the batteries?

Macel: if Lodestar is able to participate, an additional electrical permit will be needed. Torres: Maurice Gregoire/Town Electrician is aware of the plan for battery storage. Bonnar: is a waiver needed? Lacy: this project is subject to the special permit for light industrial use; it is not subject to the solar bylaw. Lacy reads Section 9.3-3 "Amendment" into the record: "The terms and conditions of any Special Permit or Site Plan approval may be amended in the same manner as required for the issuance of the original permit. Any enlargement, alteration, or construction of accessory structures not previously approved shall require an amendment." Lacy refers to the deminimus argument and notes that the proposed battery storage is subject to electrical permitting. Raymond states agreement with this approach. Jaques suggests a legal agreement. Macel suggests submitting an "as built" plan. Lacy: Lodestar needs to present an argument that the proposed changes do not apply to Sections 3.3-1 and 9.3-3 of the *Shutesbury Zoning Bylaw*. Sullivan: the second issue is the drainage. Lacy notes that a site visit was conducted 6.7.18. Sullivan: on the eastern side, SWCA did calculations centered around the changing environmental laws; because the solar array is no longer considered impervious, the State wants to see stone check dams installed rather than concentrated flow via detention basins that result in one area receiving more drainage and other areas less than prior to site disruption; eastern side vegetation is coming in – blueberries, ferns and mountain laurel. Jaques: there was no sign of water flow into the buffer zone in this area; recommends the same requirement be followed for this change. Lacy supports the drainage proposal; the area is fairly level – it has been cleared, stumped and covered with root matter. Bressler: both proposals are state of the art; does this make it so Section 9.3-3 does not apply? Bonnar: the area is dry. Jaques: once the stone weirs are installed, will they be eventually grown over? Sullivan: yes, the weirs are like a speed bump. Lacy: the approved plan showed a detention basin in this area; DEP stated this was necessary due to the Stormwater Standards at the time, however, these Standards have changed. Jaques: the other detention basins were very important during construction; installing the third detention basin now would be disruptive. The Planning Board agrees with this perspective. Bressler suggests the "state of the art" argument and changing DEP regulations. Lacy: Lodestar needs to provide a document justifying why Section 9.3-3 is not triggered. Sullivan and McCaffery will be conferring on how to make detention basin #1 drier. Sullivan to Jaques' question: yes, seeding will begin this week. Jaques: the special permit requires 90% vegetation coverage under the solar panels; how will this be enforced and by whom? Lacy: the Planning Board will inspect the site; if there is an issue, it will be referred to the zoning enforcement officer, the Building Inspector. Sullivan: the argument is that the requirement from SWCA is for root growth as this establishes site stabilization; SWCA expects to see enough tissue mass in the swales. Sullivan: emergence of the sown seed will be ongoing; Lodestar's concern is preventing erosion. Plan: continue the discussion regarding the proposed changes on 7.9.18.

Cheney Marijuana Business Inquiry: Bonnar: Mr. Cheney did not respond to an email invitation to attend this meeting.

Cannabis Business Development Committee: Torres reads the last sentence of the moratorium amendment approved at Town Meeting into the record: "During the moratorium period, the Town shall undertake a planning process to address the potential

impacts of marijuana establishments with advice from a new town cannabis business development committee, and shall consider adopting new zoning bylaws in response to these new issues.” Torres continues: this committee will advise the Planning Board on the development of new zoning bylaws and on the economics of distribution and/or growing; the Select Board has discussed the Select Board and Planning Board roles relative to the committee. Torres requests the Planning Board work on developing the charge to present to the Select Board who, as of now, will appoint the committee; because he proposed the amendment to the moratorium during Town Meeting, the Select Board wishes to appoint Sanford Lewis to the committee. The Planning Board agrees to the name: “Town Cannabis Business Development Committee” as per the Town Meeting vote. Torres asks the Board to consider the basic elements of a charge for the new committee and the criteria for its makeup. Raymond: there is a bias written into the language of the amendment in the wording “town cannabis business development committee”. Lacy: given all the State requirements, the question is, how can a cannabis business be established in Shutesbury; currently, the interest is in growing cannabis. Raymond: is the committee being asked to consider how growing will not intrude on others? Bressler: the Board needs to take an objective look at what regulations are needed and the committee will assist with this; what does Shutesbury need in its zoning bylaw to objectively evaluate the benefits and disadvantages of cannabis growing. Lacy: the Board needs to consider how to protect abutters without over regulating; growing, packaging and selling to wholesalers is part of tier one and two. Torres: the committee will advise about tier one and two as well as the relevant bylaws. Torres: there was a strong sense of support as evidenced by the Town Meeting vote. Bonnar notes that there is a benefit to moving quickly. Torres asks the Planning Board for guidance on membership and the frequency with which the committee will report back to the Planning Board. Bonnar attended a workshop during which Kay Doyle, Commissioner of the MA Cannabis Control Commission reviewed the “Adult Use Regulations 935 CMR 500”. Torres: Lewis suggested the committee be comprised of “expert” members, who may be from out of town, along with interested residents. Lacy recommends Town Counsel participate on the committee. Torres: Town Counsel MacNicol has been working with Peggy Sloan/FRCOG on sample cannabis business relevant bylaws for towns to use. Torres will obtain this document for the Board’s review and consideration. Lacy suggests the Board consider “performance” criteria zoning, i.e. the applicant will need to demonstrate that a cannabis business site can meet specific criteria. Torres will ask MacNicol about her interest and will let her know that Lewis has a legal background and the Planning Board is interested in other members with relevant experience/background. Bressler suggests the committee review the MacNicol/Sloan document and meet regularly with the Planning Board. Torres suggests the Planning Board have extra meetings on the topic and suggests meeting on 6.25.18 to review the FRCOG document.

Meeting Minutes: Raymond moves and Rotondi seconds the motion to approve the 5.14.18 Planning Board minutes as presented; motion is unanimously approved.

5.15.18 Select Board Meeting: This agenda item is not considered during the meeting.

At 9:03pm, Rotondi moves and Bressler seconds a motion to adjourn the meeting; motion passes unanimously.

Documents and Other Items Used at the Meeting:

1. "Grant of Conservation Restriction DCS" (CR Shutesbury No. 7) Lot D18 Locks Pond Road
2. Maffei-Quackenbush 533 West Pelham Road Site Plan
3. "Battery Storage, Rock Berms" Wheelock Tract Site Plans, dated 6.10.18, Sheets #4.1, 4.2 and 4.3.
4. Town Meeting Vote: 8.11-3 Temporary Moratorium
5. Handout from the 6.7.18 "Adult Use Marijuana Regulations 935CMR 500" workshop
6. 5.29.18 Select Board letter to Municipal Officials regarding protection from email abuse

Respectfully submitted,
Linda Avis Scott
Land Use Clerk