

CHAPTER

7

LAND USE AND ZONING

As a hill town in Eastern Franklin County, Shutesbury's historically rural development patterns have been strongly tied to its topography. With elevations over 1,000 feet, Shutesbury's cooler climate and poorer soil conditions did not support intensive agriculture, which provided communities within the Connecticut River floodplain a foundation for larger populations. From the late 1700s through the 1800s, Shutesbury's upland terrain provided conditions suitable for mills and wood production. Streams, brooks, and ponds, carrying water that flowed off the highland divide between the Connecticut and Swift River basins provided power for sawmills and corn mills. The town's forests helped to fuel these local mills as well as others in Greenfield. Shutesbury was the County's highest producer of broom handles in 1845.

Shutesbury is still a town of forests, which cover 90 percent of its total land area. Many of these 15,592 forested acres are owned and managed for privacy, recreation, forest products, and for wildlife habitat and observation. Overall, 37 percent of this forest is owned by the Commonwealth of Massachusetts, under the management of the Department of Conservation and Recreation, as a water supply resource and as state forest, and will remain protected from development as long as it is needed for these purposes. Other forested lands in the southwestern portion of town provide recharge to Atkin's Reservoir, a water supply source of the Town of Amherst.

The forests in Shutesbury are uniquely unfragmented. Large areas of contiguous forest contribute to the rural character of Shutesbury and have attracted people to call the town home. Shutesbury's woodlands provide forest products that support the regional economy. Forests provide residents what they highly value: peace and quiet, clean air and drinking water, lower housing density, walking and hiking trails, rural character and wildlife habitat, according to the results of the Town Plan Survey.

All of these forests, when viewed within a regional context, provide populations of large mammals like moose, deer, bobcat, beaver, and fisher room to roam. This landscape-scale characteristic is largely absent from most communities straddling Rte. 495 in eastern Massachusetts. Shutesbury's forests may help to buffer the already largely contiguous forest blocks of the Quabbin Reservoir Watershed. A loss of forest in Shutesbury and other towns surrounding the reservoir, could translate into a reduction in the region's capacity to provide for wildlife with large home ranges. What makes Shutesbury so special is also what is most at risk from rapid, unplanned development.

The purpose of the Land Use and Zoning chapter is to identify which zoning and non-zoning strategies would be most appropriately applied to ensure that future development patterns support the community's goals. The Land Use and Zoning chapter opens with a review of

land use patterns and development trends in Shutesbury that are described in more detail in the Natural Resources and Open Space chapter of the Master Plan. The Land Use and Zoning Goals and Objectives describe what the Master Planning Committee considers to be the best strategies to consider towards impacting how future development occurs in town. Following this is a review of Shutesbury's current Zoning By-Law. Potential Land Use and Zoning Recommendations follow a brief discussion of Shutesbury's Potential Future Land Use Patterns. The recommendations will identify potential zoning by-law amendments and non-zoning strategies designed to direct future land uses and growth in Shutesbury. This chapter will also include a Potential Future Zoning Map.

Current Land Use Patterns in Shutesbury Reviewed

The current land use patterns in Shutesbury greatly reflect its recent history and follow historic land use trends in the region. Like other upland hill town communities in the region, Shutesbury's population experienced a decline in residents from the early 1800s to the early to mid-1900s followed by a subsequently rapid increase to present day. A large in-migration of new residents seeking good schools and nearby job opportunities caused Shutesbury's growth to skyrocket between 1970 and 2000.

The following bulleted points reflect Shutesbury's land use, population, and development trends over the past thirty years:

- **Shutesbury experienced a high population growth rate 1970-2000.** Between 1970 and 2000, the town's population grew from 489 to 1,810 residents (U.S. Census), which is an increase of 270 percent over 30 years.
- **The number of homes increased by 271 in twenty years.** Between 1980 and 2000, housing demand encouraged the construction of 271 new housing units, an increase of 51 percent. Long undeveloped stretches of major roads made development along them easy.
- **Overall, 618 acres of forest were converted to house lots in thirty years.** The main change to land use during the period 1971 to 2002 was a gain of 533 acres in single-family homes and a loss of 618 acres of forest. This occurred mainly along existing public roads.
- **Most of the new development has occurred outside of the historic village areas and on roadside lots.** In the decade between 1993 and 2002, building permits were issued for seventy-two new dwelling units and more than half of these were on Wendell, Montague and Pratt Corner, Pelham Hill and Locks Pond Roads. This is equal to a yearly increase in dwelling units of around 1 percent.
- **Household size is increasing.** Shutesbury experienced a slight increase in average household size during the 1990s. In comparison, the average household size declined 4 percent in Franklin County and 3 percent across the State.

- **Households with children increased 20 percent in the 1990s.** During the 1990s, the number of households in Shutesbury with children under 18 grew by 20 percent, while in Franklin County overall, the number of these households decreased by 3 percent.
- **Most development is in ANR lots.** The dominant development pattern in town is single-family homes on approval-not-required (ANR) frontage lots. Overall, 93 percent of Shutesbury's housing is in single-family homes.
- **A few small subdivisions have been built in town, all are on private roads, and two include protected open space: Round Hills and the Old Peach Orchard (Old Orchard Road).**
- **The conversion of half the units around Lake Wyola from seasonal to year-round use is possible.** A large concentration of single-family homes exists around Lake Wyola on private roads. It is estimated that approximately half the homes are now used as year-round residences and the other half are family vacation homes. It is suspected that vacation homes will slowly convert to year-round use in the coming years.
- **Shutesbury has more older working professionals.** In 2000, Shutesbury had a higher percentage of people ages 45-64 than Franklin County or Massachusetts overall.
- **Growth over the next twenty-five years is projected to slow to 44 percent.** Shutesbury's population is projected (by FRCOG) to increase by 44 percent between 2000 and 2025 adding approximately 800 people in up to 320 new dwelling units assuming household size remains constant.
- **Based on the assumptions of a maximum build-out analysis, Shutesbury's current zoning could eventually allow up to 10,000 more people to live in town.** The results of the build-out analysis show the potential for five times as many dwelling units as existed in 2000, and almost ten thousand more people given current zoning and the existing amount of protected land. However, this figure assumes that all backland will be developed as ten-acre subdivisions despite current constraints due to soils, slope, and depth to groundwater.

A continuation of the current pattern of development would entail more frontage lots of single-family homes until all of the lands without constraints were developed. Without any more open space protection, this could result in the loss of recreational access to backland forests. Too much access to backland forests could result in overuse and in a reduction of the habitat values associated with forests. Further development pressures might open up backland forest to more development in the form of subdivisions. Were this level of development to occur, many of the values attributed to forests and to the town by residents would be changed forever.

Shutesbury's protection of undeveloped areas is one way in which the community has demonstrated its commitment to preserving its open spaces, natural resources, and rural characteristics and landscapes. Fortunately, the eastern third of the town is protected by the Department of Conservation and Recreation, Division of Water Supply Protection (formerly the Metropolitan District Commission (MDC)), but the remaining land is vulnerable to development. Within these areas, there are over six thousand acres of land in the Chapter 61 Program, mostly owned by W.D. Cows, which together provide access to a network of trails, and which contain BioMap Core habitats for rare species, prime forestland soils, aquifers, and potential future water supply areas. Conserving these open space areas is a prime directive of the Town Plan Survey results.

Zoning provides one means for Shutesbury to conserve these important town features while encouraging development and land uses in a manner that agrees with the community's values and its vision for the future. The town's zoning by-law is summarized in this chapter. The summary description of the zoning by-law is intended to clarify for the reader how the existing zoning promotes the community's vision and goals, and whether by-law changes may be needed to discourage patterns of development that do not support the goals of the town as expressed in the Master Plan Goals and Objectives.

Land Use and Zoning Goals and Objectives

The Land Use and Zoning goals were developed and approved by the Master Planning Committee in January 2002. The draft objectives have been developed through a careful review of the recommendations presented in the previous chapters of the Master Plan. The Land Use and Zoning chapter represents a synthesis of the work presented in earlier chapters, and an evaluation of the ways that Shutesbury's current land use and zoning policies could be revised to better support the town's goals and vision for its future.

Goal A: To protect the rural character and working landscapes of Shutesbury, while allowing landowners to develop suitable portions of their land.

Objectives:

- Design a draft Forest Conservation Overlay District, for the purpose of conserving forests and their wildlife habitat, forest products, and recreational values.
- Determine which critical resource areas would be best protected through the acquisition of conservation easements or lands in fee, and which would be best protected by a Forest Conservation Overlay District that could have conservation development design as the by-right development option.
- Continue to plan, develop, and maintain trail linkages over land and water to enhance the recreational experiences of residents. Trail systems should be designed to prevent over-development, which would lead to impairment of the values the Town Plan Survey indicates are desirable.

- Develop a roadside fence by-law that allows for review of proposed tall fences that block viewsheds and scenic lands and may create road visibility issues.

Goal B: To protect the Town's natural resources and open space through appropriate zoning and subdivision measures.

Objectives:

- Design a draft Water Supply Protection Overlay District to protect current and ground and surface water supplies.
- Identify areas in Shutesbury that might be prioritized for town-acquisition to protect potential future water supplies (areas of undeveloped forest atop estimated low to medium-yield aquifers) from development.
- Ensure that all town policies reflect the use of best management practices for the purpose of protecting against groundwater contamination.
- Organize resources and develop methods for maximizing the town's effectiveness in protecting parcels of land that contain priority values as described in the Natural Resources and Open Space Chapter's recommendations, such as re-establishing annual contributions from tax revenues to a Chapter 61 land purchase program managed by the town as a whole.
- Revise the existing town by-law to prohibit the storing of more than two, non-registered vehicles on land under one ownership as a means of protecting groundwater from contamination and provide an enforcement provision with exceptions as described in a Major Home Occupation by-law.
- Adopt the Community Preservation Act.

Goal C: To encourage small business development in a manner that does not reduce residents' quality of life.

Objectives:

- Encourage entrepreneurship and business development in Shutesbury through zoning.
- Investigate the need for a local small-business support space in town.
- Include a small business support center within a new public library.
- Continue to advocate for advanced telecommunications broadband services to be made available in the community.

- Determine the potential for developing business ventures that would create revenue for the Town, by leasing municipally owned land, by municipal ownership and operation, or by private sector contribution to the tax base.
- Allow home businesses to build structures or facilities that may not completely resemble residential structures as long as they do not detract from the nature of the neighborhood. This could increase the amount of taxable property without incurring a lot of additional municipal services.

Goal D: To develop a system of land-use controls, which will best manage the acceptance of new development in the community.

Objectives:

- Identify the parts of town that may be the most suitable for new housing development.
- Identify suitable areas for affordable housing for seniors at an appropriate scale for the community.
- Promote a diversity of housing choices that will meet the needs of current and projected future residents.
- Revise the zoning by-laws to encourage more housing options for seniors, including accessory apartments and senior housing.
- Revise the zoning by-laws to include overlay districts that protect sensitive environmental, scenic, and historic areas from residential development patterns that could be detrimental to these assets.
- Consider adding a Town Center District that would encourage development consistent with existing patterns, and which could potentially allow appropriately scaled commercial uses desired by the community (home businesses, bed & breakfast, arts & crafts, dentist/doctor/veterinarian, restaurant/coffee shop, gas station (bio-diesel station)/convenience store).

Current Zoning Districts and Zoning Regulations

Zoning districts and zoning regulations affect the character of a community and how the community develops and grows over time. The Town of Shutesbury established its zoning code in 1972, and has made a number of revisions and amendments to the code over the past thirty-two years. Shutesbury’s zoning by-law, and its guidance on the permitted and prohibited land uses in town, the minimum lot sizes and setbacks, and the special regulations,

have influenced the development patterns in the community during the past three decades, and have played a role in the land use trends and changes that were discussed in the last section. The zoning by-laws will also affect the way the town develops in coming decades, as is discussed in a section of this chapter, Potential Future Development Patterns.

Purpose of Zoning

Shutesbury's zoning should reflect and promote the community's vision for itself. Shutesbury's Vision Statement for the Year 2020, which was developed by the Town Plan Committee in January 2002 as part of the Master Plan Goals and Objectives is included below with several key concepts relating to zoning and land use in bold italics:

Shutesbury is a community whose members are united by the manner in which they care for their environment and for each other. *Residents seek to enhance their own lives by protecting what they value most about Shutesbury's rural character and by developing creative ways to ensure the provision of quality community-wide services.*

Shutesbury residents value their natural environment. *Expansive areas of forest linking the Quabbin lands to large blocks of open space, all permanently protected from development, provide a network for hiking, non-motorized biking, and walking throughout town.* The forests also tend to have a moderating effect keeping temperatures slightly cooler in the heat of summer than down in the valley. Community volunteers monitor the quality of all water bodies, wetlands, and certified vernal pools annually.

Although people continue to move to Shutesbury because it is so attractive, *the numbers, locations, and types of housing are restricted to clusters of small lots, and large lots with plenty of frontage.* This keeps the number of new lots being developed thankfully far behind the number of acres the community is protecting. However, because Shutesbury residents value diversity, the town has *promoted the limited development of federally subsidized housing for first-time homebuyers and the elderly.* Shutesbury has *two elderly housing developments built using existing historic structures.*

Locks Village, the most densely populated portion of town is among the few areas of Shutesbury with municipal water and sewer. Several neighborhood treatment facilities process wastewater and village wells are an efficient and cost effective way of ensuring the supply of clean drinking water.

One of the most active organizations in Town is the Shutesbury Recreation Commission. Beyond the traditional holiday events that every town has, the Shutesbury Rec. Commission provides monthly recreational events from movies, to food festivals, and arts fairs, and for the whole family. The Commission has also developed additional areas used as sports fields and picnic areas. Adventure and environmental education is another of the Commission's specialties using the expertise of many community members. Shutesbury just seems to attract people who care about the environment.

Shutesbury residents have worked hard to integrate the protection of their historic buildings, important scenic view sheds, and landscapes by making sure that new economic development pays to sustain these resources. Some of *the community's most historic structures have been reused and maintained by expanding home businesses.* The town's *efforts to assist*

forestry and agricultural businesses to succeed, has benefited the community by keeping working landscapes undeveloped.

One way Shutesbury has encouraged local economic development is by lobbying companies to ***build high speed Internet and telecommunications infrastructure without reducing the local aesthetics***. As a result, the ***number of successful small home businesses has increased steadily causing a reduction in residents' commuting time, and a higher level of dependency on the local market, café, and fuel station***. Thankfully, Shutesbury realized the need for building a constituency for public transit so that now, many residents take advantage of the inexpensive electric bus fares.

Shutesbury residents pay property taxes that are on par with surrounding communities.

However, as any resident will tell you, the level of community services provided is excellent. The award winning elementary school, full time police and fire departments, well-staffed and equipped highway departments, and modern town offices are hard won benefits resulting from residents choosing the services they need, developing revenues sources beyond residential property taxes, and from implementing an aggressive land protection program.

Shutesbury is a vibrant yet rural, small-town community with top-notch services.

Another set of concepts that may be used to assess whether the town's current by-law effectively promotes public benefits and purposes common to many communities can be found described under "Public Purposes" of the Third Iteration, or draft, of the Massachusetts Land Use Reform Act (MLURA), Section 2b. Although the public purposes section of the MLURA (which follows) could potentially apply to zoning across the Commonwealth, many of the values listed below appear to be consistent with the Master Plan Goals and Objectives (*italics mine*):

(b) Public Purposes

Cities and towns have authority to adopt zoning ordinances and by-laws for the protection of the public health, safety, and general welfare. Cities and towns have authority to advance some or all of the zoning applications listed below and may advance other zoning applications not so listed as they deem appropriate.

- (1) Implementation of a plan adopted by the city or town under section 81D of chapter 41.
- (2) *Orderly and sustainable growth, development, conservation and preservation which promote the types, patterns and intensities of land use contained in a plan adopted by the city or town under section 81D of chapter 41;*
- (3) *The efficient, fair and timely review of development proposals, including standardized procedures for administration of zoning ordinances or by-laws.*
- (4) *The efficient resolution of planning and regulatory conflicts involving public and private interests.*
- (5) *The use of innovative development regulations and techniques such as development agreements, development impact fees, design review, inter-municipal transfers of*

development rights, agricultural zoning, inclusionary housing, mediation and dispute resolution, and urban growth boundaries.

- (6) To *balance and delineate urban and rural development*.
- (7) The achievement of a *balance of housing choices*, types and opportunities for all income levels and groups, including the preservation of existing housing stock, and the *preservation of affordability in housing*.
- (8) The *integration of residential with commercial*, civic, cultural, recreational and other compatible land uses at locations that *reduce dependence upon the private automobile*.
- (9) The adequate provision and distribution of educational, health, cultural and recreational facilities.
- (10) The *preservation or enhancement of community amenities* or features of significant architectural, historical, cultural, visual, aesthetic, scenic or archaeological interest.
- (11) The *protection of the environment and the conservation of natural resources*, including those qualities of the environment and natural resources set forth in Article 97 of the Massachusetts constitution.
- (12) The *retention of open land for agricultural production, forest products*, horticulture, aquaculture, tourism, outdoor recreation, and fresh and marine fisheries.
- (13) The *protection of public investment in infrastructure* systems.
- (14) An *energy efficient, convenient and safe transportation infrastructure* with as wide a choice of modes as practical, including, wherever possible, maximal access to public transit systems and non-motorized modes.
- (15) *Efficiency in energy usage and the reduction of pollution* from energy generation, including the *promotion of renewable energy sources* and associated technologies.
- (16) The *adequate provision of employment opportunities* within the city or town and the region including redevelopment of pre-existing sites, *home-based occupations, sustainable natural-resource-based occupations, and housing to support the employment opportunities* within the city or town and the region.
- (17) The conservation of the value of land and buildings, including the prevention of blight and the rehabilitation of blighted areas.
- (18) The *accommodation of regional growth in a fair, equitable and sustainable manner* among municipalities, including coordination of land uses with contiguous municipalities, other municipalities, the state, and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on other municipalities.
- (19) The Implementation of a plan adopted by a regional planning agency under section 5 of chapter 40B.

Shutesbury's Zoning By-law Explained

The Town of Shutesbury's Zoning By-law (as of 2003) is thirty-one pages with two amendments attached at the back of the by-law for a total of thirty-nine pages. There are seven sections, plus the two amendments. There is no table of contents. The seven sections and two amendments are:

Section I: Purpose and General Regulations

Section II: Establishment of a Zoning District and Use Regulations

Section III: Special Regulations

Section IV: Dimensional Requirements for Lots

Section V: Enforcement and Administration

Section VI: Driveways and Curb Cuts

Section VII: Definitions

“Back Lots with Open Space Setaside” amendment to Shutesbury Zoning By-laws

Shutesbury Telecommunications Tower By-Law

Section 1: Purpose and General Regulations

The section “A. Purpose” of the by-law is to “promote the health, safety, convenience and general welfare of the inhabitants of the Town of Shutesbury.” Further, “to protect the community, to encourage the most appropriate use of land and to promote sound growth,” the by-law seeks to regulate land use and the “construction, alteration, size, location, and use” of buildings and structures in town.

The “Basic Requirements” state that any building or structure that is modified or built, as well as every new use of land has to conform to the by-law. It also notes that any use not mentioned in the by-law should be considered as prohibited and that an ANR plan filed prior to May 7, 1988 only has to comply with the zoning by-law in existence the day before.

Similarly, “Non-Conforming Uses” states that a legal use of a building or land at the time of an amendment to the by-law can continue without needing to conform to the amendment. The by-law continues that outside of a single-family or two-family house, a non-conforming use cannot be modified without getting a permit from the Board of Appeals.

On pages two through five, the by-law graphically describes how changes can be made by right to a single or two-family house. It is shown that changes are allowed by right within the setback areas if they do not result in any reduction of the distances between the structure and the lot lines. As well, the tallest part of the alteration cannot be higher than the existing building. The first section finishes with two points: 1) A non-conforming use that is abandoned for two years can not be re-established without complying with zoning; and, 2) A non-conforming use destroyed by fire can be rebuilt within three years as long as it is not bigger.

Section II: Establishment of a Zoning District and Use Regulations

This section begins by stating that the entire town is designated as a Rural Residential District. It then describes the uses that are allowed by right (without the need of a special permit), which include:

- Single and two-family dwellings, provided that the sanitary infrastructure, off-street parking, and structure meets minimum state and local standards;
- Private and / or for-profit farm and forest-based uses as long as any retail sales deal with mostly site-grown goods and are located far back from the road;
- Governmental, educational, religious, or other non-profit institutional uses;
- Conservation land for water, water supply, plants, and wildlife; and,
- Accessory uses.

Accessory uses including home occupations, fenced swimming pools, room rentals, and uses that involve assembly work, crafts, art, or light manufacturing by residents, are acceptable as long as they could be considered as incidental to uses that are already allowed (*see above bullets*) and that they are not “detrimental” to a residential neighborhood. The accessory use would need to have the following characteristics to be allowed: 1) Not visible from the outside and no merchandise on display; 2) No more than five non-family employees; 3) Adequate parking exists; and, 4) It preserves the “residential character” of the neighborhood.

The last part of this section, “Uses Which May be Allowed,” begins by describing the protocol that must be followed to apply for a permit from the Zoning Board of Appeals. It also states that uses that cause undue traffic congestion or land erosion, or appear to be hazardous, injurious, noxious, detrimental or offensive are expressly prohibited. This is then followed by a numbered list of the sixteen uses, which require a special permit from the Board of Appeals. These uses center on recreation, child care, elder care, health care, pet care, hair care, utilities, tourism and hospitality, conversion of pre-1972 homes to two-families, other retail and consumer services, scientific research, and commercial camping with conditions.

Section III: Special Regulations

In this section, the by-law includes regulations for signs, parking, and rate of development. It also lists uses that are prohibited. The sign regulations list the characteristics of signs that are allowed in town: number per family, business, or per type of use; size in square feet; height from ground; design; materials used; level of motion employed. The parking regulations state that each parcel of land with a need must have at least two, off-street parking spaces with adequate on-site stormwater disposal. The prohibited uses can be summarized into several main categories:

- 1) More than one principal use on any one lot;
- 2) Use of a trailer or mobile home as a dwelling with listed exceptions;
- 3) Trailer or mobile home park;
- 4) Deep basement dwellings;
- 5) Commercial junk or refuse yards;
- 6) Hazardous signs or floodlights;

- 7) Shrinking a lot below minimum requirements for a principal use; and,
- 8) Multi-family housing with more than two dwelling units.

The “Townwide Rate of Development” sub-section is the final part of Section III. Its purpose is to: encourage annual residential growth consistent with the average annual rate experienced between 1996-2001; schedule new development to allow the town to provide basic public services, while preserving and enhancing the town’s rural character, its safety, health, and property values; and, ensure an equitable distribution of permits.

In general, this regulation states that building permits will only be issued for six new dwelling units in each year from 2002-2006 based on a set of procedures:

- Only one dwelling unit-permit can be applied per person/entity, per month;
- The timing of permit issuance is the last day of the week that the Franklin County Cooperative Inspection Program offices are open in order of submission;
- One or more permits may be issued per week; and,
- Affordable units proposed by a public, state or federally subsidized agencies are both exempted from this regulation and count towards the maximum of six permits to be issued per year.

Section IV: Dimensional Requirements for Lots

Lot dimensional requirements for both single-family dwellings and two-family dwellings are listed in Table 7-1 below.

Table 7-1: Dimensional Requirements for Lots in Shutesbury

Structure	Min. Lot Size(sq. ft.)	Frontage (ft.)	Side and Rear Yards (ft.)	Front Yard	Width of Lot *
Single-family	90,000	250	25	75	50
Two-family	180,000	500	25	75	50

Source: Shutesbury Zoning By-Law; 2003. Note: * In an area of the lot between frontage and the dwelling. In situations where an application is made to change an existing use (e.g. conversion of a one-family to a two-family dwelling), the MGL Ch. 40, Section 6 apply.

Section V: Enforcement and Administration

This section describes how the by-law is intended to be enforced, the legal requirements associated with building permits, and the establishment and activities of the Board of Appeals. This section states that the by-law is enforceable by the Building Inspector and that, “No building or structure shall be erected, altered or moved and no major use of land or building shall be commenced unless a building permit has been issued by the Building Inspector.” With each permit application, a plan must be filed with the Inspector that shows the lot, its location, and its adherence to dimensional and sanitary requirements.

The by-law lists the Building Inspector’s basic requirements and enforcement options:

- 1) Substantial construction must start within six months of permit issuance and continue towards completion;
- 2) Each permit is valid for two years only;

- 3) By-law violators may be fined up to \$300 per offense per day;
- 4) Notice of offence must be delivered by Inspector or by registered or certified mail; and,
- 5) Other enforcement options as included in MGL Ch. 40A, Section 7 and, Chapter 40, Section 21D.

Table 7-2: Officials and Agencies Required to Sign Off on a Permit Application in Shutesbury and Their Associated Legal Requirements

Agencies or Officials from which signatures are typically required	Legal Requirements
Conservation Commission	Massachusetts Wetlands Protection Act Any local wetland by-laws and related regulations
Board of Health	State Sanitary Code Any local Board of Health regulation
Fire Department	Safe and appropriate smoke detection system
Building Inspector	Driveway regulations and curb cut provisions in Section VII of by-laws; Zoning By-laws; State Building Code and any other legal requirements not specified above

Source: Shutesbury Zoning By-Law; 2003.

In addition, the by-law states that all applications for building permits need to document the compliance of agencies or officials, via their signatures, unless the Inspector has received a written indication that a particular signature is not required or, he/she may decide that a signature is not necessary for a minor remodeling project. The officials and agencies that need to sign off on a permit application are in the left column and their associated legal requirements are in the right-hand column.

Other enforceable sanitary requirements listed in this section include: 1) Building permits will not be issued for the new buildings that need drinking water unless they have access to a public or private water supply system or well; and, 2) A sewage disposal permit by the Board of Health must be acquired before a building permit can be issued.

A sub-section establishes a Board of Appeals and stipulates its form, purpose, and the provisions for Appeals, and for the granting of Special Permits and Variances. The by-law states that the Board should hear and decide an appeal presented by a person who has been unable to obtain a permit from any administrative official or board or by any decision of a town entity in violation of Ch. 40A (the Zoning Act) or of the by-law.

Other than hearing appeals, the by-law describes the actions of the Board of Appeals involving the granting of Special Permits and Variances, and lists requirements of each and the sections of the Zoning Act that govern the former.

Special permits are governed by MGL, Ch 40A, section 6 and 9. Section 6 allows that a special permit for the alteration or extension of a pre-existing, non-conforming use may be allowed if the Board of Appeals finds that the alteration would not be substantially more detrimental than the existing structure to the neighborhood. Special permits must be granted if the non-conforming, pre-existing use is a single- or two-family structure and the extension does not increase the non-conforming nature of the structure.

Section 9 covers other special permits that deal with new structures or uses or both, that require it to be in harmony with the general purpose and intent of the by-law (*see Purpose*). Special permits can impose conditions and safeguards and limitations on time or use. For example, a special permit will lapse in two years from the date it is granted by the Board of Appeals, unless a substantial use has begun or construction has started. Accessory uses to an allowable use can be granted a special permit if it does not substantially detract from the public good. Other allowances for the granting of a special permit are stipulated that ensure that it reflects the purposes of the zoning by-law.

The by-law also includes a provision that the Board of Appeals can allow a variance from the terms of the by-law when strict adherence to the by-laws would result in an unnecessary hardship, as long as the action was not contrary to public interest. The by-law describes the administrative procedures and requirements for granting a variance, and the responsibility of the applicant to demonstrate a compelling argument for relief.

Two final administrative sub-sections describe how the by-laws can be amended (at any annual or special town meeting) and the terms of validity, which stipulate that this by-law is valid even if it imposes a greater restriction than other by-laws, and if any one part of the by-law is held invalid, the remainder continues in full force.

Section VI: Driveways and Curb Cuts

This sub-section of the by-law includes the regulation of driveways in regards to: when they need to be designed and constructed in relation to permit approval; driveway location spatially, relative to the lot; grade to and from the street line; width; and drainage. The by-law also stipulates the conditions that would require, and trigger issuance of, a special permit for the creation of a new road or driveway—for a private road or driveway that abuts a town maintained public way. In addition the by-law states: 1) The Building Inspector must either issue the permit within forty days or communicate a denial of the permit in writing; 2) A permit is required from the Highway Superintendent only, if the curb cut is for an agricultural, forestry, or other use not involving construction; and, 3) The applicant must submit to the granting authority a scaled drawing containing all required information, some of which is listed in the by-law.

This section also includes requirements for Common Driveways. The by-law states that a common driveway must be contained within, and can connect, up to four lots, which all must meet frontage requirements. A special permit is required from the Board of Appeals to develop a common driveway and as a part of the permit process the applicant must provide evidence and guarantees that it will be constructed to high standards and be maintained in perpetuity in an equitable manner by the parties being served.

Section VII: Definitions

This section of the by-law provides brief definitions for each of the following terms:

Accessory Use or Building, Building, Common Driveway, One-Family Dwelling, Two-Family Dwelling, Family, Farm, Frontage, Habitable Floor Area, Junk Yard, Lot, Signs, Street, Structure, Trailer or Mobile Home, Variance, Front Yard, and, Substantial Start of Construction.

“Back Lots with Open Space Setaside” amendment to Shutesbury Zoning By-laws

The Back lots with Open Space Setaside (BOSS) by-law has six sub-sections: Purpose, Eligible Parcels, General Description, General Requirements (which go into detailed requirements), Common Driveway Standards, and Conservation Restriction Requirements.

The purpose of the BOSS by-law is to:

- Encourage efficient use of land with new residential development;
- Increase opportunities for open space protection for agriculture and forestry;
- Preserve scenic qualities of Shutesbury; and,
- Protect and enhance property values by providing landowners the opportunity to design and create appropriate ownership, use, and development patterns that are amenable to public approval.

An owner or developer with contiguous parcels of land, which comply with ANR development requirements and which may also be separated by a public way if they are under the same ownership, can request a special permit from the Planning Board to create back lots that:

- Are each a minimum of 90,000 sq. ft. in area;
- Have no, or a reduced, roadway frontage;
- Are accessible from a public way via a deeded right-of-way across land of others, which will be a common driveway serving up to 4 back lots; and,
- If more than one, will be developed to be compact.

The by-law requires the applicant to place a conservation restriction on the same number of ANR lots, each having a minimum of 90,000 sq. ft. in area and 250 ft. of lot frontage, for each back lot created. The ANR lots created must be contiguous and have a minimum 200 ft. depth measured from the centerline of the road, which can be modified to compensate for site characteristics at the Planning Board’s discretion. This section of the by-law lists even more detailed requirements of a special permit by the Planning Board in accord with the BOSS by-law including criteria to be met by a BOSS proposal, common driveway standards, and conservation restriction requirements.

“Shutesbury Telecommunications Tower By-Law” amendment to Shutesbury Zoning By-laws

This amendment to the zoning by-law includes nine sub-sections: 1) Purpose and Goals, 2) Definitions, 3) Exemptions, 4) General Guidelines, 5) Siting and Height Requirements, 6) Design Requirements, 7) Application Process, 8) Approval, and 9) Conditions of Use.

The purpose of the Telecommunications Tower By-Law is to establish guidelines and a permitting process for any type of tower. The goals of the by-law are to ensure that a minimum number of new towers are effectively sited on town land or on existing locations, and in a manner that reduces their visual and environmental impacts and that makes available telecommunications service and tower locations to the community and to local municipal agencies, respectively.

The following terms are defined within the by-law: distance; FAA; FCC; height; non-residential structure; wireless communication building, device, facility, and structure; applicant; application; telecommunications service provider; and, tower.

Under exemptions, the by-law explains that all towers in the town are required to comply with the by-law except for those towers that are used for town or state emergencies, licensed for amateur radio use, or used for personal television reception or wireless telecommunications.

The General Guidelines describe more specifically how towers and wireless telecommunication facilities can be located in town with a Special Permit from the Planning Board. It offers guidelines describing tower location, design capacity, and building dimension and use limits and requirements. It also prohibits the siting of TV, telecommunication or radio broadcast systems. More specific setback, location, height, and due diligence requirements are detailed in their own sub-sections.

Under the Application Process sub-section, the specific procedures and requirements for submitting an application for a special permit from the Planning Board is described. Some of the basic points included in this sub-section are the following: Expiration of the permit occurs if the facility is not constructed within two years of issuance; Failure to supply all information in a timely manner is grounds for permit denial; Applicants need to submit site and engineering plans, a map showing service area of proposed facility, locus map, soil and surficial geology maps, a narrative report, proof of approval of other necessary permits, an on-site demonstration showing future visibility if the facility, and potentially, payment for the review of a technical expert. Certain plan and information requirements are repeated in a different format on the following page (7) of the amendment. Additional specific requirements are included that apply to siting wireless communication devices on existing towers or structures.

The Approval sub-section provides that prior to granting a special permit, the Planning Board must find that the applicant has met all the requirements and that the facility has met the goals of the by-law. The applicant must post both a construction bond and a maintenance bond, comply with all federal, state, and local regulations, and agree to remove and repair the facility based on the Conditions of Use.

Shutesbury's Potential Future Land Use Patterns

“Shutesbury is a vibrant yet rural, small-town community with top-notch services.”

-Excerpt from the Shutesbury Town Plan Vision Statement: Shutesbury in the Year 2020.

The following section introduces potential land use and zoning recommendations with a brief discussion on the relationship between development, land use, and the characteristics and resources of the community that can be conserved and enhanced through zoning and non-zoning measures.

Shutesbury's zoning by-law has created the pattern of development seen today (*see discussion on page two*). Amendments have been added to the town's zoning by-law to provide the town to plan for growth for a period of time (Townwide Rate of Development By-law), deal with opportunities to protect roadside open space (Back Lots with Open Space Setaside), and manage potential threats to the town's rural character (Shutesbury Telecommunications Tower By-Law). However, the current zoning by-law does not effectively promote or retain the town's rural, small-town characteristics. It does not ensure the retention of large blocks of protected forest most valued by residents for recreational purposes, protect community water supplies, nor promote a diversity of housing choices. In short, the town's zoning is not currently designed to sustain Shutesbury's rural character over the next ten years and beyond.

The potential impacts of the current development pattern in Shutesbury are inconsistent with the Master Plan Goals and Objectives. If the current development pattern is allowed to proceed, all the land that could be developed may end up accommodating mostly traditional subdivisions of single-family homes on two-acres lots with 250 feet of frontage. According to the build-out analysis described in Chapter 1-Natural Resources and Open Space, the town's current zoning by-law could accommodate 10,000 more residents in subdivisions that would create 84 miles of new roads.

The Town of Shutesbury can guide the use of the land within its borders to sustain desirable community characteristics. The town should continue to seek consensus on priority issues and on the methods to be used to advance the town's collective vision over time. However, for the purposes of the Master Plan, the goals and objectives serve as a source of consensus on the most important issues and the recommendations, the most appropriate solutions.

Shutesbury's ideal land use pattern might simply be a modification of the current one to include a reduction in the risk of traditional large lot residential sub-divisions and the intentional concentration of development in areas that already exhibit higher densities. Through the adoption of zoning and non-zoning measures, Shutesbury could protect forests from fragmentation and public access to woodland-based recreational and economic activities, conserve ground and surface water supplies, maintain housing affordability in the community, and promote small home-based businesses.

According to the Town Plan Vision Statement, a more ideal future development pattern could be described as one that has *“clusters of small lots and large lots with plenty of frontage.”*

The potential for encouraging a development pattern different than approval-not-required frontage lots and traditional subdivisions could be more easily realized were the State Legislature to enact the Massachusetts Land Use Reform Act (MLURA), which would allow for more flexibility in the development of town-appropriate zoning. However, even without the benefits that would be gained from an enacted MLURA, the town may be able to shift to a more desirable pattern via changes in zoning and in the level of land protection activities in town.

Before describing land use and zoning recommendations, it is important to clarify the characteristics to be promoted via zoning and non-zoning strategies that are consistent with the Master Plan recommendations and Goals and Objectives:

- The retention of large blocks of contiguous (undeveloped) forests;
- Slow and steady growth in appropriate areas;
- Clusters of small lots potentially near protected forestland;
- Roadside development of single-family and two-family dwellings on lots 2 acres in size with 250 feet of frontage;
- Concentrations of higher density lots in an expanded Town Center;
- An expanded Town Center area with municipal/civic, small-lot residential, and small commercial business uses along Leverett/Cooleyville Road from Town Center to Pratt Corner Road;
- Small scale 5-7 unit senior housing development around Lake Wyola, the Town Center area, or other suitable areas;
- Accessory apartments associated with owner-occupied single-family detached dwellings, allowed in all areas; and,
- Small home business uses with expanded allowances in all areas.
- Low density development with appropriate safe guards in the watershed protection and forest conservation overlay districts.

Land Use and Zoning Recommendations

The following Land Use and Zoning Recommendations focus on promoting Shutesbury's small town, rural character. Although many of the Master Plan recommendations relate to land use in town, and seek to sustain or enhance elements of the community most valued by residents, the following describe potential amendments to Shutesbury's Zoning By-law as well as changes in land use and conservation policies that could help the town meet its goals.

The three fold-out maps at the end of the chapter are the Land Use Map, Zoning Map, and Potential Zoning Map. The Potential Zoning Map shows the town broken into two main use districts: the Rural Residential District and the Town Center District. There are also two overlay districts presented: Forest Conservation Overlay District and the Water Supply Protection Overlay District. The descriptions of these proposed districts are found in the following recommendations:

- **The Shutesbury Planning Board develops and seeks to have Town Meeting adopt the following by-laws:**

- **A Phased Growth By-law** is adopted to ensure that growth occurs in an orderly and planned manner that allows the town time for preparation to maintain high quality municipal services for an expanded residential population while allowing a reasonable amount of additional residential growth during those preparations. Phased growth by-laws seek to manage the amount of residential growth in a community during a specific time period. Rapid rates of growth can have adverse impacts on the costs of municipal services like education and on the rural character of town. Overbuilding can increase school enrollment beyond its capacity, which could lower the quality of service for the existing residents as well as require a costly expansion of the elementary school. Any expansion of the elementary school would need to overcome significant site constraints, one of which is the proximity of the school's drinking water supply.

Phased growth by-laws seek to control growth in a variety of ways. One technique is to limit the amount of residential permits for new dwelling units issued each year, as Shutesbury presently does with its Townwide Rate of Development By-law, which provides for no more than six permits per year for new houses. Other phased growth by-laws include "phasing in" the number of units that can be built in a subdivision, often depending on the size of the development project. An even more sophisticated approach, such as that used by Amherst, Massachusetts, awards development credits using a points system. Points are awarded based on many factors, such as the provision of low income housing units or open space, proximity to the Town Center, and aquifer protection measures. The points are then used to determine how quickly the development will be built.

Shutesbury could design its Phased Growth By-law to contain the types of mechanisms used in the Amherst by-law: a yearly cap, a phasing in of both traditional and conservation development subdivisions, and a point system that promotes the publicly held values expressed in the Master Plan (e.g. affordable housing, contiguous forests, and water supply protection).

- **A Town Center District** (*see Potential Zoning Map*) promotes residential development at a higher density than is currently allowed in the Rural Residential District and the concentration of existing and future civic uses including police, fire, highway, senior housing, and library uses. The Town Center District could potentially contain appropriately-scaled commercial businesses considered desirable by a majority of community survey respondents including home businesses, bed & breakfast, arts & crafts,

dentist/doctor/veterinarian offices, a restaurant/coffee shop, and a gas [or bio-diesel] station/convenience store. The Town Center District could also be the “receiving zone” of a local Transfer of Development Rights (TDR) By-law. For example, developers could be allowed to build at a density of one acre per dwelling unit or greater within the Town Center District, which is half the current minimum lot size, for every 10 acres of land protected with a conservation restriction in one of the proposed critical resource areas identified in this Master Plan (e.g., the Forest Conservation Overlay District, the Water Supply Protection Overlay District, and the Lake Wyola Sub-watershed Overlay District).

- **A Water Supply Protection Overlay District for the Atkins Reservoir, Dean Brook and Nurse Brook Sub-watersheds** (*see Potential Zoning Map*). The Adams Brook sub-watershed includes the basins of Atkins Reservoir, Nurse Brook, and Dean Brook. These three basins drain into the Atkins Reservoir that, when full, drains into Adams Brook. The Town of Amherst can divert water from Dean Brook into the Reservoir. The three sub-basins contribute recharge to Atkins Reservoir, a drinking water supply for the Town of Amherst. Shutesbury residents value the protection of all drinking water supplies but in particular, Amherst’s because of the regional school district and the many Shutesbury residents who work at UMass and in Amherst. A Water Supply Protection Overlay District could have within its design the regulation of land uses that pose a threat to surface and groundwater quality within the sub-watersheds.

- **A Forest Conservation Overlay District for large unprotected blocks of forest in town, which would have conservation subdivision design as the by-right or easiest development option** (*see Potential Zoning Map*). Certain areas of town that contain large contiguous forest blocks could become the future location of a Forest Conservation Overlay District in recognition of the very unique and important resources that contiguous forests provide the community. A Forest Conservation Overlay District could require developers submit to the Planning Board both a traditional subdivision plan and one that uses conservation subdivision design, with the understanding that the latter would enjoy preference. The Forest Conservation Overlay District could be linked to the Phased Growth By-law by awarding points for each 10 percent reduction in the share of the total parcel used by development. In addition, points could be awarded to those developments that provided public access to open space lands for recreation purposes.

The Planning Board and Master Planning Committee members have agreed on a potential location for a Forest Conservation Overlay District. Based on current GIS information, the 2000 Town Survey results, the town’s land acquisition criteria, and the Land Use Suitability Map, the District could be located west of Wendell and Lockes Pond Road and north of Leverett Road. It could encompass one of the larger blocks of contiguous forest the town

shares with Leverett, a BioMap Core Habitat Area, Montague Road, and one of the greatest concentrations of critical natural, forest management, and recreational resources, the values of which would be most greatly impacted by conventional subdivision design.

One of the ways this overlay district could help to conserve undeveloped contiguous forest acreage and promote forest management and recreational uses, is by decreasing allowable development densities to a level appropriate to those values. A developer could be permitted to build at a higher density if certain conditions were met, including protecting a particular share of the forested parcel with a conservation restriction.

In addition, the Forest Conservation Overlay District could be a “sending zone” as part of a town-wide Transfer of Development Rights (TDR) by-law. The town could adopt a TDR by-law that would encourage developers to build at higher densities within a Town Center District (the “receiving zone”) in exchange for protecting forest from development in the Forest Conservation Overlay District, within the Water Supply Protection Overlay District, or within the Lake Wyola Sub-watershed. The TDR by-law could allow a developer to build at a higher density in the proposed Town Center District in exchange for protecting open space in one of the overlay districts.

- **A Lake Wyola Sub-watershed Overlay District** (*see Potential Zoning Map*). The Lake Wyola Sub-watershed Overlay District would include all the land within the basin of the same name, in the northwestern portion of town. The overlay district could be designed to address both the need to protect the quality of surface and groundwater within the sub-watershed and Lake Wyola itself, as well as the potential need for establishing equitable land use regulations for the developed portion of the basin.
- **A Transfer of Development Rights (TDR) By-law.** TDR is used extensively across the country but relatively little in this state. With a TDR By-law, new development can be encouraged in specific areas while being discouraged in others. For every acre of land a developer protects in a “sending zone,” which could be one of the critical resource protection areas, the developer receives the right to develop at a higher density or at a faster rate than is typically allowed by current zoning in a “receiving zone,” which could be the proposed Town Center District.
- **A Conservation Subdivision Design (CSD) By-law.** Conservation Subdivision Design could be used as part of the Forest Conservation Overlay District alone or, as a town-wide measure. CSD would encourage housing to be grouped on smaller lots and result in a large share of the total parcel being protected from development. A CSD could result in the same number of lots as would occur in a conventional subdivision plan but with less road

infrastructure, less impervious surfaces, and more contiguous forested open space.

- **An amendment that promotes the development of accessory apartments.** An increase in accessory apartments could result in more housing choices for residents of different ages and economic backgrounds as well as help the town increase its share of “affordable” units under Chapter 40B. Accessory apartments associated with owner-occupied single-family detached dwellings could be the focus of the amendment. Accessory apartments could also provide for increased incomes for low and moderate -income homeowner households with burdensome housing costs.
- **A Major Home Occupations By-law** that might encourage the expansion of home business operations in town. The Town of Shutesbury has a high concentration of home-based businesses relative to the region. These businesses represent Shutesbury’s local economic engines, which produce services and products that import wealth into the community. The Economic Development chapter includes recommendations to support home-based business expansion through incubator-types of services and spaces, by promoting consumption of local goods and services, and by encouraging hi-speed Internet capacity for Shutesbury business owners and residents. An amendment to the Zoning By-law might include more allowances for accessory home business uses including detached structures that may not appear completely residential in nature along with parking, sign, and aesthetic requirements that would continue to sustain the community’s rural character.

A Major Home Occupation, according to the Rutland, Massachusetts by-law, may have one more of the following characteristics: it employs more than one non-resident on the premises, has outdoor storage of materials or equipment, has outdoor parking of more than one commercial vehicle exceeding 10,000 pounds gross vehicle weight, occupies more than 25 percent of the floor area of the dwelling, occupies more than 500 square feet of floor space in accessory buildings, will routinely serve more than three (3) customers or clients on the premises at any one time, or is potentially disruptive, offensive or harmful to the neighborhood.

A Major Home Occupation (MHO) by-law can regulate: utility areas, the number of employees, parking, signage, lighting, the level of retail activities. The MHO can require business owners to be the homeowner, and ensure that activities are to be non-injurious to the public or natural environment, any abutter, or the neighborhood as a whole.

- **The Conservation Commission adopts amendments to the local wetlands protection by-laws and regulations that would specifically prohibit the storing outside of more than two, non-registered vehicles.** These regulations could apply to all areas of town based on the understanding that most residents

receive their drinking water from bedrock wells that are vulnerable to contamination from pollutants in groundwater. Regulations on hazardous material storage and use could also be specified for areas that overlay known and estimated aquifers. Special permits and exceptions could be provided for certain uses such as truck farming operations and other businesses developed under the Major Home Occupation By-law.

- **The Town direct its Conservation Commission and Recreation and Open Space Committee to adopt a more aggressive and comprehensive approach to the use of land protection as a growth management tool.** The town will have future opportunities to protect, in perpetuity, public access to deep woodlands and forest trails that residents enjoy without allowing overuse by motorized vehicles that diminish the peace and quiet. Many of the large blocks of unprotected contiguous forests in Shutesbury, north and south of Leverett Road are in the Chapter 61 program. The town will continue to have opportunities to acquire or otherwise protect forestlands through executing its right-of-first-refusal option. The ability of the community to protect valuable forestland may be dependent on residents' continued awareness of the myriad of forest values sustained in Shutesbury via land protection. The relevant town committees and others may seek to raise money in preparation of future opportunities. The town may also want to study the feasibility of borrowing funds to purchase land to keep it out of development. For example, the Town of Walpole, Massachusetts is a bedroom community of 20,000+ with several large commercial and industrial properties, located nineteen miles southwest of Boston. In December 1998, Walpole borrowed \$7.7 million to purchase 293 acres of private forests and fields to keep 163 big (4-bedroom) single-family homes from being built there (David Davison, Director of Finance, Town of Walpole; 2000). The Town of Shutesbury has had a similar, albeit less expensive, opportunity recently with the South Brook Conservation Area, and surely will have these types of opportunities in the future. Like Walpole, Shutesbury may find that it makes more sense to borrow a considerable sum of money to purchase open space than to pay for the annual municipal services that population increases can produce. Shutesbury could pass the Community Preservation Act and leverage state funds against local monies raised to protect open space, preserve historical uses, and develop affordable housing.
- **The Shutesbury Select Board appoints a Senior Housing Subcommittee to plan for the development of senior housing in the Town Center, in the vicinity of the new library, near Amherst, near Lake Wyola, or other suitable locations.** The Select Board could appoint a Senior Housing Subcommittee to study the most appropriate locations for affordable senior housing. Although the Census information does not point to a critical need today, in ten years the over 65 years age group is projected to increase from 104 to 127, and by 2020, to 208, double the number of seniors in the year 2000. It can take several years to develop senior housing and it may be worthwhile to begin the process with a survey of people sixty years and over as to their interest in housing that could be

developed in close proximity to the new library or to Lake Wyola. In the case of Lake Wyola, the town might consider using some of the town-owned land for the development of scale-appropriate senior housing that could then be developed and managed by the Franklin Regional Housing and Redevelopment Authority. Senior housing, if privately-owned, could contribute tax revenues to pay for municipal services without contributing to education-related expenses.

- **The Planning Board should develop a Fence By-law to protect scenic road-side views and the pastoral nature of our country roads.** Fences in the front setback area should be a maximum of forty-eight inches by right. Taller fences may be approved by Special Permit. In addition to blocking scenic and natural landscapes, tall fences sometimes create a road visibility hazard and should have review by the Zoning Board.
- **The Town adopts the Community Preservation Act.** The Community Preservation Act is statewide enabling legislation that allows cities and towns to raise funds for open space protection, historic preservation, and affordable housing by adopting up to a 3 percent surcharge of the real estate tax levy. Monies raised via the surcharge would also receive a state match.