

Shutesbury Planning Board Meeting Minutes
December 10, 2018 Shutesbury Town Hall

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

Planning Board members absent: Jim Aaron

Staff: Linda Avis Scott/Land Use Clerk

Guests: Sanford Lewis and Don Wakoluk; Catherine Hilton/Board of Health

Bonnar calls the meeting to order at 7:33pm.

Public Comment: None offered.

Cannabis and Hemp Regulation: Bonnar notes DeChiara's concern that the Planning Board develop a strategy; the headway has been to become better informed. Sanford Lewis presents a list of possible nominees for the Sustainable Cannabis Development Advisory Committee: himself, Don Wakoluk, Mary Lou (Ferro) Conca, and Julia Agron/Amherst resident with expertise and experience in a medical marijuana dispensary. Lewis notes the need to take time in developing the right bylaws for our community by learning from the interesting things other towns are doing, i.e. Cambridge is trying to legalize smoking cannabis wherever nicotine can be legally smoked and Somerville is giving priority to local growers. Lewis states he is interested in more sustainable methods of growing and has been working with hemp growers to improve the law to support these growers; these improvements may help cannabis growers as well. Lewis: perhaps there is a need to expand the survey to include more residents than those that attended the September forum. DeChiara notes that Lewis' focus is on cultivation and that Lacy may be proposing a simpler approach than crafting a cannabis specific bylaw. DeChiara refers to his "Possible Use Table for Marijuana Establishments" that includes all of the parameters and the various types of establishments as well as the possibility of including hemp; if the Board wants to have a bylaw, we can achieve a comprehensive approach by considering the establishments and the parameters. Bressler: it seems overwhelming to consider all types of establishments and the parameters; he, therefore, recommends seeing if it is possible to fit potential uses into the current Use Table. DeChiara agrees to begin with this approach and is willing to develop a draft for members to consider. Bonnar states that he is not sure the two approaches are mutually exclusive. Bressler recommends simplifying the larger process by first considering the Use Table. Lacy: we may create another Use Table category. Don Wakoluk: it may be useful to look at the difficult methods - some are simple, i.e. cooking, and mechanical while others are more complicated, i.e. the possible use of solvents in a lab setting. DeChiara: there are things we would like to see and some we might not, i.e. does a lab fit Shutesbury? Wakoluk suggests identifying the negative before considering the positive. Lewis: there is a real split between investment from outside the state versus community-based initiatives. Raymond asks Lewis to clarify his suggestion that the town does not

need to really push for a bylaw. Lewis does not see a reason to push unless the Board is concerned about expanding the moratorium or there is a business waiting; things are just getting worked out and Shutesbury can learn and be ready when the time comes for a facility in town; he would hope the Planning Board will extend the moratorium, as it already is, if a bylaw is not ready for annual town meeting. Lacy reports that four requests for moratorium extensions have gone to the Attorney General's office; of the four, three were rejected and one accepted. Lewis: Shutesbury does not have a full moratorium and he would argue that the Board has the community's support. Lacy reports that he consulted with Town Counsel Donna MacNicol about the period between when the moratorium expires 12.31.18 and annual town meeting in May; they reviewed the Use Table (page 8-9 *Town of Shutesbury Zoning Bylaw*) and many uses could be considered under "Home Occupation, Customary", permitted by right, or "Home Occupation, Major" that is available in all districts by Zoning Board of Appeals special permit and has some thresholds, i.e. this could accommodate a greenhouse; if an establishment is not "Home Occupation, Major", it would be principal use on a lot and considered "Light Industry" requiring a Planning Board special permit and available only in Rural Residential or Forest Conservation; another possibility would be "Other Retail Business or Consumer Service" available in all districts by Zoning Board of Appeals special permit. Lacy: this helps define what we might do in the months before annual town meeting and does not rule out a bylaw; MacNicol advises, as per the State, that the Board not treat cannabis growing as agriculture. DeChiara: by using the current Use Table, we lose having preferences codified. Lacy: this gives the Board something to use in the interim; we may say a research facility does not fit with our Use Table. DeChiara: we can choose what not to allow. Lacy: if we cannot find it in the Use Table, we can say it has not been contemplated. Lewis: there is lot of land in town that can be used as agriculture; there is no "industry zone". Lacy: agriculture is permitted across the board; light industry is allowed by permit. Lewis: per the Right to Farm Law, hemp growing cannot be banned or regulated; cannabis growing, per the State, is not a Right to Farm issue. Bonnar: what we are finding is what Bressler suggested – to go through the Use Table and what does not fit in the current table may need a bylaw. Lewis: there are some aspects that could be done as a home business. DeChiara cites the example of a lab. Bonnar: that is one area where the Board might want to write a bylaw. Bressler: we are not discouraging, there might be a way for a homeowner to have a lab in a barn. Raymond: during the September forum, Lewis stated that a special bylaw may not be needed and noted the importance of the host agreement. Lacy: for the minutes, our attorney has advised us that after the first of the year (1.1.19), we need a strategy to handle any applications that may come in, i.e. light industry, customary home or major home; the zoning enforcement officer, the Building Commissioner, will make the decisions about what permit is needed; now is the time to think about this. Lacy explains that he spoke with Zoning Board of Appeals members who are willing to permit to the extent agreed upon with the Planning Board. Raymond: are there any other towns that may be a model? DeChiara: other nearby town bylaws are mostly based on the FRCOG model. Raymond: the regulations are many pages long; to have an exhaustive bylaw does

seem exhausting. Lacy: if we have an applicant pushing back, the Board has acknowledged that we are considering using our current Use Table. Lewis: it is no longer the case that you do not allow establishments, the Board goes to the Use Table. Bressler: this will not be a final decision; we need to review the Use Table in a more methodical way; per Lacy, between now and annual town meeting, the Board will use our Use Table. DeChiara: we could say we will do this for a specific time period; if you are not specific, then you get into interpretation. Lewis: it would be controversial to exclude someone doing agriculture. Wakoluk: the town has voiced its opinion - they want to see a rural small-town approach. Lewis: another reason for a bylaw would be to limit the use of bright lights; you cannot do this by special permit. Bonnar: the charge of the Sustainable Cannabis Development Advisory Committee charge will be as voted during the 2018 annual town meeting. DeChiara reads the charge 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 cannabis business development committee, and shall consider adopting new bylaws in response to these new issues". Lacy moves the Planning Board appoint Sanford Lewis, Don Wakoluk, Mary Lou Ferro Conca and Julia Agron to the Sustainable Cannabis Development Advisory Committee and that at least one more member be sought. DeChiara seconds the motion that passes unanimously. Lewis would like Planning Board guidance on a future survey. DeChiara: we need to think about lighting and parking and how these hold across town; he is willing to develop a bylaw for discussion.

Livestock in the Lake Wyola District: Catherine Hilton: the Board of Health is concerned about livestock being kept in the Lake District, for example, horses on South Laurel Drive and pigs on a small lot on Haskins Way; it is possible pig excrement washed into Lake Wyola after a heavy rain and negatively affected a water test taken at Elliott Memorial Park. Hilton continues: the Board of Health is asking if the Planning Board would be willing to control the keeping of livestock within the Lake District; we are seeking a remedy that would keep livestock, that may be polluting the lake, out of the interior of the three boundary roads (Lake Drive, Shore Drive and Lakeview Road) – the bowl with Lake Wyola at the bottom; the lake took a lot of runoff this year and we cannot consider these rains to be an anomaly. Lacy states that agriculture is allowed across the board in all districts; the bylaw, as written, is liberal; reads the limits into the record: "Except that on lots of less than five acres in the TC, LW, or RR districts, the keeping of more than three pigs or the operation of a fixed-site sawmill shall require a Special Permit from the Zoning Board of Appeals" (page 9 *Town of Shutesbury Zoning Bylaw*). Rotondi: is it livestock or is it poop, i.e. dogs? Bressler: we are talking about a small area. Bonnar: could the area be defined by a distance from the shoreline; the places further from the lake are less worrisome per Hilton. DeChiara notes the need to speak to the functionality. Lacy: we could back-off on agriculture in the Lake District to the State exemption. DeChiara: we could redefine agriculture and separate out animal husbandry because the concern is about animal waste. Lacy: in MA, with five acres, one can have an agricultural exemption. Bressler supports DeChiara's suggestion to redefine agriculture.

Bonnar: we could have a criterion that one's animals are not polluting the lake. Lacy: the Lake District is not the place for agriculture. Bressler: can the Lake Wyola Association (LWA) do something about this? Hilton: they do not have any actual power to impose restrictions. Hilton to Raymond's question: the State beach and the LWA beaches are tested weekly; occasionally the boat ramp area is tested. Rotondi: who would one call with a concern about a septic system failing in the Lake District? Hilton: the Board of Health enforces repair and can fine a property owner. Rotondi: is it a Board of Health matter if someone is concerned that pigs are contaminating the lake? Bressler: the area is so specific, it may be hard to write a bylaw. Hilton to DeChiara's question: the concern is recreational use and drinking water because some of the wells are shallow or are "below grade" wells; bacterial matter on the ground can get into the lake. DeChiara: the Board of Health is looking for assistance from the Planning Board on how to mitigate a potential problem? Hilton: yes, prevention. DeChiara: defining would help. Hilton: so far, despite some outbreaks, the Lake water quality is good. Raymond confirms with Hilton that there was one episode of bacterial contamination when pigs were present. Hilton: yes, it was localized at the Elliott Memorial Park. Raymond: what are the Board's specific requests? Hilton: the Board would not want livestock within the immediate Lake District. Bressler: the Board of Health has more power than a Planning Board bylaw; singling out an area will be upsetting and the Board of Health has regulatory control. Hilton: currently, there are no animals of concern and we do not want them to come back. Lacy suggests Hilton ask the Board of Health to define what specific animals/livestock are of concern. Hilton: we do not think any livestock should be kept around the lake. DeChiara: could keeping livestock in the Lake District be done by special permit? Rotondi: lot size is an issue, however, waterfront is really the issue; it is really distance to the water and what is appropriate. Bressler states that he understands the Board of Health's desire to codify, however, it is really a case by case basis. Lacy refers Hilton to MGL Chapter 40A Section 3, "Agricultural Exemption for Parcel of 5 Acres or More" and whether that may be an adequate substitution; we could exclude agriculture in the Lake District. Lacy continues: if there were a bylaw, support from the Planning Board, Board of Health and Conservation Commission would be of benefit. DeChiara supports Lacy's suggestion that there be no agriculture in the Lake District. Bonnar: there are areas of the Lake District that are peripheral; a bylaw would need to be written very carefully. DeChiara: could it be by site plan review? Lacy: the Watershed Protection Act has a 400' limit. Upon review of a lake area map, Hilton notes that 400' is too close. Lacy: the Planning Board cannot regulate more strictly than the State standard for drinking water. Bressler suggests that if the Planning Board takes care of 400', any activity outside the 400' limit is a Board of Health matter. Hilton: the Board of Health will confer on what we have discussed. Bonnar: the Planning Board will plan for this topic to be on January meeting agenda.

DeChiara moves and Bressler seconds a motion to approve the 10.15.18 meeting minutes; DeChiara, Bressler, Lacy, Raymond and Bonnar support the motion; Rotondi, absent for the 10.15.18 meeting, abstains; the minutes are approved as presented.

DeChiara moves and Raymond seconds a motion to approve the 11.5.18 meeting minutes; the minutes are unanimously approved as presented.

Lot O32 Study Update: Lacy to DeChiara's question: the Select Board will handle the project with assistance from Town Administrator Torres and himself; Torres will manage the contract and he will confer with the Conway School of Landscape Design and attend site visits; instead of a specific committee, relevant standing committees will be consulted as indicated; the expected start is sometime in March - April 2019.

Wheelock Solar Site Update: item not considered.

Possible Habitat for Humanity Construction: item not considered.

2019 Town Meeting Zoning Amendment Proposals: item not considered.

At 9:32pm, Bressler moves and Rotondi seconds a motion to adjourn the meeting; motion passes unanimously.

Documents and Other Items Used at the Meeting:

1. "Possible Use Table for Marijuana Establishments" by DeChiara

Respectfully submitted,
Linda Avis Scott
Land Use Clerk