

Shutesbury Planning Board Meeting Minutes  
March 11, 2019 Shutesbury Town Hall

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

Planning Board members absent: Linda Rotondi

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Town Counsel Donna MacNicol, Tom Williams/37 Carver Road, Don Wakoluk/Sustainable Cannabis Business Development Committee, Megan McDonough/Pioneer Valley Habitat for Humanity Executive Director

Bonnar calls the meeting to order at 7:02pm.

Pioneer Valley Habitat for Humanity Letter of Support: Bonnar refers to Section 8.3 Rural Siting Principles of the *Town of Shutesbury Zoning Bylaws*. Megan McDonough/Pioneer Valley Habitat for Humanity Executive Director (PVHH): because our organization does not yet own the land, we have yet to invest in site planning. McDonough, responding to the Rural Siting Principles: there are no known wetlands on the parcel that slopes up to West Pelham Road; the curb cut will require going through the stone wall that runs along the road – are there any other considerations for this stone wall? McDonough continues: there are no open fields, the parcel is currently forested with some mature and some small trees; the perc test pits are located in an open area; the plan is to locate the well to the rear and the septic system to right, left or front of the house; the driveway is not to be too steep or too long; it is not likely the structure will be multi-level – they are typically slab on grade as this is less expensive and easy to insulate; there are no known trails on the parcel; there is an opportunity for a vegetative buffer near the stone wall - enough trees will be cleared to avoid hazard tree removal in the future; whether or not solar panels are on the roof, enough land will be cleared to orient the house for solar. Lacy: the CPC voted to support the application. McDonough: Bruce Coldham, retired architect, has agreed to do a preliminary site plan so may be able to provide a sketch for town meeting; having the rural siting principles for guidance is helpful. Lacy has walked the site and confirms with McDonough that the plan is to build on the knoll; his concern is that the front of the site would be “blown out” therefore recommends less impact. McDonough: PVHH will want a gravity fed septic system. Lacy suggests the driveway could wind in an arc toward the house. McDonough: there is a balance between excavation costs and future plowing costs. DeChiara: the Planning Board took a position on the Building Committee’s Old Town Hall CPC project; could we take a position on the PVHH CPC warrant article? Lacy: the Board knew enough about the OTH project proposal to provide support; in this case, we are lacking a site plan. McDonough to DeChiara’s inquiry: if the funding is approved at annual town meeting, PVHH will work with the Select Board to create a Local Action Unit that will restrict the home as affordable housing into the future; PVHH does not want to rush into site planning and design before funding from the town is certain and the land is purchased; Coldham will provide a preliminary draft site plan. Bonnar: having a draft site plan before annual town meeting, will allow the Board to speak more knowledgeably in support of the plan. McDonough: is having affordable housing part of the town’s goals? Bonnar: yes, the Planning Board is in support of affordable housing; having a plan will help us to be better informed in our support.

Special Permit Public Hearing 3.25.19/Cell Tower Proposal: Tom Williams/37 Carver Road states that he is curious as to why the town is proceeding with this application because, on the face, the application appears to be invalid; there is no applicant, because as defined in the bylaw, the applicant needs to be a licensed telecommunications service provider and the applicant wants to be waived of this requirement. DeChiara notes that times have changed since the bylaw was written. Williams: per the bylaw, the applicant needs to have an FCC license to provide telecommunications. Town Counsel MacNicol: one, the special permit does not have an “off ramp” meaning the Planning Board has to act per Statute; the Board has to go through the process and hold the hearing. MacNicol to Lacy’s question: the basics of the special permit application are needed to go forward: payment of the fee, an abutter list and a completed application form which could be in the form of a letter with all the pertinent information. MacNicol: two, the bylaw has waiver provisions that do not specify what is to be waived – after the public hearing, the Planning Board can deny the permit if it is determined that not being a provider is significant and, three, the Telecommunications Act was revised when the industry changed and towers cannot be unreasonably denied and cannot be regulated to prevent construction; for these three reasons, the Board may have to deny and either amend the bylaw or the applicant may appeal; the Board can grant or deny after hearing all the facts. DeChiara: if the industry has changed and providers are not building towers, how does amending the bylaw affect the application? MacNicol: once the public hearing notice is given, the hearing is held and the special permit denied, the applicant cannot reapply for two years. Bonnar notes that on one occasion, Vertex said they would not build a tower until they had a provider. MacNicol to DeChiara’s question: if there is no waiver for the telecommunications provider requirement, the Board either denies the permit or amends the bylaw. MacNicol to Bonnar: the Board cannot grant a special permit with a condition that a provider be found; the Board does not want to write any conditions with criteria to be met later. Williams: this is an entity trying to make money; cell service provider companies want to make money and want to cover financially viable populations; the town wants cell service not towers; there is an empty cell tower in Buffam Road in Pelham that has been that way for five years; this application does not provide service to the town. Lacy notes and MacNicol concurs that there is no general waiver in the telecommunications section of the bylaw. Lacy reads Section 8.7-7 D into the record: “The applicant or co-applicant must be a telecommunications service provider or a tower construction company that holds a current contract with a telecommunications service provider for use of the tower to provide wireless telecommunications services to the public.” MacNicol: if the applicant does not have a telecommunication provider in hand, the Board will have to deny the permit. Williams: the point is that the bylaw asks for the license itself. Raymond: if the developer comes back with a provider contract, is there a limit to other contracts on the tower? DeChiara: the Board can encourage co-location. Williams to the Planning Board: please read the applicant’s language carefully; as a town, we have never rejected any cell tower applicant; the prior applicants decided on their own not to proceed. DeChiara: given this discussion, is the balloon test necessary? MacNicol: the applicant needs to follow the process; it will be fair to let them know that there is no waiver in the bylaw for not having a telecommunications provider contract. Lacy: the only waiver is for height. Weather permitting, the visual demonstration balloon test is scheduled for 3.17.19.

Lake Wyola Livestock Zoning Bylaw Amendment: The warrant article language prepared by Lacy is reviewed and approved by Town Counsel MacNicol. Next step, submit the warrant article to the Town Administrator to bring to the Select Board. MacNicol to Raymond's question: in the Lake District, a horse for riding purposes is prohibited; basically, the amendment states that no livestock is allowed in the Lake District unless one has five acres.

Waiver Provision/Solar Bylaw Amendment: MacNicol reviews and approves the warrant article prepared by Lacy who notes that the same waiver language will be included in the marijuana bylaw. Next step, submit the warrant article to the Town Administrator to bring to the Select Board. Bonnar: the required timing will be followed in order to hold a Planning Board public hearing for the proposed bylaw amendments in advance of town meeting.

Hemp Bylaw Proposal: DeChiara explains that the creation of a hemp bylaw evolved out of the Sustainable Cannabis Business Development Committee (SCBDC). Don Wakoluk/SCBDC: per the Mass Department of Agricultural Resources (MDAR), hemp is a protected agricultural practice and they advise not making unreasonable restrictions; the Planning Board can either regulate hemp growing with a bylaw or the SCBDC can educate about best practices; there will not be any open fields of hemp; so far he is the only one in town planning to grow hemp and he is willing to work with others; cross contamination is managed better with best management practices because if the hemp crop does not meet the less than .3% THC test, it must be destroyed therefore growers are motivated to use best management practices; as a Committee, the SCBDC is divided on whether education or a bylaw is best. MacNicol: hemp is an agricultural product therefore the Planning Board can only make reasonable regulations, i.e. site plan review without denying use as per the agricultural exemption in Chapter 40A Section 3; it is not reasonable to prohibit hemp growing in certain districts; the Board can reasonably regulate however cannot deny via site plan review. Raymond: Sanford Lewis/SCBDC recommended hemp growers inform others that hemp is being grown outdoors. Lacy: the purpose of zoning is to separate uses that are injurious to one another. MacNicol: if you pass a marijuana bylaw that states one cannot grow marijuana within a specified distance from a hemp grower, that could be considered a "taking" from the marijuana grower's property. MacNicol states that she sees no need for a hemp bylaw and the Board cannot create a marijuana bylaw that protects hemp; education is the way as it cannot be done via the law. DeChiara sites from section z.6 "Cultivation" from the "3.10.19 Draft Hemp Zoning Bylaw": "Applications for mixed gender hemp cultivation in excess of 12 plants will require local notification to all commercial marijuana and hemp growers and any residential growers known to the Town of Shutesbury within x miles of the proposed hemp operation prior to site plan review. In addition to obtaining Mass Department of Agricultural Resources licensing, the applicant shall provide the permit granting authority with a description of plans or strategies that will be deployed to prevent cross pollination with existing hemp or marijuana cultivation". MacNicol suggests an article in the town newsletter. Wakoluk to Bressler's question: to grow hemp, you have to register with MDAR who will do the testing; MDAR notifies the Police and Fire Departments and the Town Administrator of the hemp grower's contact information. Bressler: because there is a built-in notification mechanism, the information could migrate into the town newsletter; appreciates the need to know who is growing hemp. Lacy notes that per his contact with MDAR, the research is ongoing and MDAR does not officially recognize cross contamination as hemp may not contaminate to a degree worth worrying about; at this point, bylaws regulating hemp seem to be

creating more problems. DeChiara is willing to postpone consideration of a hemp bylaw and wait to see how the situation evolves. MacNicol: information and education can be provided at town meetings. DeChiara: the Planning Board could request the Select Board to ask the Town Administrator to post grower information on the town website. MacNicol: the Select Board could ask the Town Administrator, via a policy, to notify abutters. DeChiara will follow-up with the Select Board. Wakoluk suggests the Planning Board contact the Farm and Forestry Committee. Bonnar affirms the need for education.

Marijuana Bylaw Editing: Lacy to MacNicol's question about two permit granting authorities (PGA) on the use table: the Zoning Board of Appeals is the PGA for small discreet projects and the Planning Board is the PGA for larger projects, i.e. subdivisions. MacNicol notes the need to be consistent with "where children congregate" and that distances can be decreased. Bonnar: to what extent is the distance meaningful if it can be decreased? MacNicol: if a distance is not included in a local bylaw, the default is the Cannabis Control Commission regulation distance; farmers are going to be affected by facilities where children congregate; how many licensed day facilities are there and, if 500' is used, how many people might this effect? Lacy suggests leaving the distance at 500' and the use the waiver provision. MacNicol: there has to be a rational basis for and consistency in granting a waiver. Distances are considered. Bressler: why did the state choose 500' as the default; the distance relative to where children congregate should be farther than that for a residence. Bonnar suggests 250' for Section x.4.B and 125' for Section x.4.C. Raymond notes that "State-approved day care center" was eliminated from Section x.4.B. MacNicol restates that if the Board does not specify, the State regulation of 500' applies; 500' stems from liquor license laws. Raymond suggests 100' for all. Bressler recommends 250' for B and 125' for C. MacNicol, noting the rural character of Shutesbury: if you are going to allow cultivation/production close to a residence, the Board will need to address the matters of water usage, solid waste disposal, and odor. Wakoluk: the host agreement will consider these matters. MacNicol: the State is not going to look at potential effects on the aquifer and nearby wells; the distance issue is not only relative to children. Wakoluk: many modern grow facilities use water 24 hours/day. MacNicol: hydroponic growing is included in the host agreement. DeChiara refers to the function of the use table relative to tiers. Lacy refers to current setbacks. The draft use table is reviewed. Wakoluk: during the 2018 annual town meeting, tiers 1&2 were recommended as these are small businesses; the Board needs to support the small grows and think about the impact of a medium grow. MacNicol: the Board may consider the different tiers and whether or not they are closed loop, i.e. recycling water. DeChiara: a closed loop provision could be included in Section x.5 "Water Management and Efficiency". MacNicol: this area needs further discussion – does the Board control water usage by distance, by tier, and/or if they are closed loop or not. Bonnar notes that the proposed marijuana bylaw may not be ready in time for annual town meeting. Lacy suggests and DeChiara agrees to work on a next level draft. Bressler: as per MacNicol's suggestion, the Board could create a three-tier matrix to address water usage. MacNicol suggests adding solid waste disposal/waste management to Section x as this needs to be addressed due to the regulations; Section x.5 I "Driveways and Parking Lots" is too vague. DeChiara reads the deleted portion of this section into the record: "No such premises shall have any driveway or exit for motor vehicles within five hundred feet of the property used by any school, public library, or church or other location where children congregate. It is noted that Section 8.2 of the *Town of Shutesbury Zoning Bylaw* addresses parking. MacNicol suggests looking at towns who have parking regulations that use a square foot measure. Lacy: on a basic

level, does the Board want retail anywhere in Shutesbury? MacNicol recommends more discussion about Section x.5 O “Hours of Operation”. MacNicol, referring to the Cannabis Control Commission regulations: regarding retailer limits, the Planning Board needs to check with the Select Board to see how many liquor licenses the town is permitted to give out. Lacy: can any of the marijuana establishments be a customary or major home occupation? MacNicol: yes, the Board could add “home occupations” that comply with this section of the bylaw; referring to the proposed use table “tier one, special permit home occupation” - small cultivation in a small greenhouse on a property with a home would be two principal uses on one lot which cannot be done, the “use” would need to be a home occupation.

Wakoluk: any grower who wants a license needs to adapt their standards to the bylaw. Lacy moves the Planning Board, via the use table, indicate that there will be no retail marijuana establishments in any district including the Town Center at this time; Aaron seconds the motion. DeChiara appreciates Lacy’s observation about the potential for congestion with a retail establishment in the town center, however, a retail business could be a way to create a commercial tax base therefore this seems like an inconsistent argument. Bressler sees Lacy’s recommendation as way to simplify regulation for the time being. Vote: Bressler, Aaron, Lacy, Bonnar and Raymond support the motion; DeChiara does not; motion carries.

Planning Board 2.25.19 Meeting Minutes: DeChiara moves and Lacy seconds a motion to approve the 2.25.19 meeting minutes as amended; motion passes unanimously.

Building Committee CPA Project Letter of Support: Aaron moves the Planning Board approve the 2.26.19 letter, to be signed by Bonnar, in support of the Building Committee Old Town Hall application for \$38,000 in CPA funds; motion is seconded by Bressler and passes unanimously.

At 9:49pm, Bressler moves and DeChiara seconds a motion to adjourn the meeting; motion passes unanimously.

Documents and Other Items Used at the Meeting:

1. *Town of Shutesbury Zoning Bylaw*
2. “Proposed Zoning Bylaw Changes for the Keeping of Livestock Within 400 Feet of Lake Wyola”
3. “Proposed Zoning Bylaw Changes to Section 8.10 Ground-Mounted Solar Electric Installations”
4. 3.10.19 “Draft Hemp Zoning Bylaw”
5. “Proposed Use Table”
6. 2.25.19 “Draft Marijuana Zoning Bylaw”
7. 2.25.19 letter to the Community Preservation Committee

Respectfully submitted,  
Linda Avis Scott  
Land Use Clerk