



# Shutesbury Bylaws

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29 } as of  
 30 } May 2005  
 29 and 30  
 were incorporated  
 into 28

1

Town of Shutesbury

Number: 020504

**Annual Report Bylaw**

**Bylaw Name** \_\_\_\_\_

Adopted at the **Annual/Special** Town Meeting held: May 4, 2002

and approved by the Attorney General's Office on \_\_\_ August 19, 2002 \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date

The Selectmen, before the first day of November, shall at the expense of the Town print the annual report for the use of inhabitants containing the report of the Selectmen for the fiscal year preceding that date. All reports contained therein from departments and boards shall be based on the fiscal year and shall contain reports from the Accountant, Treasurer, Tax Collector, Planning Board, Finance Committee, School Committee, and any other boards or departments as the selectmen consider expedient. All reports shall be submitted to the Town Administrator within 60 days of the close of the fiscal year.

2

Town of Shutesbury

Number: 730224

Annual Town Meeting date

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**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: February 24, 1973

and approved by the Attorney General's Office on May 29, 1973

**Amendments:**

Town Meeting date	Attorney General approval date

ANNUAL TOWN MEETING  
TOWN OF SHUTESBURY, MASS.

February 24, 1973

ATTORNEY  
Rec'd  
Ref'd to \_\_\_\_\_  
Pgs. \_\_\_\_\_

At a legal meeting of the inhabitants of the Town of Shutesbury, qualified to vote in town affairs, held at the Shutesbury Center School in Shutesbury on February 24, 1973 in the presence of a quorum, the following Article was adopted:

Article 22. To see if the Town will vote to change the date of the Annual Town Meeting or take any other action in relation thereto.

Motion made to amend by by-law the date of the Annual Town Meeting to the first Saturday in May.  
Recommended by the Finance Committee.  
Voted unanimously.

A true copy. Attest: Lawrence S. [Signature]  
Town Clerk

May 29, 1973

Boston, Massachusetts

The foregoing amendment to general by-laws adopted under Article 22 is hereby approved.

[Signature]  
Attorney General

3

Town of Shutesbury

Number: 860503

Warrants – Annual Town Meeting

\_\_\_\_\_  
**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: May 3, 1986

and approved by the Attorney General's Office on \_\_\_September 22, 1986\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date

Move the Town vote to adopt a bylaw to require that articles for the Annual Town Meeting warrant be submitted to the Selectmen forty-five days in advance of annual town meeting.

4

Atkins Reservoir

Bylaw Name

Adopted at the Annual/Special Town Meeting held: August 30, 1983

and approved by the Attorney General's Office on November 5, 1984

Amendments:

Town Meeting date	Attorney General approval date
May 7, 1988	
June 15, 1989	

**ATKINS RESERVOIR AND ADJACENT WATERSHED**

Town Meeting of August 30, 1983: (As amended 5/7/88)  
voted to accept the following regulations to apply to land in the Town of Shutesbury designated as the Amherst Watershed adjacent to Atkins Reservoir, specifically Parcels V12, V13, W7, W8, W9, W10, W11, W12, W13, W14, X1, and X2, as shown on the Town's tax map:

- a. No person shall possess or imbibe any alcoholic beverages.
- b. No person shall possess any firearms, fireworks or glass containers.
- c. No person shall camp.
- d. No person shall maintain any open fire or use any cooking equipment of any kind.
- e. No person shall swim, boat or fish in the Atkins Reservoir.

Whoever violates any of the above regulations (a-e) shall pay a fine of \$25.00 for the first offense; \$50.00 for the second offense; and \$100 for the third and each subsequent offense within a twelve month period.

**ENFORCING PERSONS: SELECT BOARD, BOARD OF HEALTH,  
HEALTH AGENT, CONSERVATION COMMISSION**

5

Town of Shutesbury

Number: 660212A

Building Code

Bylaw Name

Adopted at the Annual/Special Town Meeting held: February 12, 1966  
and approved by the Attorney General's Office on December 23, 1966

Amendments:

Town Meeting date	Attorney General approval date

BUILDING CODE BY-LAW

Annual Town Meeting, February 12, 1966

Article 19. Motion made that the Town adopt as a By-Law the text of the "Proposed Building Code for the Town of Shutesbury", now on file and available for scrutiny in the office of the Town Clerk; and to appropriate the sums of fifty dollars (\$50.00) for expenses for the Board of Appeals and of two hundred dollars (\$200.00) for the salary of a Building Inspector. Voted unanimously, 20 yes, 0 no.

Note: Accepted the 1960 edition of the BOCA building code

The Town Clerk

Has the 1960 BOCA Building Code

6

Town of Shutesbury

Number: 000506

Capital Planning bylaw

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**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: May 6, 2000

and approved by the Attorney General's Office on July 19, 2000

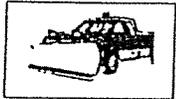
**Amendments:**

Town Meeting date	Attorney General approval date

Shutesbury  
Bylaw creating a Capital Improvement Planning Committee



Section 1. The Selectboard shall establish and appoint a committee to be known as the Shutesbury Capital Improvement Planning (SCIP) Committee, composed of one member from the Finance Committee, one school representative, the Town Treasurer and two members at large. In the event that the Town Treasurer is not a resident of Shutesbury, the Finance Committee shall have two representatives and the Treasurer will be an ex-officio staff member without the right to vote. The Town Administrator shall be an ex-officio staff member without the right to vote. The committee shall choose its officers.



Section 2. The Committee shall study proposed projects and improvements involving major non-recurring tangible assets and projects which 1) are purchased or undertaken at intervals of not less than three years; or 2) have a useful life of at least three years; or 3) cost over \$5,000. All officers, boards and committees including the Selectboard and School Committee, shall, by February 1 of each year, give the Committee, on forms prepared by it, information concerning all anticipated projects requiring Town Meeting action during the ensuing six years. The Committee shall consider the relative need, impact, timing and cost of these expenditures and the effect each will have on the financial position of the Town. No appropriation shall be voted for a capital improvement requested by a department, board, committee or commission unless said proposed capital improvement is considered by the Committee's report, or the Committee shall first have submitted a report to the Selectboard explaining the omission.



Section 3. The Committee shall prepare an annual report recommending a Capital Improvement Budget for the next fiscal year, and a Capital Improvement Program including recommended capital improvements for the following five fiscal years.

The report shall be submitted to the Selectboard and Finance Committee for approval. The Committee shall submit its approved Capital Budget to the Annual Town Meeting for adoption by the Town.



Section 4. Such Capital Improvement Program, after its adoption, shall permit the expenditure on projects included therein of sums from departmental budgets for surveys, architectural or engineering advice, options or appraisals; but no such expenditure shall be incurred on projects which have not been so approved by the Town through the appropriation of sums in the current year or in a prior years. Planning for capital improvements beyond the time frame of the Capital Improvement Program shall be considered as a capital improvement, shall be listed in the Capital Improvement Program as such and shall be approved prior to expenditure of funds.



Section 5. The Committee's approved report, shall be published and made available with the distribution of the Finance Committee report. The Committee shall deposit its original report to the Town clerk.

A TRUE COPY

ATTEST *Lester Bracebridge*

7

Town of Shutesbury

Number: 731030

Council on Aging

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**Bylaw Name**

Adopted at the Annual/**Special** Town Meeting held: October 30, 1973

and approved by the Attorney General's Office on December 27, 1973

**Amendments:**

Town Meeting date	Attorney General approval date

TOWN OF SHUTESBURY

SPECIAL TOWN MEETING  
October 30, 1973

At a legal meeting of the inhabitants of the Town of Shutesbury, qualified to vote in elections and Town affairs, held at the Shutesbury Center School in Shutesbury on October 30, 1973, and in the presence of a quorum, the following article was adopted:

Article 7. To see if the Town will vote to establish a Council on Aging under the provisions of the General Laws, Chapter 40, Section 8B, and to raise and appropriate a sum or sums of money therefor, or take any other action in relation thereto. Motion made that the Town accept the following By-Law: Pursuant to the provisions of the General Laws, Chapter 40, Section 8B, there is hereby established a Council on Aging consisting of five citizens of the Town to be appointed by the Board of Selectmen; two members to be appointed for three years, two members to be appointed for two years, and one member for one year. The Council shall annually elect its Chairman and the other officers as it deems appropriate.

THE DUTIES OF THE COUNCIL SHALL BE TO:

Identify the total needs of the community's elderly population; educate the community and enlist support and participation of all citizens concerning these needs; design, promote or implement services in the community; promote and support any other programs which are designed to assist elderly persons in the community. Said Council on Aging shall cooperate with the Commonwealth of Massachusetts Executive Office of Elder Affairs and shall be cognizant of all state and federal legislation concerning funding, information exchange, and program planning which exists for better community programming for the elderly.

Said Council on Aging shall give an annual report to the Board of Selectmen with a copy of that report directed to the Commonwealth of Massachusetts Executive Office of Elder Affairs.

Move further to raise and appropriate from taxation the sum of \$100.00 for the expenses of the Council during the current fiscal year.

Finance Committee approved.

Motion carried.

A true copy. Attest: Patricia Swenson  
Town Clerk

8

Town of Shutesbury

Number: 870502

Curb cut

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**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: May 2, 1987

and approved by the Attorney General's Office on August 24, 1987

**Amendments:**

Town Meeting date	Attorney General approval date

No owner or occupant of land, abutting upon a town way of Shutesbury or any public way which, by statute said town is obligated to repair and maintain, shall construct any private road or driveway thereon, as to extend into such public way, without first having obtained a written permit therefore from the Board of Selectmen, and approved by the Superintendent of Highways having charge of the maintenance and repair of such public way.

The Board of Selectmen shall issue the permit within forty (40) days or shall render decision in writing specifying the reasons for denial of said permit and shall base that decision upon consideration of public safety. Whoever by himself, being the owner or occupant, or by his agents or servants, violated this regulation, shall be punished by a fine not to exceed twenty dollars (20.00) per day and be liable in tort to the Town of Shutesbury for all damages caused thereby, and for the cost and expense of removing the constructing material and of restoring the said public way to its former condition.

9

Town of Shutesbury

Number: 990501A

Denial, Suspension or Revocation of local licenses

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**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: May 1, 1999

and approved by the Attorney General's Office on August 3, 1999

**Amendments:**

Town Meeting date	Attorney General approval date



Approved by the  
Attorney General  
August 3, 1999  
A true copy. Attest  
Linda Bracebridge

Town of Shutesbury, Massachusetts 01072

Annual Town Meeting  
May 1, 1999

At a legal meeting of the Inhabitants of the Town of Shutesbury qualified to vote in elections and town affairs, held at the Shutesbury Elementary School, 23 West Pelham Road on the first day of May in the year one thousand nine hundred and ninety nine, in the presence of a quorum the following business was conducted.

The meeting was called to order at 9:15 a.m. with Moderator Michael Bloomfield presiding.

ARTICLE 6: A motion was made and seconded to accept Chapter 40, §57, as amended, of the Massachusetts General Laws, which would allow a licensing authority to deny, suspend or revoke any local license or permit including renewals and transfers issued by any board, officer, department for any person, corporation or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges and to amend the Shutesbury General Bylaws by adopting the following as a bylaw "Denial, Suspension or Revocation of Local Licenses. The Town Collector shall annually furnish to each department, board or commission, hereinafter referred to as the "licensing authority", that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the "party", that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

Summary of Procedure: The licensing authority may deny, revoke, or suspend any license or permit, including renewals and transfers to any party whose name appears on said list furnished to the licensing authority from the Town Collector, or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out

May 1, 1999 Annual Town Meeting

or exercised on or about real estate owned by any party whose name appears on said list, furnished to the licensing authority by the Town Collector; provided, however, that written notice is given to the party and the Town Collector, as required by applicable provisions of law, and the party is given a hearing, to be held not less than fourteen (14) days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The Town Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings by the licensing authority with respect to such license denial revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding or law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, revoked or suspended under this section shall not be re-issued or renewed until the licensing authority receives a certificate issued by the Town Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as of the date of issuance of said certificate.

**Payment Agreement:** Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

**Waiver of Denial, Suspension, or Revocation:** The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section 1 of Chapter 268A, in the business or activity conducted in or on said property.

**Exceptions:** This bylaw shall not apply to the following licenses and permits granted under the applicable Massachusetts General Laws cited herein open burning, section 13 of Chapter 48; bicycle permits, section 11A of Chapter 85; sales of articles for charitable purposes, section 33 of Chapter 101; children work permits, section 69 of Chapter 149; clubs, associations dispensing food or beverage licenses, Section 21 E of Chapter 140; dog licenses, Section 137 of Chapter 140; fishing, hunting, trapping licenses, section 12 of Chapter 131; marriage licenses, section 28 of Chapter 207 and theatrical events, public

exhibition permits, section 181 of Chapter 140".

Passed by a majority.

Meeting dissolved at 4:44 P.M.

Town Seal

Respectfully submitted,

*Leslie Bracebridge*  
Leslie Bracebridge  
Shutesbury Town Clerk

A true copy.

Attest: *Leslie Bracebridge*  
May 1, 1999 Annual Town Meeting

10

Town of Shutesbury

Number: 740504

Disposition of Town property

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**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: May 4, 1974

and approved by the Attorney General's Office on July 3, 1974

**Amendments:**

Town Meeting date	Attorney General approval date

At a legal meeting of the inhabitants of the Town of Shutesbury, qualified to vote in elections and town affairs, held at the new Shutesbury Elementary School gymnasium in Shutesbury on May 4, 1974, in the presence of a quorum, the following business was transacted:

Article 15. Motion made to adopt the following bylaw regulating the disposal of Town owned personal property:

1. Any department of the Town may, with the approval of the Selectmen, if it deems it to be for the best interest of the Town, sell either at public auction or private sale any article of personal property of which such department has custody and control, the fair market value of which does not exceed \$500.00;

2. Each department of the Town shall keep at all times a complete inventory and appraisal of the personal property under its jurisdiction and control.

Voted unanimously.

A true copy. Attest: Lester Braselundge  
Town Clerk



Town of Shutesbury

Number: 891003

**Dog Licensing and Control**

Bylaw Name \_\_\_\_\_

Adopted at the Annual/Special Town Meeting held: August 30, 1983

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 7, 1988	
June 15, 1989	
October 3, 1989	
May 2, 1992	
December 7, 1999	
May 4, 2002	August 19, 2002

Town of Shutesbury

Number: 891003

**Dog Licensing and Control**

Bylaw Name \_\_\_\_\_

Adopted at the Annual/Special Town Meeting held: August 30, 1983

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 7, 1988	
June 15, 1989	
October 3, 1989	
May 2, 1992	
December 7, 1999	
May 4, 2002	August 19, 2002
October 17, 2006	January 10, 2007

## **DOG LICENSING AND CONTROL**

- **GENERAL OFFENSES**

All owners or keepers of dogs, or their agents, shall at all times:

Maintain control of the dog beyond the confines of their property by leash or voice command.

Maintain a collar or harness on the dog, suitable for restraining the animal.

Maintain current Massachusetts dog license, if over six months of age.

License any dog requiring same within 30 days of its arrival in Shutesbury.

Maintain current rabies vaccination, if required.

Maintain the issued current license tag securely attached to the collar or harness.

- **NONCRIMINAL DISPOSITION**

In addition to criminal enforcement through the Massachusetts General Laws, all sections of this bylaw may be enforced by the below designated enforcing persons through the noncriminal disposition process as defined in Chapter 40 section 21D of the Massachusetts General Laws. The Enforcing persons for this bylaw shall be: all Dog Officers, all Police Officers and Constables with jurisdiction, and all members of the Select Board.

- **FINES**

Unless otherwise specified, the fines for any listed offense shall be \$25.00 for each first offense, and \$50.00 for each subsequent violation. Each offense shall be considered as a separate offense in determining the applicable fine, and each day on which any violation exists shall be deemed to be a separate offense. The offenses shall be accrued against the owners or keepers, and not tallied against individual dogs.

- **PICKUP AND STORAGE FEES**

In the event that the enforcing person is required to collect and/or keep a dog in the performance of his or her official duties, said enforcing person shall charge a fee to the owner, keeper or adaptor for every dog collected plus the cost of necessary inoculations; and a fee per day for storage and board, beginning on the pickup date. All fees are subject to the approval of the Select Board and reflect the current market costs.

**Dog Licensing and Control**

**Bylaw Name** \_\_\_\_\_

Adopted at the Annual/Special Town Meeting held: August 30, 1983

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 7, 1988	
June 15, 1989	
October 3, 1989	
May 2, 1992	
December 7, 1999	
May 4, 2002	August 19, 2002

**Dog Licensing and Control**

Bylaw Name \_\_\_\_\_

Adopted at the Annual/Special Town Meeting held: August 30, 1983

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 7, 1988	
June 15, 1989	
October 3, 1989	
May 2, 1992	
December 7, 1999	
May 4, 2002	August 19, 2002
October 17, 2006	January 10, 2007

## **DOG LICENSING AND CONTROL**

- **GENERAL OFFENSES**

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Maintain a collar or harness on the dog, suitable for restraining the animal.

Maintain current Massachusetts dog license, if over six months of age.

License any dog requiring same within 30 days of its arrival in Shutesbury.

Maintain current rabies vaccination, if required.

Maintain the issued current license tag securely attached to the collar or harness.

- **NONCRIMINAL DISPOSITION**

In addition to criminal enforcement through the Massachusetts General Laws, all sections of this bylaw may be enforced by the below designated enforcing persons through the noncriminal disposition process as defined in Chapter 40 section 21D of the Massachusetts General Laws. The Enforcing persons for this bylaw shall be: all Dog Officers, all Police Officers and Constables with jurisdiction; and all members of the Select Board.

- **FINES**

Unless otherwise specified, the fines for any listed offense shall be \$25.00 for each first offense, and \$50.00 for each subsequent violation. Each offense shall be considered as a separate offense in determining the applicable fine, and each day on which any violation exists shall be deemed to be a separate offense. The offenses shall be accrued against the owners or keepers, and not tallied against individual dogs.

- **PICKUP AND STORAGE FEES**

In the event that the enforcing person is required to collect and/or keep a dog in the performance of his or her official duties, said enforcing person shall charge a fee to the owner, keeper or adaptor for every dog collected plus the cost of necessary inoculations; and a fee per day for storage and board, beginning on the pickup date. All fees are subject to the approval of the Select Board and reflect the current market costs.

• **LOCAL AMENDMENTS OF EXISTING MASSACHUSETTS GENERAL LAWS**

1. Notwithstanding the provisions of Section 136A of Chapter 140 of the General Laws or any other provision of law to the contrary, the License period for Shutesbury will be the time between July first and the following June thirtieth, both dates inclusive. Remainder unchanged.
2. Notwithstanding the provisions of Section 137 of Chapter 140 of the General Laws or any other provision of law to the contrary, the cost of a replacement for a lost license tag shall be one dollar. Remainder unchanged.
3. Notwithstanding the provisions of Section 137A of Chapter 140 of the General Laws or any other provision of law to the contrary, ...The fee for each license for a kennel shall be twenty-five dollars if not more than four dogs are kept in said kennel, fifty dollars if more than four but not more than ten dogs are kept therein and seventy-five if more than ten dogs are kept therein;...Remainder unchanged.
4. Notwithstanding the provisions of Section 137C of Chapter 140 of the General Laws or any other provision of law to the contrary, the fine for maintaining a kennel after the license therefore has been so revoked, or while such license is so suspended, shall be as defined in the section entitled FINES of this bylaw. Remainder unchanged.
5. Notwithstanding the provisions of Section 139 of Chapter 140 of the General Laws or any other provision of law to the contrary, the fee for every license shall, except as otherwise provided, be ten dollars for a male or female dog, unless a certificate of a registered veterinarian who performed the operation attests that said male dog has been neutered, or female dog spayed, and has thereby been deprived of the power of propagation, has been shown to the town clerk, in which case the fee shall be five dollars.

Further, that the town clerk may accept a statement under penalties of perjury from a registered veterinarian regarding an examination of any neutered male, as for a spayed female, as defined in C140 s139.

Further, that a late charge of five dollars shall be charged beyond the start of the annual license period, or 30 days after arrival of the dog in town, as defined in the section entitled FINES of this bylaw and MGL C140 s138 that the dog is not licensed with the town clerk. Remainder unchanged.

6. Notwithstanding the provisions of Section 141 of Chapter 140 of the General Laws or any other provision of law to the contrary, the violation of statute fine for a violation of this section shall be as defined in the section entitled FINES of this bylaw. Remainder unchanged.
7. Notwithstanding the provisions of Section 145B of Chapter 140 of the General Laws or any other provision of law to the contrary, the noncriminal fine for a violation of this section shall be as defined in the section entitled FINES of this bylaw. Remainder unchanged.
8. Notwithstanding the provisions of Section 146 of Chapter 140 of the General Laws or any other provision of law to the contrary, the fee for a transfer license shall be one dollar. Remainder unchanged.
9. Notwithstanding the provisions of Section 150 of Chapter 140 of the General Laws or any other provision of law to the contrary, for an owner or keeper of a dog who refuses to answer or answers falsely the fine for a violation of this section shall be as defined in the section entitled FINES of this bylaw. Remainder unchanged.
10. Notwithstanding the provisions of Section 151 of Chapter 140 of the General Laws or any other provision of law to the contrary, the annual appointment date of dog officers shall be July first, beginning in 1993, and all dog officers holding office as of April thirtieth of any given year shall retain full powers and responsibilities until June thirtieth of said year, unless otherwise removed by the appointing authorities. Remainder unchanged.
11. Notwithstanding the provisions of Section 151A of Chapter 140 of the General Laws or any other provision of law to the contrary, the issue date of the warrant shall be amended from "June" to "July"; and the minimum adoption fee and 'per day' care fee shall both be amended from "three dollars" to "four dollars". Remainder unchanged.
12. Notwithstanding the provisions of Section 157 of Chapter 140 of the General Laws or any other provision of law to the contrary, for any person owning or harboring a dog who shall fail to comply with an order of an enforcing authority the noncriminal fine for a violation of this section shall be as defined in the section entitled FINES of this bylaw.
13. Notwithstanding the provisions of Section 161A of Chapter 140 of the General Laws or any other provision of law to the contrary, the words "..unlicensed dog of the age of three months or older..." shall be amended to read, "..unlicensed dog of the age of six months or older..." to be consistent with other State laws and this bylaw.

14. Notwithstanding the provisions of Section 164 of Chapter 140 of the General Laws or any other provision of law to the contrary, for a person who owns or keeps a dog and who has received notice and does not within 24 hours kill such dog or thereafter keep it on his premises or under immediate restraint and control of some person the fine for a violation of this section shall be as defined in the section entitled FINES of this bylaw.
15. Notwithstanding the provisions of Section 172 of Chapter 140 of the General Laws or any other provision of law to the contrary, and in recognition of the acceptance of Section 147A of Chapter 140 by Town Meeting vote prior to this Article, any fees or charges or damages received by the town treasurer under Sections 136A to 174D inclusive of Chapter 140, and this by law, and receipts of noncriminal fines resulting from tickets issued under this bylaw, in excess of the limit set on the revolving fund as defined in MGL Ch. 44, S. 53B-1/2 for Dog Licensing and Control, shall be expended for the support of public libraries or schools.

Further, should any future Annual Town Meeting fail to reauthorize the Dog Licensing and Control revolving fund, the provisions of this section shall revert to the current General Laws at that time, relating to disposition of the balance of the dog fund.

• **SEVERABILITY**

It is the desire of Town Meeting to ratify this Article in its entirety. If any section, subsection, paragraph, sentence or word thereof is found to be invalid it is the intent and desire of Town Meeting to sever this entire Bylaw and revert back to the existing approved Bylaw.

In any section which refers to existing statutes of Massachusetts General Laws which may be amended subsequent to this date, the statute in effect at the time of the offense shall be applied.

Once approved in its entirety, this Bylaw replaces the existing Bylaw entitled "Dog Licensing and Control Bylaw" and the Bylaw entitled "Bylaws Governing Persons in Control of Dogs".

12

Town of Shutesbury

Number: 890615

Excessive noise

\_\_\_\_\_  
**Bylaw Name**

Adopted at the Annual/**Special** Town Meeting held: June 15, 1989

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date

**ARTICLE #4**

Move to establish an excessive noise bylaw as follows:

**PROHIBITION OF EXCESSIVE NOISE:**

No person(s) shall create, assist in creating, continue or allow to continue any excessive, unnecessary or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the Town of Shutesbury.

**EXEMPTIONS:**

The following shall not be deemed violations of this bylaw:

Noise generated while engaged in necessary business by any police, fire, or Town equipment or vehicles.

Noise generated by any construction, maintenance or repair vehicles or equipment between the hours of 7 AM and 9 PM.

**PENALTIES:**

Any person(s) violating this bylaw shall be punished by a fine of \$25.00 for each second and subsequent offense. The first such offense shall be addressed as a warning by the enforcing person(s). Any act which either continues or is repeated more than thirty minutes after a warning or violation notice is issued shall be a separate offense, and each subsequent thirty minute period of an ongoing disturbance shall constitute subsequent offenses. If the person(s) responsible for the offense cannot be determined, then the person in lawful custody or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

**ENFORCING PERSONS:** ANY POLICE OFFICER OR CONSTABLE WITH JURISDICTION, SELECT BOARD, DOG OFFICER

Motion passed. Unanimous.

Meeting adjourned at 8:44 p.m.

A true copy. Attest:

*Veronica M. Richter*  
Veronica M. Richter

Town Clerk

13

Town of Shutesbury

Number: 890615A

False alarms

\_\_\_\_\_  
Bylaw Name

Adopted at the Annual/Special Town Meeting held: June 15, 1989

and approved by the Attorney General's Office on October 12, 1989

**Amendments:**

Town Meeting date	Attorney General approval date

**ARTICLE # 3**

Move to establish a "false alarm" bylaw, as follows:

Any residence, facility, vehicle or business equipped with an intrusion or fire alarm system shall be subject to a fine of \$25.00 for each second and subsequent falsely activated alarm, as determined by the responding Fire or Police personnel, in a twelve month period commencing on the date and time of the first such false alarm.

**ENFORCING PERSONS: ANY POLICE OFFICER OR CONSTABLE WITH JURISDICTION, SELECT BOARD, FIREFIGHTERS**

Motion carried.

14

## **Finance Committee Bylaw**

Section 1. There shall be a Finance Committee consisting of seven citizens of the Town, other than incumbents of excluded offices or boards which shall be the Selectboard, the School Committee, Elementary School Principal, Union 28 Superintendent, the Fire Chief, the Police Chief, Moderator and the Superintendent of Streets. The Moderator shall appoint two members for one year, two members for two years and three members for three years, the terms to begin on the first day of July. No Committee member shall serve more than three (3) consecutive full terms. The Finance Committee shall choose its own officers. The members of the Committee shall serve without salary. Any member of the Committee who shall be appointed or elected to any of the foregoing excluded Town offices or boards shall forthwith upon his qualification in such office or board, cease to be a member of said Committee. The Finance Committee shall hold scheduled meetings at least once in every two months of the calendar year. A member absent from one third of the regular meetings in any year of his term may be removed by a majority vote of the entire Committee after due notice of the impending removal action. Voting or balloting by proxy shall be invalid in the Finance Committee.

Section 2. In the event of any vacancy in its membership, the Finance Committee shall notify the Moderator in writing, and thereupon the Moderator shall fill such vacancy within thirty days.

Section 3 The Finance Committee shall consider all matters of business included in the articles of any Town Warrant for a Town meeting and, after due consideration, shall report its recommendation as to each article and shall cause the same to be posted on official Town bulletin boards at least seven days in advance of a Town meeting. The recommendations shall be those of a majority of the entire Committee, but this shall not be construed to prevent recommendations by a minority as such. Minority recommendations shall be reported in print under the same constraints as those placed on the majority. The report of the Committee shall state the total amount of the appropriations recommended by them on the entire Warrant and the approximate tax rate based on such recommendations. The Report for the annual Town Meeting shall contain a statement of the doings of the Committee during the year, with such recommendations or suggestions as it may deem advisable on matters pertaining to the welfare of the Town. It may issue recommendations on referenda and other matters on any ballot other than the choices of individuals for offices.

Section 4. The Finance Committee shall have authority at any time to examine the books, accounts and management of any department of the Town, and to employ such expert or other assistance as it may deem advisable for that purpose. The books and accounts of all departments and officers of the Town shall be open for the inspection of the Committee or any person employed by it for that purpose. The Committee may appoint sub-committees and delegate to them such of its powers as it deems expedient.

Section 5. The various Town boards, officers and committees charged with the expenditure of Town funds shall prepare detailed estimates of the amounts deemed necessary by them for the administration of their respective offices or departments for the ensuing fiscal year not later than the first of December of each year; such estimates shall be accompanied by explanatory statements of the reasons for any changes from the amounts appropriated for the same purpose in

the preceding year. They shall also prepare estimates of all probable items of income which may be received by them during the ensuing year in connection with the administration of their respective departments or offices, and a statement of the amount of the appropriation requested by them for the ensuing fiscal year. Such estimates and statements shall be filed in duplicate with the Chair of the Finance Committee and the Chair of the Selectboard.

Section 6. The Finance Committee shall duly consider the estimates and statements filed by the Town boards, officers and committees and may confer with them and may hold hearings if the Finance Committee deems it advisable. The Committee shall thereupon recommend such sums and in such division of items as it considers necessary and convenient.

Section 7. A quorum of members will be a majority of the appointed members at the time of any given Finance Committee meeting. Any vote taken shall require a quorum and a majority vote of the quorum to be legal with the exception of a vote to adjourn.

Town of Shutesbury

Number: 681230

Finance Committee

\_\_\_\_\_  
Bylaw Name

Adopted at the Annual/Special Town Meeting held: December 30, 1968

and approved by the Attorney General's Office on April 11, 1969

**Amendments:**

Town Meeting date	Attorney General approval date
October 22, 1991	
May 5, 2001	August 27, 2001

15

Town of Shutesbury

Number: 930501

House numbers

\_\_\_\_\_  
Bylaw Name

Adopted at the **Annual**/Special Town Meeting held: May 1, 1993

and approved by the Attorney General's Office on \_\_\_\_\_

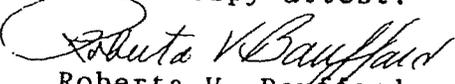
**Amendments:**

Town Meeting date	Attorney General approval date

ARTICLE 14: Motion made, seconded and voted unanimously to adopt a Town by-law to include a provision which will require the clear display of house numbers on all residences and places of business in order to assist in the delivery of emergency services and to allow the enforcement by the Board of Selectmen and/or its designee. Entire text of By-law being made part of this motion as follows:

- I. Legislative intent.  
The purpose of this article shall be to require the clear display of house (or building) numbers for all residences and places of business. This is intended to aid in the delivery of emergency services, recognizing that some of these services are delivered by out-of-town agencies.
- II. Display required, location.
  - A. Every house and place of business shall be adequately labeled with its official house number.
  - B. It is the intent of this Article that all property owners use common sense in the placement of clear, easy-to-read house numbers on all residences and places of business in the town. If the structure is easily visible and accessible from the street during twelve(12) months of the year. The number would ideally be placed on the structure.
  - C. If, by placing the number on the structure, the number is not easily read by emergency service responders approaching from either direction on the street during all twelve(12) months of the year then the number should be placed on a stake at the edge of the driveway leading to the house. The location of numbers on a mailbox will suffice if the mailbox is labeled on both sides and is located at the driveway and there is no confusion about location of the dwelling.
- III. Display required; location cont.
  - D. In the case of shared driveways, property owners should adequately label all building numbers at the entrance to the driveway, and additional markings should be posted at appropriate junctions in the driveway to alleviate any questions in the mind of emergency service personnel.
- III. Enforcement.  
Violations shall be enforced by the Board of Selectmen and / or its designee.
- IV. Assignment.  
Street number assignment will be conducted through a systematic process which complies with E-911 standards and regulations. The process includes measurement of roads and a corresponding system of numbers assigned by distance down the road beginning with the end of the road nearest the center of town. The Board of Selectmen and/or its designee will oversee assignment through this process.

A true copy attest:

  
Roberta V. Bouffard  
Town Clerk

16

Town of Shutesbury

Number: 730619

*Watercraft and Persons using Lake Wyola*

**Bylaw Name**

Adopted at the Annual/Special Town Meeting held: June 19, 1973  
and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 5, 1989 Noncriminal disposition	
June 15, 1989	
May 4, 2002	August 19, 2002
May 27, 2003	October 1, 2003

Town Bylaw in reference to watercraft and persons using Lake Wyola:

1. All motorboats must comply with Massachusetts Boating Laws and Coast Guard Regulations for safety equipment.
2. Speed limit on Lake Wyola is not to exceed (30 mph) day time and 5 mph dusk to dawn.
3. The speed limit within 150 feet of shore is 5 mph.
4. All motorboats must travel in a counter clockwise direction around the lake.
5. No water skiing between dusk and dawn.
6. *No watercraft are allowed other than non-motorized watercraft that are docking or launching in swimming areas designated and marked by the state or town or the East, North or West Lake Wyola Association beaches. Such areas shall extend no further than 75 feet from shore.*
7. Swimmers must be accompanied by a boat when swimming out beyond 150 feet from shore.

Enforcing persons and fines: Fines for items 1, 2 and 3 are \$50.00 per offense and are enforced by all police officers. Fines for Items 4, 5, 6 and 7 are \$25.00 per offense and are enforced by Selectboard, all police officers and constables with jurisdiction.

Town of Shutesbury

Number: 730619

Watercraft and Persons using Lake Wyola

**Bylaw Name**

Adopted at the Annual/Special Town Meeting held: June 19, 1973  
and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 5, 1989 Noncriminal disposition	
June 15, 1989	
May 4, 2002	August 19, 2002

~~Town Bylaw in reference to watercraft and persons using Lake Wyola:~~

- ~~1. All motorboats must comply with Massachusetts Boating Laws and Coast Guard Regulations for safety equipment.~~
- ~~2. Speed limit on Lake Wyola is not to exceed (30 mph) day time and 5 mph dusk to dawn.~~
- ~~3. The speed limit within 150 feet of shore is 5 mph.~~
- ~~4. All motorboats must travel in a counter clockwise direction around the lake.~~
- ~~5. No water skiing between dusk and dawn.~~
- ~~6. No watercraft are allowed in swimming areas designated and marked by the state, town or Lake Wyola Association. Such areas shall extend no further than 75 feet from shore.~~
- ~~7. Swimmers must be accompanied by a boat when swimming out beyond 150 feet from shore.~~

~~Enforcing persons and fines: Fines for items 1, 2 and 3 are \$50.00 per offense and are enforced by all police officers. Fines for Items 4, 5, 6 and 7 are \$25.00 per offense and are enforced by Selectboard, all police officers and constables with jurisdiction.~~

Town Bylaw in reference to motorboats and persons using Lake Wyola:

1. All motorboats must comply with Massachusetts Boating Laws and Coast Guard Regulations for safety equipment.
2. Speed limit on Lake Wyola is not to exceed (30 mph) day time and 5 mph dusk to dawn.
3. The speed limit within 150 feet of shore is 5 mph.
4. All motorboats must travel in a counter clockwise direction around the lake.
5. No water skiing between dusk and dawn.
6. Motorboats must stay 150 feet from shore and swimming areas.
7. Swimmers must be accompanied by a boat when swimming out beyond 150 feet from shore.

Enforcing persons and fines: Fines for items 1, 2 and 3 are \$50.00 per offense and are enforced by all police officers. Fines for Items 4, 5, 6 and 7 are \$25.00 per offense and are enforced by Selectboard, all police officers and constables with jurisdiction.

#### ***SEVERABILITY***

***It is the intent of the Town meeting to ratify this bylaw in its entirety. If any portion of this bylaw is determined invalid than the entire bylaw shall be considered invalid. When this "Town bylaw in reference to motorboats and persons using Lake Wyola" is approved at the Attorney General's Office it will replace the 1973 bylaw limited speeds of motorboats on Lake Wyola, the September 30, 1981 bylaw regulating motorboats on Lake Wyola and the August 9, 1989 noncriminal bylaw concerning motor boats and persons at Lake Wyola.***

17



Commonwealth of Massachusetts

# Massachusetts Environmental Police

Headquarters

251 Causeway St., Suite 101, Boston, MA 02114-2153

(617) 626-1650

Fax: (617) 626-1670

Richard A. Murray, *Director*

*Copies to Ralph, Becky, Joseph, David, Carole Samuels,  
Bill Elliott for LWAC & DCR, Lauretta Gass & Al  
e bylaw info, October 16, 2003*

*OCT 17 2003*

*Mailed  
to*

Ms. Leslie Bracebridge  
Town Clerk  
P.O. Box 264  
Shutesbury, MA 01072

Dear Ms. Bracebridge,

We have reviewed the bylaw amendment entitled "Watercraft and Persons using Lake Wyola", which was approved at the Annual Town Meeting held on May 3, 2003 in the town of Shutesbury.

Please be advised that under the authority given our office by M.G.L. Chapter 90B, sections 15(c), 11(n) and M.G.L. Chapter 131, section 45, said bylaw amendment is hereby **approved**.

Sincerely,

*Richard A. Murray*  
Richard A. Murray  
Director

Cc: AGO



Town of Shutesbury

Number: 890515

Non-Criminal disposition

\_\_\_\_\_  
**Bylaw Name**

Adopted at the Annual/Special Town Meeting held: June 15, 1989

and approved by the Attorney General's Office on October 12, 1989

**Amendments:**

Town Meeting date	Attorney General approval date

(Article 2, page one)

**ARTICLE #2**

Move to adopt the text of Article 2, as amended on the floor, to provide for noncriminal disposition under MGL Chapter 40 section 21D.

**NONCRIMINAL DISPOSITION OF VIOLATIONS OF TOWN BYLAWS**

Whoever violates any provision of any Town bylaw with criminal sanctions may be penalized by a noncriminal disposition as provided in the General Laws Chapter 40, section 21D. The noncriminal method of disposition may also be used for violations of any rule or regulation of any municipal officer, board or department which is subject to a specific penalty.

Without intending to limit the generality of the foregoing, it is the intention of this provision that the following bylaws and sections of bylaws are to be included within the scope of this subsection, that the specific penalties as listed here shall apply in such cases and that in addition to any police officers or constables with jurisdiction, who shall in all cases be considered enforcing persons for the purpose of this provision, the municipal personnel listed for each section, if any, shall also be enforcing persons for such sections. Each day on which any violation exists shall be deemed to be a separate offense, unless otherwise specified.

**SEVERABILITY:** It is the desire of Town Meeting to ratify this Article in its entirety. If any section, subsection, paragraph, sentence or word thereof is found to be invalid it is the intent and desire of Town Meeting to sever those portions so the remainder can be approved pursuant to MGL Chapter 40 section 32.

If any provisions of this Article or the provisions to any person or circumstance shall be held invalid, the validity of the remainder of this Article and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(Article 2, page two.)

SUMMARY OF LISTED BYLAWS:

SUBJECT OR TITLE: TOWN BEACH AT LAKE WYOLA REGULATIONS  
PASSAGE DATE: AUGUST 30, 1983 AMENDED MAY 7, 1988  
ENFORCING PERSONS: SELECT BOARD, BOARD OF HEALTH,  
HEALTH AGENT, CONSERVATION COMMISSION  
FINE PER OFFENSE: \$25 1ST, \$50 2ND, \$100 3RD & SUBSEQUENT

SUBJECT OR TITLE: ATKINS RESERVOIR AND ADJACENT WATERSHED  
PASSAGE DATE: AUGUST 30, 1983 AMENDED 5/7/88 & 6/15/89  
ENFORCING PERSONS: SELECT BOARD, BOARD OF HEALTH,  
HEALTH AGENT, CONSERVATION COMMISSION  
FINE PER OFFENSE: \$25 1ST, \$50 2ND, \$100 3RD & SUBSEQUENT

SUBJECT OR TITLE: PERSONS IN CONTROL OF DOGS (LEASH LAW)  
PASSAGE DATE: AUGUST 30, 1983 AMENDED MAY 7, 1988  
ENFORCING PERSONS: SELECT BOARD, DOG OFFICERS  
FINE PER OFFENSE: \$25 1ST, \$50 2ND & SUBSEQUENT

SUBJECT OR TITLE: STRIPPING LAND OF SOIL AND LOAM  
PASSAGE DATE: FEBRUARY 11, 1961  
ENFORCING PERSONS: SELECT BOARD, CONSERVATION COMMISSION,  
ZONING BOARD OF APPEALS,  
ZONING ENFORCEMENT OFFICER  
FINE PER OFFENSE: \$50 1ST, \$100 2ND, \$200 3RD & SUBSEQUENT

SUBJECT OR TITLE: TRASH DISPOSAL AND RECYCLING  
PASSAGE DATE: MAY 7, 1988  
ENFORCING PERSONS: SELECT BOARD, BOARD OF HEALTH,  
HEALTH AGENT  
FINE PER OFFENSE: \$15

SUBJECT OR TITLE: LAKE WYOLA BOATING SPEEDS  
PASSAGE DATE: JUNE 19, 1973  
ENFORCING PERSONS: SELECT BOARD  
FINE PER OFFENSE: \$50

SUBJECT OR TITLE: FALSE FIRE AND SECURITY ALARMS  
PASSAGE DATE: JUNE 15, 1989  
ENFORCING PERSONS: SELECT BOARD, FIREFIGHTERS  
FINE PER OFFENSE: \$25 2ND & SUBSEQUENT

SUBJECT OR TITLE: EXCESSIVE NOISE  
PASSAGE DATE: JUNE 15, 1989  
ENFORCING PERSONS: SELECT BOARD, DOG OFFICER  
FINE PER OFFENSE: \$25 2ND & SUBSEQUENT

SUBJECT OR TITLE: UNREGISTERED MOTOR VEHICLES  
PASSAGE DATE: FEBRUARY 12, 1966  
ENFORCING PERSONS: SELECT BOARD  
FINE PER OFFENSE: \$5

FULL TEXT OF CURRENT BYLAWS:

(Article 2, page three)

**TOWN BEACH AT LAKE WYOLA REGULATIONS**

Town Meeting of August 30, 1983: (As amended 5/7/88)  
voted to accept the following bylaws to apply to all Town  
property at the Town Beach on Lake Wyola and adjacent to it.

- a. No person shall possess or imbibe any alcoholic beverages.
- b. No person shall possess any firearms, fireworks or glass containers.
- c. No person shall camp.
- d. No person shall maintain any open fire or use any cooking equipment of any kind.
- e. No person shall deposit any trash except in containers provided for that specific purpose.
- f. No person shall bring any dog or horse onto the Town Beach or onto the adjacent Town land.
- g. The beach, beach facilities and adjacent Town property shall be closed to the public from sunset to sunrise.

Whoever violates any of the above bylaws (a-g) shall pay a fine of \$25.00 for the first offense; \$50.00 for the second offense; and \$100 for the third and each subsequent offense within a twelve month period.

ENFORCING PERSONS: SELECT BOARD, BOARD OF HEALTH,  
HEALTH AGENT, CONSERVATION COMMISSION

**ATKINS RESERVOIR AND ADJACENT WATERSHED**

Town Meeting of August 30, 1983: (As amended 5/7/88)  
voted to accept the following regulations to apply to land in  
the Town of Shutesbury designated as the Amherst Watershed  
adjacent to Atkins Reservoir, specifically Parcels V12, V13,  
W7, W8, W9, W10, W11, W12, W13, W14, X1, and X2, as shown on  
the Town's tax map:

- a. No person shall possess or imbibe any alcoholic beverages.
- b. No person shall possess any firearms, fireworks or glass containers.
- c. No person shall camp.
- d. No person shall maintain any open fire or use any cooking equipment of any kind.
- e. No person shall swim, boat or fish in the Atkins Reservoir.

Whoever violates any of the above regulations (a-e) shall pay a fine of \$25.00 for the first offense; \$50.00 for the second offense; and \$100 for the third and each subsequent offense within a twelve month period.

ENFORCING PERSONS: SELECT BOARD, BOARD OF HEALTH,  
HEALTH AGENT, CONSERVATION COMMISSION

(Article 2, page four)

**PERSONS IN CONTROL OF DOGS (LEASH LAW)**

Town Meeting of August 30, 1983 (As amended 5/7/88)  
voted to accept the following regulations to apply to  
the conduct of persons in control of dogs:

a. No person shall allow a dog of which she/he is the owner or keeper to go beyond the confines of his property unless the dog is held firmly on a leash or is under the control of its owner, keeper or agent.

b. In the event that the dog officer is required to collect and/or keep a dog in the performance of his/her official duties, said dog officer may charge a fee of \$10.00 to the owner for every dog collected plus the cost of necessary inoculations; a fee of \$3.00 per day may be charged to the owner for storage and board of any collected dogs for a period of ten days, or until any rabies tests have been conducted, after which time the dog shall be destroyed humanely and disposed of, or taken for adoption. Whoever violates section (a) of this bylaw shall pay a fine of \$25.00 for the first offense, and \$50.00 for each subsequent violation.

**ENFORCING PERSONS: SELECT BOARD, DOG OFFICERS**

(Article 2, page five)

**STRIPPING LAND OF SOIL AND LOAM**

Town Meeting of February 11, 1961 voted to accept the following bylaw to apply to stripping land of soil and loam.

Section 1.

No person, firm or corporation shall strip, remove or convey away any soil, loam, sand or gravel from any land in the Town not in public use, unless and until such stripping, severance, removal or conveyance away, is first authorized by a permit issued by the Selectmen of Shutesbury, except in conjunction with construction of a building on the parcel, and except for the continued operation of an existing sand or gravel pit. No such permit shall be issued until and unless an application therefore has been filed with the Board. Said Board shall then hold a public hearing on the application and notice of the filing of the application and date and time of the holding of the public hearing thereon, shall be advertised forthwith, at the expense of the applicant, in a newspaper, published in Franklin County, seven days at least, before the meeting.

Section 2.

The Superior Court shall have jurisdiction in equity to compel compliance with this Bylaw. The penalty for this Bylaw shall be as follows: For the first offense, Fifty Dollars, for the second offense, One Hundred Dollars, and for each subsequent offense, Two Hundred Dollars.

ENFORCING PERSONS: SELECT BOARD, CONSERVATION COMMISSION,  
ZONING BOARD OF APPEALS, ZONING ENFORCEMENT OFFICER

**TRASH DISPOSAL AND RECYCLING**

Town Meeting of May 7, 1988 unanimously voted to accept the following bylaw governing trash disposal and recycling.

**TRASH DISPOSAL AND RECYCLING:** In order to implement a recycling program in conjunction with ordinary waste collection, residents of every household whose trash is collected by the Town shall separate waste material into the following categories before depositing same for collection:

1. Glass and cans
2. Paper
3. Other waste

If no separation takes place, the material will not be collected, and the residents of that household must remove the material within an eighteen (18) hour period or suffer a fine of \$15.00 for that and each subsequent eighteen (18) hour period.

Materials must not be placed at the collection site more than eighteen (18) hours before the scheduled pickup time. For each eighteen hour period of premature deposit of material at the collection site, the offender will suffer a fine of \$15.00.

**ENFORCING PERSONS:** SELECT BOARD, BOARD OF HEALTH,  
HEALTH AGENT

**LAKE WYOLA BOATING SPEEDS**

Town Meeting of June 19, 1973 voted to establish maximum speeds of 30 miles per hour on Lake Wyola, except that it be a maximum of 5 miles per hour within 150 feet of shore. No amount of a fine was noted at that time.

**FINE UNDER THIS SECTION:** \$50 per offense.

**ENFORCING PERSONS:** SELECT BOARD

(Article 2, page seven)

**FALSE FIRE AND SECURITY ALARMS**

Town Meeting of June 15, 1989 to passed the following bylaw governing "false alarms".

Any residence, facility, vehicle or business equipped with an intrusion or fire alarm system shall be subject to a fine of \$25.00 for each second and subsequent falsely activated alarm, as determined by the responding Fire or Police personnel, in any twelve month period commencing on the date and time of the first such false alarm.

**ENFORCING PERSONS: SELECT BOARD, FIREFIGHTERS**

**EXCESSIVE NOISE**

Town Meeting of June 15, 1989 passed the following bylaw governing excessive or unnecessary noise.

**PROHIBITION OF EXCESSIVE NOISE:**

No person(s) shall create, assist in creating, continue or allow to continue any excessive, unnecessary or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the Town of Shutesbury.

**EXEMPTIONS:**

The following shall not be deemed violations of this bylaw:

Noise generated while engaged in necessary business by any police, fire, or Town equipment or vehicles.

Noise generated by any construction, maintenance or repair vehicles or equipment between the hours of 7 AM and 9 PM.

**PENALTIES:**

Any person(s) violating this bylaw shall be punished by a fine of \$25.00 for each second and subsequent offense. The first such offense shall be addressed as a warning by the enforcing person(s). Any act which either continues or is repeated more than thirty minutes after a warning or violation notice is issued shall be a separate offense, and each subsequent thirty minute period of an ongoing disturbance shall constitute subsequent offenses. If the person(s) responsible for the offense cannot be determined, then the person in lawful custody or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

**ENFORCING PERSONS: SELECT BOARD, DOG OFFICER**

(Article 2, page nine)

#### UNREGISTERED MOTOR VEHICLES

Town Meeting of February 12, 1966 passed the following bylaw concerning unregistered motor vehicles:

SECTION 1. The keeping of more than one unregistered motor vehicle assembled or disassembled, except by a person licensed under General Laws Chapter 140 section 59, on any premises, shall not be permitted unless said motor vehicle is stored within a closed building.

SECTION 2. A special permit to keep more than one unregistered motor vehicle on any premises not within an enclosed building, after a duly called public hearing to which all abutters to the premises have received notice, may be granted by the Board of Selectmen, if it finds that such keeping (1) is in harmony with the general purposes and intent of this bylaw; (2) will not adversely affect the neighborhood; and (3) will not be a nuisance.

SECTION 3. All such special permits granted shall limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time.

SECTION 4. This article shall not apply to motor vehicles which are designed and used for farming purposes, nor to contractor's equipment. This article shall not apply to landowners or tenants who store motor vehicles out of sight of abutters and the public ways; but a temporary cover shall not be considered as providing suitable concealment.

SECTION 5. Whoever violates any provision of this Article of the bylaws shall be liable to a penalty of five dollars (\$5.00) per day for each day of violation, commencing ten days following date of receipt of written notice from the Board of Selectmen. This bylaw shall not take effect before September 1, 1966.

ENFORCING PERSONS: SELECT BOARD

Motion passed. Unanimous.

18

Town of Shutesbury

Number: 960702

Personal watercraft on Lake Wyola

**Bylaw Name**

Adopted at the Annual/Special Town Meeting held: July 2, 1996

and approved by the Attorney General's Office on December 20, 1996

**Amendments:**

Town Meeting date	Attorney General approval date

Pursuant to Massachusetts General Laws Chapter 131, Section 45 the operation of jet skis, surf skis, wet bikes, and other so-called "personal watercraft" in or on Lake Wyola, which is completely situated in the Town of Shutesbury, is prohibited.

Exempt from this bylaw are personal watercraft, either specifically marked and identified for law enforcement use or operated by persons clearly identified as law enforcement personnel, which are patrolling Lake Wyola or responding to an emergency (e.g. search, rescue and recovery).

Whoever violates this bylaw shall pay a fine of one hundred (100) dollars for each offense. This bylaw shall be enforced by environmental police, state police, town police and constables. This bylaw also shall be enforced through the noncriminal disposition process as defined by Massachusetts General Laws Chapter 40, Section 21D

19

Town of Shutesbury

Number: 940507

Personnel bylaw

\_\_\_\_\_  
Bylaw Name

Adopted at the **Annual**/Special Town Meeting held: May 7, 1994

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 6, 2000	
May 5, 2001	
May 4, 2002	
May 27, 2003	
May 1, 2004	
February 7, 2006	N/A

Town of Shutesbury

Number: 940507

Personnel bylaw

Bylaw Name \_\_\_\_\_

Adopted at the **Annual**/Special Town Meeting held: May 7, 1994

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 6, 2000	
May 5, 2001	
May 4, 2002	
May 27, 2003	
May 1, 2004	
February 7, 2006	N/A



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BY:.....

TOWN OF SHUTESBURY

**PERSONNEL BY-LAW**

**Adopted: May 1995**  
**Amended: May 2, 1998**  
**Amended: May 6, 2000**  
**Amended: May 5, 2001**  
**Amended: May 4, 2002**  
**Amended: May 27, 2003**  
**Amended: May 1, 2004**  
**Amended: February 7, 2006**

**TOWN OF SHUTESBURY**  
*Personnel Bylaw*

**SECTION 1.** Name of Bylaw/Authority

- 1.1 This bylaw shall be known as the Personnel Bylaw of the Town of Shutesbury and is hereby adopted pursuant to the provisions of Chapter 41 of Section 108C.

**SECTION 2.** Coverage/Applicability

- 2.1 This bylaw is applicable to all persons employed by the Town of Shutesbury except school employees, Town Counsel, unionized employees and those who render certain intermittent, temporary or casual services. This bylaw does not constitute a contract of employment.
- 2.2 Should the provision of a Collective Bargaining Agreement or Professional Contract be in conflict with the Personnel Board Bylaw, the provisions of the Collective Bargaining Agreement or Professional Contract shall prevail.
- 2.3 It shall be the policy of the Town of Shutesbury to guarantee equal opportunity to all qualified applicants and to all employees with respect to initial appointment, advancement, compensation and general working conditions without regard to age, race, creed, color, sex, national origin, disability or sexual preference.
- 2.4 Employees hired before the adoption of this bylaw will not lose any pre-existing benefits passed by Town Meeting or authorized by the Selectboard, as noted in written records.

**SECTION 3.** Definitions

As used in this bylaw, the following words and phrases shall have the following meanings unless a different meaning is clearly required by the context or by Federal or State laws.

- 3.1 **Administrative authority:** The elected or appointed board or individual having jurisdiction over a function or activity.
- 3.2 **Board:** The Personnel Board, as defined by Section 4 of this bylaw.
- 3.3 **Casual service:** Service rendered by an employee in a position calling for part-time employment, which service does not constitute continuous employment. This service is rendered occasionally and without regularity according to the demands therefor.
- 3.4 **Compensation plan:** The totality of all wage and salary schedules.
- 3.5 **Conflict of Interest:** Public employees are covered by G.I. c.268A, which is the conflict of interest law. If an employee has any questions regarding that law, they are advised to contact the State Board of Ethics.
- 3.6 **Continuous employment:** Employment uninterrupted except for vacation leave, sick leave, or other authorized leave of absence.
- 3.7 **Department:** Any working unit, board, committee, commission or other agency of the town subject to this bylaw.
- 3.8 **Department head:** In addition to all other duties, the individual within a department or boards, committees or commissions with the authority to recommend individuals to the Selectboard for appointment, discipline, termination.

- 3.9 Employee: A paid person who is appointed to a full-time, part-time or intermittent position.
- 3.10 Employee Eligible for Benefits (EEFB): A paid person who works twenty (20) or more hours per week and is therefore entitled to benefits.
- 3.11 Exempt employee: A salaried employee who is employed in an executive, administrative or professional capacity and is not generally entitled to overtime pay. Reference the Fair Labor Standards Act.
- 3.12 Family: The immediate family shall include the employee's spouse or significant other, children, parents and siblings.
- 3.13 Full-time employee: An individual retained in full-time, continuous employment as defined below.
- 3.14 Full-time employment: Employment for not less than forty hours per week, fifty-two (52) weeks per year, minus legal holidays and authorized vacation leave, sick leave and other authorized leaves of absence.
- 3.15 Hourly employee: Non-stipend position with either continuous or non-continuous service dependent on the length of the task.
- 3.16 Increment: The dollar difference between step rates.
- 3.17 Intermittent service: Service rendered by an employee in a position calling for part-time employment, which service, although constituting continuous employment is not rendered during prescribed working hours, daily, weekly or annually, but is rendered according to the demands for such service.
- 3.18 Leave without pay: Leave of absence from employment approved by Administrative Authority for a definite time period during which employee shall accrue no benefits.
- 3.19 Maximum rate: The highest rate in a range that an employee normally is entitled to attain.
- 3.20 Minimum rate: The lowest rate in a range that is normally the hiring rate of a new employee.
- 3.21 Non-exempt employee: An employee whose primary duty is not executive, administrative or professional in nature. Reference the Fair Labor Standards Act.
- 3.22 Part-time employee: An individual who works less than full time and is not seasonal.
- 3.23 Part-time employment: Employment for less than full-time employment, as defined.
- 3.24 Personal rate: A rate above the maximum rate applicable only to a designated employee.
- 3.25 Position: An office or post of employment in the Town service with duties and responsibilities calling for the full-time or part-time employment in the performance and exercise thereof.
- 3.26 Promotion: A change from a position of lower pay and/or compensation to a position with greater pay and/or compensation.
- 3.27 Range: The dollar difference between minimum and maximum rates of pay, for a particular job.
- 3.28 Rate: A sum of money designated as compensation for hourly, daily or weekly service.
- 3.29 Review Period: Initial six-month period of employment in a position during which time evaluation takes place.
- 3.30 Salaried employee: An individual receiving a set sum of pay for weekly compensation for the job regardless of exempt or non-exempt status.
- 3.31 Seasonal employee: A temporary employee engaged periodically.
- 3.32 Town: The Town of Shutesbury.

**SECTION 4.** Personnel Board

- 4.1 Pursuant to the vote of Annual Town Meeting in May 1991, there was established a five (5) person Personnel Board. The Personnel Board is charged with the following responsibilities:
- 4.1.1 Providing for the compilation of a Personnel Bylaw for the Town of Shutesbury and recommending amendments, additions and revisions thereto.
  - 4.1.2 Describing the duties and responsibilities of all positions to which this bylaw is applicable.
  - 4.1.3 Reviewing periodically the duties and responsibilities of such positions.
  - 4.1.4 Proposing a compensation plan for those positions.
  - 4.1.5 Reviewing said compensation plan.
  - 4.1.6 Proposing working conditions and fringe benefits for employees occupying the positions to which this bylaw is applicable.
  - 4.1.7 Providing for the compilation and revisions of an employee handbook which describes the conditions of employment with the Town including job descriptions, compensation plans, fringe benefits and vacations.
- 4.2 The membership of the Personnel Board shall be as follows: One (1) member appointed by the Board of Selectmen; one (1) member of the Finance Committee to be drawn from and chosen by the Finance Committee; and three (3) members at large to be appointed by the Moderator. All moderator-appointed members shall be registered voters of the town and no appointees shall be employees of the Town or under the direction of the School Committee. The term of office shall be for three (3) years, except for the first term, which shall be as follows in order to create staggered terms: Selectman, one (1) for one (1) year; Finance Committee one (1) for two (2) years and three members at large, one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. The Town Administrator shall be a non-voting member.
- 4.3 Vacancies, other than by expiration of terms, shall be filled in the same manner and by the same authority for the balance of the unexpired term as outlined in 4.2 above. In the event that such a vacancy is not filled within sixty (60) days, the remaining members of the Personnel Board shall fill the vacancy for the balance of the unexpired term.
- 4.4 A member may be appointed to succeed himself/herself, but the entire tenure shall not exceed three (3) consecutive terms of office [nine (9) years].
- 4.5 The Board shall be invested with all the powers and duties specified in MGL Chapter 41 Section 108C.
- 4.6 Within thirty (30) days after the Board has been appointed and annually, it shall convene and by majority vote, elect among the Board membership:
- 4.6.1 A Chairperson
  - 4.6.2 A Secretary
- 4.7 Duties of the Chairperson
- 4.7.1 Call the Board together and preside at its meetings
  - 4.7.2 Represent the Personnel Board at Selectboard meetings, town meetings and budget hearings
  - 4.7.3 Prepare for publication any proposed bylaw amendments and administer the process prescribed for such amendments
  - 4.7.4 Act as the administrator of this bylaw and initiate such activity as prescribed by the bylaw.

- 4.7.5 Chair may appoint a Vice-Chairman pro tem to assume responsibility in the Chair's absence.
- 4.8 Duties of the Secretary:
  - 4.8.1 Inform the Town Clerk of all Board meetings so that they can be posted as required by law
  - 4.8.2 Keep Board minutes and receive and deliver communications
  - 4.8.3 Immediately, and not later than ten (10) days after occurrence, notify in writing the Town Clerk and the appointing authority of a vacancy on the Board
  - 4.8.4 Be responsible for all its files and records
  - 4.8.5 Prepare its annual report in cooperation with the Chair
  - 4.8.6 Submit to the Town Clerk one (1) copy of the minutes of each meeting.
- 4.9 Any three (3) members shall constitute a quorum for the transaction of business.
- 4.10 The Board shall oversee the administration of personnel policies and shall establish such procedures as it deems necessary for the proper administration thereof. It may employ assistance and incur expenses as it deems necessary, subject to the appropriation of funds therefor.
- 4.11 The Board shall maintain the employee handbook provided for in Section 4.1.6 of this bylaw.
- 4.12 Additional Board responsibilities:
  - 4.12.1 From time to time, on its own motion, investigate the duties and rates of salaries or wages for any or all positions of this bylaw. Such reviews shall be made at such intervals as the Board deems necessary and to the extent which the Board considers practicable. The Board of Selectmen may on an annual basis request that such an investigation be made.
  - 4.12.2 The Board shall assist the Selectmen and departments by preparing and reviewing current information as to municipal salary and wage rates, fringe benefits and working conditions, acting in this capacity as the technical staff to the Town.
  - 4.12.3 The Board shall maintain written job descriptions for all Town positions. Each description shall consist of a statement describing the essential functions of the job and the characteristics that distinguish each position. A job description is intended to generally describe the responsibilities pertaining to a particular position and is not meant to interfere with the ability of the immediate supervisor to assign duties.
  - 4.12.4 The Board shall monitor and oversee the administration of this bylaw. From time to time, by its own vote, it may issue, amend or revoke its policies, regulations and procedures. The Personnel Board may also recommend amendments to this bylaw and submit such amendments to the Town Meeting.

**SECTION 5.** Employment Practices

**5.1 Hiring**

- 5.1.1 Hiring authority: The Selectboard, with the advice and recommendations of the department heads (and others) is the hiring authority with the following exceptions:
- 5.1.1.1 The Library Trustees hire the Library Director
  - 5.1.1.2 The Superintendent or Principal hires school personnel with approval by the School Committee
  - 5.1.1.3 The Fire Chief appoints the deputy and such officers as he/she may think necessary
  - 5.1.1.4 The Regional Health District hires the Health Agent.

**5.1.2 Hiring Procedures**

- 5.1.2.1 Subject to the provisions of this policy, if a vacancy occurs or a new position is established, the Department Head shall, subject to the approval of the Selectboard, advertise the opening. The Selectboard, with the advice and recommendations of the department heads (and others) is the hiring authority. Positions will be filled in accordance with the search procedures. No open positions, part-time or full-time, for employment in the Town, shall be filled until the position has been posted for at least seven (7) days on a public bulletin board at the Town Hall, except those positions filled on an emergency basis. Applications shall be received and interviews conducted as specified in the major or minor search procedures.
- 5.1.2.2 Prior to being interviewed, a prospective employee will be given a job description and a copy of the benefit package pertaining to her/his prospective position.

5.1.3 Physical exam: After a conditional offer of employment is made, employees in certain departments (as determined by the Selectboard) may be required to complete a physical examination for the sole purpose of determining if the employee can perform the essential functions of the job.

5.1.4 Review Period: The first six (6) months of an employee's continuous service shall constitute her/his review period. The employee will receive notification of completion of the review period.

**5.2 Compensation**

5.2.1 Compensation shall be in accordance with the Compensation Plan. The starting point in the salary range will be determined by the Selectboard/Search Committee with regard to experience and expertise in the field.

5.2.2 Employees hired before March 15<sup>th</sup> will be eligible for a Step Increase at the beginning of the next fiscal year pending successful completion of the review period.

5.3 Hours

- 5.3.1 The working day for an EEFB shall be 8 hours.
- 5.3.2 The working week for an EEFB shall be 40 hours.
- 5.3.3 The working week for part-time personnel shall be pro-rated based on a 40 hour week. For example, a twenty (20) hour work week divided by five (5) days would be a four-hour day. It will always be assumed that the number of hours worked per week is divided by five (5) days regardless of the number of actual days or the length of the day worked.
- 5.3.4 Overtime - Non-exempt Employees
  - 5.3.4.1 Compensation for hours over 40 shall be compensated by paying the employee 1.5 times his/her hourly rate for those hours or by granting him/her 1.5 times the number of hours off with pay depending on the employee's choice. Said hours off shall be taken within the same or subsequent week.
  - 5.3.4.2 All working time on Sundays or holidays shall be compensated for at 2 times the regular hourly rate or 2 times the number of hours off with pay unless those days constitute a regular working day for the individual.
  - 5.3.4.3 If a part-time employee is asked to work more than his/her regularly scheduled hours, he/she shall be paid at his/her regular hourly rate, unless and until, the number of hours worked exceeds forty (40) in one week. If the employee is unable to work the additional hours, it will not reflect negatively on his/her employment.
  - 5.3.5.4 All overtime hours must be approved in advance by the employee's supervisor in writing.

**SECTION 6.** Disciplinary Action/Grievance Procedures

- 6.1 **Disciplinary Actions.** The Supervisor may use any, all or none of the following actions as indicated in the discipline of an employee: Oral reprimand; Written reprimand; Disciplinary Probation; Suspension; Termination. These actions are to be utilized in accordance with the procedures set forth in the Personnel Handbook for the Town of Shutesbury.
- 6.2 **Grievance Procedures.** Grievances may be pursued and addressed in accordance with the procedures set forth in the Personnel Handbook for the Town of Shutesbury.

**SECTION 7.** Leaves and Holidays

- 7.1 **Bereavement:**  
An EEFB is entitled to three (3) days bereavement leave for a death in the immediate family. One (1) day will be granted for any other special, long-term relationship. The Selectboard may grant, at their discretion, special bereavement leave in the event of a death.
- 7.2 **Family and Medical Leave.** An EEFB is entitled to family and medical leave in accordance with the Family and Medical Leave Act of 1993 and any other amendments thereto and in accordance with the provisions of the relevant state statute. The description of and procedures for such leave are described in the Personnel Handbook of the Town of Shutesbury.
- 7.3 **Holidays**
- 7.3.1 The recognized holidays shall be New Year's Day, Martin Luther King Day, Presidents' Day, Patriot's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day. Any holiday falling on a Saturday will be celebrated on the preceding Friday, and any holiday falling on a Sunday will be celebrated on the following Monday. All EEFBs are entitled to be paid for these holidays. Should an employee be required to work on a holiday, he/she shall receive twice the basic rate of pay for hours worked on the actual holiday. This provision does not apply to those employees who are regularly scheduled to work on Sundays or holidays. An employee who does not normally work on a day a holiday is observed may take the next work day as that holiday.
- 7.3.2 On an annual basis, the Selectboard may decide to grant extra time around Thanksgiving Day, Christmas Day and New Year's Day.
- 7.4 **Jury Leave**
- 7.4.1 Employees who are required to serve on a jury shall be paid their full pay by the Town for the first three (3) days of such jury duty.
- 7.4.2 For service beyond the three (3) days, the Town will make up the difference (excluding travel) between the employee's regular compensation and the jury compensation for a period not to exceed four weeks.
- 7.4.3 Proper evidence of jury duty must be submitted to the department head.

- 7.5 Leave without pay  
EEFBs may take an unpaid leave of absence for up to two months with the approval of Administrative Authority and the Selectboard.
- 7.6 Military Leave  
Employees who are called for temporary military duty shall receive a leave of absence pursuant to Massachusetts General Laws, Chapter 33, Section 59, or based upon provisions of all federal acts including the Gulf War Veteran Act. The employee must present his/her department head with a copy of his/her military orders regarding the leave request.
- 7.7 Personal Leave
- 7.7.1 An EEFB shall be entitled to a number of hours equivalent to two (2) paid, pro-rated personal days per year. This time does not accrue beyond the end of the fiscal year. In the event that an employee holds two positions, only one of which is benefited, the personal time shall be based on the total hours worked in both positions, not to include overtime.
- 7.7.2 Each personal day is proportional to the percent of total time worked, in relation to an eight (8) hour full-time day. For example, a twenty (20) hour workweek divided by five (5) days would be a four-hour personal day. Employees may take partial personal days with the Supervisor's permission.
- 7.8 Sick Leave
- 7.8.1 Sick leave may be used because of the illness of the employee or the immediate family. A doctor's documentation of illness will be required by the supervisor for an absence of more than five (5) consecutive workdays.
- 7.8.2 EEFBs shall be entitled to a number of hours equivalent to fifteen (15) paid sick days per year. Each sick day is proportional to the percent of regular time worked, in relation to an eight (8) hour full-time workday. For example, a twenty (20) hour workweek divided by five (5) days would be a four-hour sick day. Employees may take partial sick days with the Supervisor's permission. In the event that an employee holds two positions, only one of which is benefited, the sick time shall be based on the total numbers of hours worked in both positions, not to include overtime.
- 7.8.3 Employees may carry over unused sick days, accumulating up to the equivalent of ninety (90) days. Upon termination of employment, the employee will not receive payment for unused sick leave time.
- 7.8.4 Emergency Sick Leave Bank. A bank of sick leave time shall be established to allow for the voluntary contribution of time by employees for the emergency use by an employee whose leave has been exhausted. Procedures for such a bank will be established and overseen by the Personnel Board or its designee.
- 7.9 Vacations
- 7.9.1 Vacation time accrues from the beginning of the employment period but may not be used until the end of the review period.
- 7.9.2 Earned vacation days which are not used in the year earned may be accumulated to a maximum of the employee's annual allotment of vacation time or to a maximum of number of hours equivalent to twenty (20) days, whichever is smaller. The time must be used before the end of the next fiscal year.

- 7.9.3 Part-time employees who work 20 or more of the regular hours as defined in Section 5 are entitled to paid vacation on a pro-rated basis. For example, a twenty (20) hour work week divided by five (5) days would be a four-hour vacation day. In the event that an employee holds two positions, only one of which is benefited, the vacation time shall be based on the total hours worked in both positions, not to include overtime.
- 7.9.4 The supervising authority and employee shall schedule all vacations so that the vacation time will cause the least interference with the performance of the regular work of the Town. Employees may take partial vacation days with the Supervisor's permission.

<u>Time in Service</u>	<u>Time of Vacation Earned</u>
1-6 months	5 days
6-12 months	an additional 5 days
2 years	11 days
3 years	13 days
4 years	14 days
5 years	15 days
6 years	16 days
7 years	17 days
8 years	18 days
9 years	19 days
10 years	20 days
11 years	21 days
12 years	22 days
13 years	23 days
14 years	24 days
15 years	25 days
16 years	26 days
17 years	27 days
18 years	28 days
19 years	29 days
20 years	30 days

- 7.9.5 In case of the involuntary termination of an employee, vacation time from the prior year shall not be compensated in cash or otherwise. The employee shall receive compensation for any unused time accrued during the current year.
- 7.9.6 Provision may be made for a new employee with previous relevant experience to begin employment with an appropriate level of vacation days as determined by the hiring authority.
- 7.10 Small Necessities Act. Pursuant to MGL Chapter 109 Act of 1998, an employee who is covered under FMLA is allowed to take off up to 24 hours per year without pay to take care of essential family business.

**SECTION 8. Employment Benefits****8.1 Insurance**

- 8.1.1 **Health Insurance:** Health Insurance, including an HMO, PPO and Indemnity plans, is available to all EEFBs. The Town of Shutesbury contributes 75% of the premium with the employee paying 25% unless these percentages are changed by a Town vote. An employee who leaves employment (for reasons other than gross misconduct) may continue to receive group coverage through COBRA (Consolidated Omnibus Budget Reconciliation Act) for up to 18 months. Said employee will be responsible for 100% of all insurance premiums and will be required to pay a 2% administrative fee in addition to the full premiums. Employees eligible for Medicare shall be required to obtain such coverage and shall be eligible for supplemental health insurance coverage.
- 8.1.2 **Life Insurance:** It is offered to eligible employees. The Town of Shutesbury contributes 75% of the premium with the employee paying 25% unless these percentages are changed by Town vote.
- 8.1.3 **Worker's Comp:** Employees are covered by worker's comp for accidents that occur while on the job.
- 8.1.4 **Employee Assistance Plan:** EAP is available to eligible employees who feel the need to ask for counseling.
- 8.1.5 **Dental Insurance:** Dental Insurance is available to all eligible employees. The employee is responsible for paying 100% of the premium.
- 8.1.6 **Long-term disability insurance** is available to all eligible employees. The employee is responsible for paying 100% of the premium.

**8.2 Retirement**

- 8.2.1 Participation in the Franklin County Retirement System (FCRS) is mandatory for all employees who are eligible under their rules and regulations. Individuals not eligible for participation in the FCRS shall participate in the O.B.R.A. (Omnibus Budget Reconciliation Act) system.
- 8.2.2 A qualified retiree may enroll in a Shutesbury Health Insurance program within 60 days of retirement, or a qualifying event, if the individual was enrolled in a Shutesbury Health Insurance Program for at least one year prior to retirement.

Upon retirement (but not resignation) from Shutesbury on or after the eligible retirement age and after a minimum of ten (10) years of creditable service in Shutesbury in an EEFB (employee eligible for benefits) position, the Town will pay 50% of the cost of an individual health plan offered by the Town. Retirees will have the option of applying the Town contributory dollar amount to the same health benefit family plan. Employees eligible for Medicare shall be required to obtain such coverage and comply with Chapter 32B section 18 of the M.G.L.

The surviving spouse of a retiree may enroll in a Shutesbury Health Insurance program within 60 days of the eligible retiree's death. The Town will pay 50% of the cost of an individual health plan offered by the Town. Said spouse will have the option of applying the Town contributory dollar amount to the same health benefit family plan. Spouses eligible for Medicare shall be required to obtain such coverage and comply with Chapter 32B section 18 of the M.G.L. and shall lose this

benefit should they remarry or qualify, through their own employment, for another health benefit.

**8.3 Professional Development benefit.**

Employees should make every effort to participate in available training programs within their department's budget. The Personnel Board will consider requests for supplemental funds for unanticipated learning opportunities.

**SECTION 9. Repeal and Amendments**

The Town of Shutesbury Personnel Policy Bylaw may be repealed or amended by a majority vote of Town Meeting following a public hearing called for the purpose of discussing the proposed changes.

**SECTION 10. Severability**

In the event that any provision of this bylaw shall be deemed invalid, unreasonable, illegal or unconstitutional by a court of law, such provision shall be stricken or modified so as to render it valid, reasonable, legal or constitutional. The invalidity of any provision shall not be construed to invalidate any other provision of this bylaw.

20

Town of Shutesbury

Number: 920204

Procurement

\_\_\_\_\_  
**Bylaw Name**

Adopted at the **Annual/Special** Town Meeting held: February 4, 1992

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 4, 2002	August 19, 2002

## **Procurement Bylaw**

The Selectboard or Chief Procurement Officer designated pursuant to MGL Chapter 30B is authorized to enter into any contract for the exercise of the Town's corporate powers on such terms and conditions as are deemed appropriate and to delegate the authority to sign specific contracts to the department head in charge. Notwithstanding the foregoing, the Selectboard or Chief Procurement Officer or delegated department head shall not contract for any purpose on any terms or under any conditions inconsistent with any applicable provision of any general or special law.

(Article 2, page five)

**STRIPPING LAND OF SOIL AND LOAM**

Town Meeting of February 11, 1961 voted to accept the following bylaw to apply to stripping land of soil and loam.

Section 1.

No person, firm or corporation shall strip, remove or convey away any soil, loam, sand or gravel from any land in the Town not in public use, unless and until such stripping, severance, removal or conveyance away, is first authorized by a permit issued by the Selectmen of Shutesbury, except in conjunction with construction of a building on the parcel, and except for the continued operation of an existing sand or gravel pit. No such permit shall be issued until and unless an application therefore has been filed with the Board. Said Board shall then hold a public hearing on the application and notice of the filing of the application and date and time of the holding of the public hearing thereon, shall be advertised forthwith, at the expense of the applicant, in a newspaper, published in Franklin County, seven days at least, before the meeting.

Section 2.

The Superior Court shall have jurisdiction in equity to compel compliance with this Bylaw. The penalty for this Bylaw shall be as follows: For the first offense, Fifty Dollars, for the second offense, One Hundred Dollars, and for each subsequent offense, Two Hundred Dollars.

ENFORCING PERSONS: SELECT BOARD, CONSERVATION COMMISSION,  
ZONING BOARD OF APPEALS, ZONING ENFORCEMENT OFFICER

21

Town of Shutesbury

Number: 610211

Stripping Land of Soil and Loom

Bylaw Name

Adopted at the **Annual**/Special Town Meeting held: February 11, 1961

and approved by the Attorney General's Office on August 2, 1961

**Amendments:**

Town Meeting date	Attorney General approval date
June 15, 1989	

22

Town of Shutesbury

Number: 830830

Town Beach

\_\_\_\_\_  
**Bylaw Name**

Adopted at the Annual/Special Town Meeting held: August 30, 1983

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
May 7, 1988	
June 15, 1989	

**FULL TEXT OF CURRENT BYLAWS:**

(Article 2, page three)

**TOWN BEACH AT LAKE WYOLA REGULATIONS**

Town Meeting of August 30, 1983: (As amended 5/7/88)  
voted to accept the following bylaws to apply to all Town  
property at the Town Beach on Lake Wyola and adjacent to it.

- a. No person shall possess or imbibe any alcoholic beverages.
- b. No person shall possess any firearms, fireworks or glass containers.
- c. No person shall camp.
- d. No person shall maintain any open fire or use any cooking equipment of any kind.
- e. No person shall deposit any trash except in containers provided for that specific purpose.
- f. No person shall bring any dog or horse onto the Town Beach or onto the adjacent Town land.
- g. The beach, beach facilities and adjacent Town property shall be closed to the public from sunset to sunrise.

Whoever violates any of the above bylaws (a-g) shall pay a fine of \$25.00 for the first offense; \$50.00 for the second offense; and \$100 for the third and each subsequent offense within a twelve month period.

**ENFORCING PERSONS: SELECT BOARD, BOARD OF HEALTH,  
HEALTH AGENT, CONSERVATION COMMISSION**

23

Town of Shutesbury

Number: 630209

Quorum – Town Meeting

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**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: February 9, 1963

and approved by the Attorney General's Office on March 19, 1963

**Amendments:**

Town Meeting date	Attorney General approval date

TOWN OF SHUTESBURY

BY-LAW

TO ESTABLISH THE NUMBER OF VOTERS FOR A  
QUORUM

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The following By-Law was adopted by the voters at the Annual Town Meeting on February 9, 1963, and approved on March 19, 1963 by Edward W. Brooke, Attorney General for the Commonwealth of Massachusetts:

The number of voters necessary to constitute a quorum at Town Meetings shall be nine.

24

Town of Shutesbury

Number: 890615B

Trash Disposal and Recycling

\_\_\_\_\_  
**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: May 7, 1988

and approved by the Attorney General's Office on \_\_\_\_\_

**Amendments:**

Town Meeting date	Attorney General approval date
June 15, 1989	
May 1, 1999	August 3, 1999

A motion was made, seconded and passed by a majority to amend the motion as follows: to vote to amend the Shutesbury Town Bylaws by deleting the entire "Trash Disposal and Recycling" bylaw adopted at a Special Town Meeting under Article 2 on June 15, 1989 and replacing it with the following new "Trash Disposal and Recycling" bylaw: In order to implement a mandatory recycling program in conjunction with ordinary waste collection, residents of every household whose trash is collected by the Town shall separate out waste material into the following categories before depositing trash collection:

1. At curb side Glass, cans, plastics and other recyclable containers as designated by the Materials Recovery Facility (MRF).
2. At curb side Paper and paper products.
3. Recyclable batteries and fluorescent light bulbs, to be collected as designated by the town.
4. Banned materials as designated by the town including yard waste, bulky items, household hazardous waste, mercury-bearing waste and cathode ray tubes.

Enforcement: If no separation takes place, the driver of the trash collection truck shall reject the material and notify the residents of that household. If a second offense occurs, the driver shall again reject the material and issue a second notice. The driver shall record the street number of the household.

For third and subsequent offenses, the material shall be rejected and the driver shall report the street number to the Town. A designated enforcing agent shall go to the location to confirm that the load does contain recyclable materials. Under non-criminal disposition, as provided by in MGL c.40, section 21 D, a ticket shall be issued. The following schedule of penalties shall take effect on July 1, 1999:

1. First ticket: \$25.00
2. Second ticket: \$50.00
3. Third and subsequent tickets: \$75.00

ENFORCING AGENTS: Recycling Coordinator, Recycling and Solid Waste Management Committee, Town Administrator, Board of Health, Selectboard, Police Department.

Amended motion passed unanimously.

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## **Town of Shutesbury Community Preservation Bylaw**

### ***Chapter 1: Establishment***

The Town of Shutesbury hereby establishes a Community Preservation Committee, consisting of nine (9) voting members pursuant to MGL Chapter 44B, Section 5. The composition of the committee, the appointment authority and the term of office for the committee members shall be as follows:

One member of the Conservation Commission as designated by the Commission for a term of three years.

One member of the Historical Commission as designated by the Commission for a term of three years.

One member of the Planning Board as designated by the Board for a term of one year and thereafter for a term of three years.

One member to act in the capacity of, or perform like duties of, a member of a housing authority; this member is to be appointed by the Select Board for an initial term of two years and thereafter for a term of three years.

One member of the Open Space Committee as designated by the Committee for an initial term of three years.

One member to act in the capacity of, or perform like duties of the Board of Park Commissioners; in the absence of such Board the Select Board shall designate a member of the Select Board for a term of one year, and to reappoint thereafter on an annual basis.

One At-large member to be appointed by the Board of Selectmen, for a term of two years and thereafter for a term of three years.

One member of the Recreation Committee for a term of two years and one member of the Finance Committee for a term of one year and thereafter for terms of three years.

Should any of the Commissions, Boards, Councils or Committees who have appointment authority under this Chapter be no longer in existence for what ever reason, the appointment authority for that Commission, Board, Council, or Committee shall become the responsibility of the Select Board.

### **Chapter 2: Duties**

(1). The community preservation committee shall study the needs, possibilities and resources of the town regarding community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the recreation committee and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town.

(2). The community preservation committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic

resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

(3). The community preservation committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

(4) In every fiscal year, the annual revenues of the community Preservation Fund shall be distributed among open space, historic resources, community housing, and administrative and operating expenses of the community Preservation committee, according to the following allocation:

- Not less than ten percent (10%) of the annual revenues in the community preservation Fund shall be spent , or set aside for later spending, for open space (not including land for recreational use); additional revenues allocated to open space beyond this ten percent may include land for recreational use
- Not less than ten percent (10%) of the annual revenues shall be spent, or set aside for later spending, for historic resources
- Not less than ten percent (10%) of the annual revenues shall be spent, or set aside for later spending for community housing

### **Chapter 3: Requirement for a quorum and cost estimates**

The community preservation committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the community preservation committee shall constitute a quorum. The community preservation committee shall approve its actions by majority vote. Recommendations to the Town Meeting shall include their anticipated costs.

### **Chapter 4: Amendments**

This Chapter may be amended from time to time by a majority vote of the Town Meeting, provided that the amendments would not cause a conflict to occur with MGL, Chapter 44 B.

### **Chapter 5: Severability**

In case any section, paragraph or part of this chapter be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

### **Chapter 6 Appointments**

Each appointing authority shall have thirty (30) days after the bylaw takes effect to make their initial appointments. Should any appointing authority fail to make their appointments within that allotted time, the Select Board shall make the appointment.

A true copy. Attest: \_\_\_\_\_  
Shutesbury Town Clerk

Town Seal

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Town of Shutesbury

Number: 660212

Unregistered vehicles

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**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: February 12, 1966

and approved by the Attorney General's Office on December 23, 1966

**Amendments:**

Town Meeting date	Attorney General approval date
June 15, 1989	

(Article 2, page nine)

#### UNREGISTERED MOTOR VEHICLES

Town Meeting of February 12, 1966 passed the following bylaw concerning unregistered motor vehicles:

SECTION 1. The keeping of more than one unregistered motor vehicle assembled or disassembled, except by a person licensed under General Laws Chapter 140 section 59, on any premises, shall not be permitted unless said motor vehicle is stored within a closed building.

SECTION 2. A special permit to keep more than one unregistered motor vehicle on any premises not within an enclosed building, after a duly called public hearing to which all abutters to the premises have received notice, may be granted by the Board of Selectmen, if it finds that such keeping (1) is in harmony with the general purposes and intent of this bylaw; (2) will not adversely affect the neighborhood; and (3) will not be a nuisance.

SECTION 3. All such special permits granted shall limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time.

SECTION 4. This article shall not apply to motor vehicles which are designed and used for farming purposes, nor to contractor's equipment. This article shall not apply to landowners or tenants who store motor vehicles out of sight of abutters and the public ways; but a temporary cover shall not be considered as providing suitable concealment.

SECTION 5. Whoever violates any provision of this Article of the bylaws shall be liable to a penalty of five dollars (\$5.00) per day for each day of violation, commencing ten days following date of receipt of written notice from the Board of Selectmen. This bylaw shall not take effect before September 1, 1966.

ENFORCING PERSONS: SELECT BOARD

Motion passed. Unanimous.

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Town of Shutesbury

Number: 870502A

Wetland protection

\_\_\_\_\_  
**Bylaw Name**

Adopted at the **Annual**/Special Town Meeting held: May 2, 1987

and approved by the Attorney General's Office on September 14, 1987

**Amendments:**

Town Meeting date	Attorney General approval date
May 5, 1990	

May 5, 1990 amendment: provide for the option of non-criminal enforcement.

Town of Shutesbury

Number: 870502A

Wetland protection

**Bylaw Name**

Adopted at the **Annual/Special** Town Meeting held: May 2, 1987

and approved by the Attorney General's Office on September 14, 1987

**Amendments:**

Town Meeting date	Attorney General approval date
May 5, 1990	

May 5, 1990 amendment: provide for the option of non-criminal enforcement.



**TOWN OF SHUTESBURY, MASSACHUSETTS  
GENERAL WETLANDS PROTECTION BYLAW**

Passed by Shutesbury Town Meeting on May 2, 1987

**SECTION 1: Purpose**

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in the Town of Shutesbury by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following (collectively, the "wetland values protected by this bylaw"):

- a. public or private water supply
- b. groundwater and groundwater quality
- c. surface water and surface water quality
- d. flood control
- e. erosion and sedimentation control
- f. storm damage prevention
- g. water pollution
- h. fisheries
- i. storm drainage
- j. runoff
- k. wildlife habitat
- l. recreation
- m. aesthetics
- n. historic values
- o. agriculture
- p. aquaculture

**SECTION 2: Jurisdiction**

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas:

- a. any freshwater wetland isolated wetland, marsh, wet meadow, bog or swamp; within 100 feet of any freshwater wetland, isolated wetland, marsh, wet meadow, bog or swamp;
- b. any lake, river, pond or stream (whether surface or subsurface); within 100 feet of any lake, river,, pond or stream (whether surface

- or subsurface); any land under said waters;
- c. any land subject to flooding or inundation by groundwater, surface water, storm flowage, or within a 100 year flood plain.

### **SECTION 3: Exceptions**

#### **a. Existing Structures or Facilities**

The permit and application required by this bylaw shall not be required for maintaining, repairing, or replacing (but not substantially changing or enlarging), an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services; provided that all of the following conditions are met:

3. the structure or facility is not substantially changed or enlarged;
4. written notice has been given to the Commission prior to commencement of work;
5. the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

#### **b. Emergency Projects**

The permit and application required by this bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that all of the following Conditions are met:

3. the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof;
4. advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement;
5. the Conservation Commission or its agent certifies the work as an emergency project;
6. the work is performed only for the

time and place certified by the Conservation-Commission for the limited purposes necessary to abate the emergency;

7. within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this bylaw.

Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

**c. Other Exceptions**

Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply.

**SECTION 4: Applications for Permits and Requests for Determination**

Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission, at its discretion in an appropriate case, may accept as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act (General Laws, chapter 131, section 40).

Any person desiring to know whether or not proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

At the time of an application or request, the applicant shall pay a filing fee specified in the Regulations of the

Commission. This fee is in addition to that required by the Wetlands Protection Act (General Laws, chapter 131, section 40).

If, in the judgment of the Commission, consulting services are necessary or appropriate, the applicant, prior to a decision on the application or request, shall reimburse the Town for the full cost of such services. All such consultants shall be selected by the Commission. Failure to pay the filing fee, or failure to provide full reimbursement for consulting services, shall be sufficient grounds to deny the application or request.

The Commission may waive all or part of the filing fee and reimbursement for consulting services for an application or request filed by a government agency. The Commission shall waive the filing fee and reimbursement for consulting services for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

#### **SECTION 5: Notice and-Hearings**

Any person filing an application or a request for determination with the Commission shall, at the same time, give written notice thereof (by certified mail with return receipt requested or by personal delivery in hand) to all abutters according to the most recent records of the assessors, including those across a traveled way or body of water. The notice to abutters shall enclose a copy of the application or request, with plans. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon.

The Commission, at its discretion in an appropriate case, may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (General Laws, chapter 131, section 40).

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and Plans required of the applicant deemed necessary by the mission in its discretion or comments and recommendations of boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the commission shall take action on such information as is available.

#### **SECTION 6: Coordination with Other Boards**

Any person filing a permit application or a request for determination with the Commission shall provide a copy thereof at the same time (by certified mail with return receipt requested, or by personal delivery in hand) to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, and Building Inspector. The Commission shall not take final action until such boards and officials ave had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission, prior to final action.

#### **SECTION 7: Permits Determinations and Conditions**

If the Commission, after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the

wetland values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions, which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration.

For good cause the Commission may revoke or modify a permit issued under this bylaw after public notice and public hearing, and notice to the holder of the permit.

The Commission, at its discretion in an appropriate case, may combine the permit or other action on an application issued under this bylaw with the order of Conditions issued under the Wetlands Protection Act.

#### **SECTION 8: Regulations**

After public notice and public hearing, the Commission shall promulgate regulations to effectuate the purposes of this bylaw. Failure by the Commission to promulgate

such regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

At a minimum these regulations shall define key terms in this bylaw not inconsistent with this bylaw.

## **SECTION 9: Definitions**

The following definitions shall apply in the interpretation and implementation of this bylaw.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the Commonwealth or political subdivisions thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, the Town of Shutesbury, and any other legal entity, its legal representatives, attorneys, agents, heirs, successors or assigns.

The terms "consultant(s)" or "consulting services" include, but are not limited to, architects, biologists and other environmental experts, chemists, engineers, geologists, landscape architects lawyers, sanitarians, and surveyors.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- a. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. Drainage or other disturbance of water level or water table;
- d. Dumping, discharging, or filling with any material which may degrade water quality;
- e. Placing of fill, or removal of material, which would alter elevation;
- f. Driving of piles, erection or repair of

- buildings, or structures of any kind;
- g. Placing of obstructions or objects in water;
- h. Destruction of plant life, including but not limited to cutting of trees;
- i. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- j. Any activities, changes, or work, which may cause or tend to contribute to pollution of any body of water or groundwater.

#### **SECTION 10: Security**

As part of a permit issued under this bylaw, in addition to any security required by any other Municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- a. By a performance bond secured by surety, or deposit money or negotiable securities. Such bond or money or negotiable securities must be approved as to form and manner of execution by the Town counsel or counsel to the Commission. Any surety must be approved by the Commission;
- b. By a conservation restriction, easement or other covenant running with the land and enforceable in a court of law, duly executed by the record owner and recorded in the Franklin County Registry of Deeds (or in the case of registered land, with the recorder of the Land Court). Such covenant shall provide in part that the permit conditions shall be performed and observed before the land, or any lot or other part thereof, may be conveyed other than by mortgage deed.

#### **SECTION 11: Enforcement**

The Commission, its agents, officers, employees, and consultants shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the

Commission deems necessary.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. As part of a permit issued under this bylaw, the Commission may provide that the applicant agrees to reimburse the Town for all enforcement expenses, including but not limited to court costs, attorney's fees and expert witness fees.

Upon request of the Commission, the Board of Selectmen and the Town Counsel (counsel to the Commission) shall take legal action for enforcement under civil law upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than three hundred dollars (\$300.00). Each day or portion thereof, during which a violation continues, shall constitute a separate offense, and each provision of the bylaw, regulations, or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in General Laws, chapter 40, section 21D.

## **SECTION 12: Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application, will not have unacceptable significant or cumulative effect upon the wetland values protected by this bylaw. Failure to provide evidence which is, in the opinion of the Commission, adequate to support this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

### **SECTION 13: Relation to the Wetlands Protection Act**

This bylaw is adopted Under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, General Laws, chapter 131, section 40, and regulations thereunder.

### **SECTION 14: Severability**

If any section, paragraph, sentence, clause, provision, phrase, or work of this bylaw shall be adjudged not valid, the adjudication shall apply only to the material so adjudged and the remainder of this bylaw shall be deemed to remain valid and effective. Any such adjudication shall not invalidate any permit or determination which previously has been issued.

### **Amendment to add at end of current section 1.1 Enforcement of Shutesbury Wetlands Protection Bylaw**

For purposes of non-criminal enforcement procedures pursuant to Mass. General Laws, Chapter 409 Section 21D, each of the following actions, omissions or occurrences shall be considered a separate offense and each such offense shall be punished by a fine of \$50.00

- 1) Altering any resource area protected by this bylaw. The term "alter" includes all activities, as described in section 9 a through j:
  - a. Removal, excavation, or dredging of: soil, sand, gravels or aggregate materials of any kind;
  - b. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
  - c. Drainage or other disturbance of water level or water table;
  - d. Dumping, discharging, or filling with any material which may degrade water quality;
  - e. Placing of fill or removal of material, which would alter elevation;

- f. Driving of piles, erection or repair of buildings, or structures of any kind;
- g. Placing of obstructions or objects in water;
- h. Destruction of plant life, including but not limited to trees;
- i. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- j. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

2. Failure to file a written application with the Shutesbury Conservation Commission for permission to perform activities regulated by the Wetlands Protection Bylaw affecting resource areas described in

Section 2 a through c:

- a. Any freshwater wetland, isolated wetland, marsh, wet meadow, bog or swamp; within 100 feet of any wetland, isolated wetland, marsh, wet meadow, bog or swamp;
- b. Any lake, river, pond or stream (whether surface or subsurface); within 100 feet of any lake, river, pond or stream (whether surface or subsurface); any land under said waters;
- c. Any land subject to flooding or inundation by groundwater, surface water, storm flowage, or within a 100-year floodplain.

3. Failure to follow any or all conditions of a permit issued by the Shutesbury Conservation Commission for activities within a resource area or buffer zone as described above. Each day or portion thereof during which a violation continues may constitute a separate offense. This bylaw may be enforced pursuant to MGL Ch. 40, s.21D by the Conservation Commission; or by a town police officer, constable with jurisdiction, or the Selectboard, upon request from the Conservation Commission.

# **Town of Shutesbury Massachusetts Regulations under the Wetlands Protection Bylaw**

## **SECTION I: AUTHORITY AND PURPOSE**

### **I.A. Authority**

These regulations shall be effective on and after July, 26 2000, and so remain until modified or amended by the Shutesbury Conservation Commission "the Commission". They are enacted by the Commission under authority granted by Section 8 of the Shutesbury General Wetlands Protection Bylaw. That Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, General Laws, chapter 131, section 40, and regulations hereunder.

### **I.B. Purpose**

These regulations are enacted to clarify and define the provisions of the Shutesbury General Wetlands Protection Bylaw, and to protect the wetlands values set forth in Section 1 of that Bylaw.

## **SECTION II: FEES**

### **II.A. Procedures**

1. Fees shall be paid to the Conservation Commission at the time of application, by check or money order made payable to "Town of Shutesbury." Fees are non-refundable.
2. In addition to the fees, reimbursement for consulting services may be required as provided in Section 4 of the Bylaw.
3. Fees may be waived by the Commission as provided in Section 4 of the Bylaw. As provided in Section 4 of the Bylaw, the Commission shall waive the filing fee and reimbursement for consulting services for a request for determination filed by a person (such as an abutter) having no financial connection with the property which is the subject of the request.
4. As provided in Section 4 of the Bylaw, the fees specified

below are in addition to fees required under the state Wetlands Protection Act.

## **II.B. Fee Schedules**

If more than one of the following schedules applies to any project, then the schedule providing the lower fee shall be applied to that project. Fees below are in addition to fees authorized by the Wetlands Protection Act (MGL 131 S 40) and 801 CMR 4.02.

1. Notice of Intent or request for determination for any project (a) not involving residential construction work, and (b) affecting less than 5,000 square feet of area within Commission jurisdiction under Section 2 of the Bylaw: **\$25.00**
  - a. For each additional one thousand (1,000) square feet or portion thereof of such area affected by the project, the above fee shall be increased by: **\$5.00**
2. Notice of Intent or request for determination for project involving one single family dwelling or one building lot: **\$50.00**
3. For each additional dwelling unit or each additional building lot, the above fee shall be increased by: **\$50.00**

Examples: ANR (approval under subdivision law not required plan) showing two lots - **\$100**; Duplex with two dwelling units on one lot - **\$100**; subdivision plan showing three lots - **\$150**.

4. Extension of time for permits: **\$ 25.00**

## **SECTION III: DEFINITIONS**

- III.A. "Bogs" shall be defined as set forth in the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, Paragraph 5.
- III.B. "Bylaw" shall mean the Town of Shutesbury General Wetlands Protection Bylaw.
- III.C. "Commission" or "Conservation Commission" shall mean the Conservation Commission of the Town of Shutesbury, Massachusetts.
- III.D. "Freshwater Wetlands" shall be de-fined as set forth in the

Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, Paragraph 5.

III.E. "Isolated Wetland" shall be defined as any area of one thousand square feet or more which meets all standards for vegetated wetlands under state law or regulations, except for the "bordering" requirement.

III.F. "Marshes" shall be defined as set forth in the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, Paragraph 10.

III.G. "Swamps" shall be defined as set forth in the Wetlands Protection Act Massachusetts General Laws, Chapter 131, Section 40, Paragraph B.

III.H. "Wet meadows" shall be defined as set forth in the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, Paragraph 9.

III.I. Definitions set forth in Section 9 of the Bylaw are incorporated herein by reference.

III.J. Definitions set forth in Section 310 CMR (Code of Massachusetts Regulations) 10.04 are incorporated herein by reference, provided however, that definitions set forth in the Bylaw or these Regulations shall take precedence in the event of any conflict.

#### **SECTION IV: ADMINISTRATION**

##### **IV.A. Waiver of Compliance**

Strict compliance with the requirements of these rules and regulations may be waived when, in the judgment of the Commission, such action is in the public interest and not inconsistent with the intent of the Shutesbury Wetlands Protection Bylaw. In waiving strict compliance, the Board may require such alternative conditions as will serve substantially the same objective as the standards or regulations waived.

##### **IV.B Reimbursement for Consulting Services**

Failure to pay any reimbursement for consulting services provided in the Bylaw or these regulations at the stated time, or within thirty (30) days following mailing of an invoice, whichever is earlier, shall be sufficient grounds for the Commission to disapprove or rescind its approval of any application or permit. All reimbursements shall be made by certified check or money order payable to "Town of Shutesbury, Massachusetts". No security provided under Section 10 of the Bylaw shall be released until after all reimbursements have been paid.

##### **IV.C. Reduction and Release of Security**

1. The penal sum of any bond, or the amount of any deposit held pursuant to Section 10 of the Bylaw may, from time to time, be reduced by the Commission and the obligations of the parties thereto released by the Commission in whole or in part, upon receipt of a written request from the person to whom the permit was issued or the person providing the security.
2. Upon completion of work provided in the permit, security for the performance of which was given pursuant to Section 10 of the Bylaw, the applicant may request (in writing) and agree on terms of release with the Commission.
3. If the Commission determines that said work has been completed in compliance with the terms and conditions of the permit, it shall release the interest of the Town of Shutesbury in such bond or deposit, and return the bond or deposit to the person who furnished same, or release the covenant, as the case may be.
4. If the Commission determines that said work has not been completed in compliance with the terms and conditions of the permit, it shall, within forty-five (45) days after receipt of a written request for release of security, specify to the applicant the details wherein said work fails to comply with the terms and conditions of the permit.

#### **IV.D. Separability**

If any section, paragraph, sentence, clause, provision, phrase, or word of these regulations shall be adjudged not valid, the adjudication shall apply only to the material so adjudged and the remainder of these regulations shall be deemed to remain valid and effective. Any such adjudication shall not invalidate any permit or determination, which previously has been issued.

#### **IV.E. Amendments**

These regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Commission, on its own motion or by petition, after public notice and a public hearing as provided by Section 8 of the Bylaw.

#### **IV.F. Invalidation by state law or local bylaw**

Any part of these regulations subsequently invalidated by a new state law or town bylaw or modification of an existing state law or town bylaw shall be automatically brought into conformity with the new or amended law or bylaw, and shall be deemed to be effective immediately, without recourse to a public hearing the customary procedures for amendment or repeal of such regulations.

#### **IV.S. Forms**

Unless otherwise specified by the Conservation Commission, the forms set forth by the Department of Environmental Protection Regulations shall serve also as the forms to be used under the Town of Shutesbury General Wetlands Protection Bylaw.

Additional or different forms for the administration of these regulations and the Town of Shutesbury General Wetlands Protection Bylaw may be adopted and revised from time to time by the Conservation Commission by administrative action of the Commission apart from Section IV.E. In the event of such administrative action, sample forms shall be appended to these regulations or made available by the Commission.

#### **IV.H. Notices and hearings**

Unless otherwise specified by the Conservation Commission, the procedures for notices and hearings set forth in the Wetlands Protection Act and in the Department of Environmental Protection Regulations shall serve also to fulfill the provisions of Section 5 of the Town of Shutesbury General Wetlands Protection Bylaw.

#### **IV.I. Enforcement and Penalties**

1. **Criminal Complaint:** As provided by Section 11 of the Bylaw, and authorized by Massachusetts General Laws, chapter 40, section 21, any person who violates any provision of the Bylaw or these regulations, or permits issued under the Bylaw or these regulations, may be punished by indictment or an complaint brought in the District Court. Except as may otherwise be provided by law, and as the District Court may see it to impose, the maximum penalty or any violation of the Bylaw, regulations or permit shall be three hundred dollars (\$300.00) for each offense. Each day or portion thereof during which a violation continues shall constitute a separate-offense, and

each provision of the Bylaw, regulations, or permit violated shall constitute a separate offense.

2. **Non-Criminal Disposition:** As provided by Section 11 of the Bylaw and authorized by Massachusetts General Laws, chapter 409 section 21D, any person who violates any provision of the Bylaw or these regulations, or permits issued under the Bylaw or these regulations, may, in the discretion of the Commission or any police officer (or of any person, department, agency or consultant designated by the Commission as its agent) be penalized by a non-criminal complaint in the District Court. The Commission or any police officer (or any person, department, agency or consultant designated by the Commission as its agent) shall be the enforcing persons. For the purpose of this provision the penalty to apply in the event of a violation shall be as follows: twenty five dollars (\$ 25.00) for the first offense; fifty dollars (\$50.00) for the second offense; one hundred dollars (\$100.00) for the third offense; and two hundred dollars (\$200.00) for the fourth and each subsequent offense. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations, or permit violated shall constitute a separate offense.

SELECTMEN'S COPY

Please  
return

Passed by Shutesbury Conservation Commission on January 20, 1987

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Recommended to Board of Selectmen for Submission to Town Meeting

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TOWN OF SHUTESBURY, MASSACHUSETTS

GENERAL WETLANDS PROTECTION BYLAW

SECTION 1: Purpose

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in the Town of Shutesbury by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following (collectively, the "wetland values protected by this bylaw"):

- a. public or private water supply
- b. groundwater and groundwater quality
- c. surface water and surface water quality
- d. flood control
- e. erosion and sedimentation control
- f. storm damage prevention
- g. water pollution
- h. fisheries
- i. storm drainage
- j. runoff
- k. wildlife habitat
- l. recreation
- m. aesthetics
- n. historic values
- o. agriculture, and

- p. aquaculture

SECTION 2: Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas:

- a. any freshwater wetland, isolated wetland, marsh, wet meadow, bog or swamp; within 100 feet of any freshwater wetland, isolated wetland, marsh, wet meadow, bog or swamp;
- b. any lake, river, pond or stream (whether surface or subsurface); within 100 feet of any lake, river, pond or stream (whether surface or subsurface); any land under said waters;
- c. any land subject to flooding or inundation by groundwater, surface water, storm flowage, or within a 100 year flood plain.

SECTION 3: Exceptions

- a. Existing Structures or Facilities

The permit and application required by this bylaw shall not be required for maintaining, repairing, or replacing (but not substantially changing or enlarging), an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services; provided that all of the following conditions are met:

- (1) the structure or facility is not substantially changed or enlarged;
- (2) written notice has been given to the Commission prior to commencement of work;
- (3) the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

- b. Emergency Projects

The permit and application required by this bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that all of the following conditions are met:

- (1) the work is to be performed by or has been ordered to be

performed by an agency of the Commonwealth or a political subdivision thereof; "

- (2) advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement;
- (3) the Conservation Commission or its agent certifies the work as an emergency project;
- (4) the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency;
- (5) within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this bylaw.

Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

c. Other Exceptions

Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply.

SECTION 4: Applications for Permits and Requests for Determination

Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission, at its discretion in an appropriate case, may accept, as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act (General Laws, chapter 131, section 40).

Any person desiring to know whether or not proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

At the time of an application or request, the applicant shall pay a

filing fee specified in the Regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act (General Laws, chapter 131, section 40).

If, in the judgment of the Commission, consulting services are necessary or appropriate, the applicant, prior to a decision on the application or request, shall reimburse the Town for the full cost of such services. All such consultants shall be selected by the Commission. Failure to pay the filing fee, or failure to provide full reimbursement for consulting services, shall be sufficient grounds to deny the application or request.

The Commission may waive all or part of the filing fee and reimbursement for consulting services for an application or request filed by a government agency. The Commission shall waive the filing fee and reimbursement for consulting services for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

#### SECTION 5: Notice and Hearings

Any person filing an application or a request for determination with the Commission shall, at the same time, give written notice thereof (by certified mail with return receipt requested or by personal delivery in hand) to all abutters according to the most recent records of the assessors, including those across a traveled way or body of water. The notice to abutters shall enclose a copy of the application or request, with plans. When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon.

The Commission, at its discretion in an appropriate case, may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (General Laws, chapter 131, section 40).

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing,

which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

#### SECTION 6: Coordination with Other Boards

Any person filing a permit application or a request for determination with the Commission shall provide a copy thereof at the same time (by certified mail with return receipt requested, or by personal delivery in hand) to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, and Building Inspector. The Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

#### SECTION 7: Permits, Determinations, and Conditions

If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring

or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the Commission prior to expiration.

For good cause the Commission may revoke or modify a permit issued under this bylaw after public notice and public hearing, and notice to the holder of the permit.

The Commission, at its discretion in an appropriate case, may combine the permit or other action on an application issued under this bylaw with the Order of Conditions issued under the Wetlands Protection Act.

#### SECTION 8: Regulations

After public notice and public hearing, the Commission shall promulgate regulations to effectuate the purposes of this bylaw. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

At a minimum these regulations shall define key terms in this bylaw not inconsistent with this bylaw.

#### SECTION 9: Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivisions thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, the Town of Shutesbury, and any other legal entity, its legal representatives, attorneys, agents, heirs, successors or assigns.

The terms "consultant(s)" or "consulting services" include, but are not limited to, architects, biologists and other environmental experts, chemists, engineers, geologists, landscape architects, lawyers, sanitarians, and surveyors.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- (a) Removal, excavation or dredging of soil, sand, gravel, or

- aggregate materials of any kind;
- (b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
  - (c) Drainage or other disturbance of water level or water table;
  - (d) Dumping, discharging, or filling with any material which may degrade water quality;
  - (e) Placing of fill, or removal of material, which would alter elevation;
  - (f) Driving of piles, erection or repair of buildings, or structures of any kind;
  - (g) Placing of obstructions or objects in water;
  - (h) Destruction of plant life, including but not limited to cutting of trees;
  - (i) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
  - (j) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater.

SECTION 10: Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- a. By a performance bond secured by surety, or deposit money or negotiable securities. Such bond or money or negotiable securities must be approved as to form and manner of execution by the Town counsel or counsel to the Commission. Any surety must be approved by the Commission;
- b. By a conservation restriction, easement or other covenant running with the land and enforceable in a court of law, duly executed by the record owner and recorded in the Franklin County Registry of Deeds (or in the case of registered land, with the recorder of the Land Court). Such covenant shall provide in part that the permit conditions shall be performed and observed before the land, or any lot

or other part thereof, may be conveyed other than by mortgage deed.

**SECTION 11: Enforcement**

The Commission, its agents, officers, employees, and consultants shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. As part of a permit issued under this bylaw, the Commission may provide that the applicant agrees to reimburse the Town for all enforcement expenses, including but not limited to court costs, attorney's fees and expert witness fees.

Upon request of the Commission, the Board of Selectmen and the Town Counsel (counsel to the Commission) shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw, ~~regulations thereunder~~, or permits issued thereunder, shall be punished by a fine of not more than three hundred dollars (\$300.00). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, ~~regulations~~, or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in General Laws, chapter 40, section 21D.

**SECTION 12: Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this bylaw. Failure to provide evidence which is, in the opinion of the Commission, adequate to support this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

SECTION 13: Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, General Laws, chapter 131, section 40, and regulations thereunder.

SECTION 14: Severability

If any section, paragraph, sentence, clause, provision, phrase, or work of this bylaw shall be adjudged not valid, the adjudication shall apply only to the material so adjudged and the remainder of this bylaw shall be deemed to remain valid and effective. Any such adjudication shall not invalidate any permit or determination which previously has been issued.

28

## Zoning

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Bylaw Name

Adopted at the **Annual**/Special Town Meeting held: February 13, 1960

and approved by the Attorney General's Office on January 30, 1961

**Amendments:**

Town Meeting date	Attorney General approval date
April 26, 1965	May 17, 1965
February 12, 1966	December 23, 1966
April 4, 1972	
May 6, 1978	
May 7, 1988	
May 6, 1989	
May 4, 1991	
May 2, 1992	
May 1, 1993	
May 4, 1996	
May 1, 1999	
May 6, 2000	
May 5, 2001	
May 4, 2002	August 19, 2002
May 7, 2005	August 30, 2005 (with 5 disapprovals)
May 6, 2006	May 12, 2006
May 5, 2007	August 28, 2007

**The Zoning Bylaw is available at the Town Clerk's office**

\$ 10.00

## SHUTESBURY ZONING BY-LAW



Adopted by the voters at the April 11, 1972  
adjournment of the April 4, 1972  
Special Town Meeting

Amended by the voters at the  
May 6, 1978 Town Meeting  
May 7, 1988 Town Meeting  
May 6, 1989 Town Meeting  
May 4, 1991 Town Meeting  
May 2, 1992 Town Meeting  
May 1, 1993 Town Meeting  
May 4, 1996 Town Meeting  
May 1, 1999 Town Meeting  
May 6, 2000 Town Meeting  
May 5, 2001 Town Meeting  
May 4, 2002 Town Meeting  
May 7, 2005 Town Meeting  
May 6, 2006 Town Meeting  
May 5, 2007 Town Meeting

A true copy, attest:

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Shutesbury Town Clerk

(printed on recycled paper)



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## SECTION I: PURPOSE AND GENERAL REGULATIONS

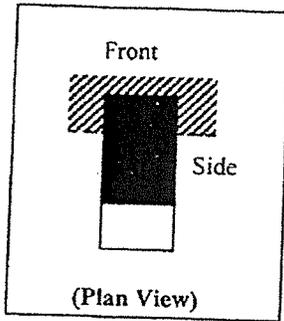
- A. Purpose: These regulations are enacted to promote the health, safety, convenience and general welfare of the inhabitants of the Town of Shutesbury. In order to protect the community, to encourage the most appropriate use of land and to promote sound growth, the use of land and the construction, alteration, size, location and use of buildings and structures are hereby regulated as provided under the authority of Chapter 40A of the Massachusetts General Laws.
- B. Basic Requirements:
1. Any building or structure hereafter erected, altered, enlarged or moved or any new use of land in the Town of Shutesbury shall conform to the provisions of this Zoning By-Law as set forth below. Uses which are not specifically listed as being allowed are thereby prohibited. Any existing lot or parcel of land which does not meet all requirements of these Zoning By-Laws shall be governed by the provisions of Massachusetts General Laws, Chapter 40A, as the same may be hereafter amended or replaced.
  2. All plans marked "Approval not required under Subdivision Control Laws" filed prior to May 7, 1988, and endorsed or recorded thereafter shall be governed by the Zoning By-Laws of Shutesbury in effect on May 6, 1988 in all matters regarding dimensional requirements; providing that nothing in this section shall be construed to give any greater rights or protection to such plans than that afforded by Massachusetts General Laws, Chapter 40A, Section 6, to plans endorsed or recorded prior to May 7, 1988. It is the intent of this section to afford plans filed prior to May 7, 1988, but endorsed after that date the same protection under Massachusetts General Laws, Chapter 40A, Section 6, as is accorded to plans filed and endorsed prior to May 7, 1988.
- C. Non-Conforming Uses: The lawful use of any building, structure or land, existing at the time of the adoption or subsequent amendment of this By-Law, may be continued although such building, structure or use of land does not conform to the provisions of the By-Law.
1. A non-conforming use shall not be increased, expanded or replaced, nor shall any major exterior alterations be made except on special permit from the Board of Appeals. However, alteration, reconstruction, extension or structural change (collectively "alteration") to a single or two-family residential structure shall not be

considered an increase in the non-conforming nature of the structure and shall be permitted by right under the following circumstances:

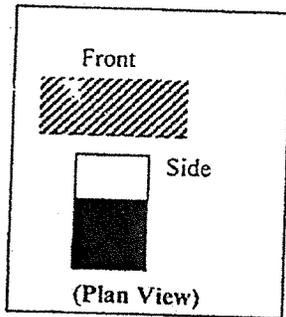
- a) the proposed changes comply with the setback requirements, or, if they do not comply, the proposed changes that encroach upon the setbacks satisfy the following conditions:
  - 1) they do not decrease the distance between any lot line and the nearest point of the structure; and
  - 2) the highest point on the roof line of these changes will be no higher than the highest point on the roof line of the existing structure; and
- b) the proposed changes do not violate or prevent compliance with any other applicable laws or regulations.

Examples:

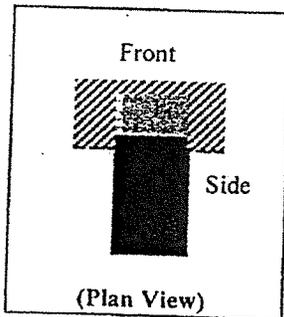
	 Setback area
KEY:	 Existing, Non-encroaching
	 Existing, Encroaching
	 New, Non-encroaching
	 New, Encroaching



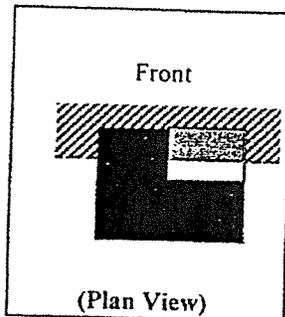
**A rear addition that complies with all setbacks.** This example proposes an addition on the rear of a house. Although the house encroaches upon the front setback, this proposed change is permitted by right since all of the changes comply with the setback requirements.



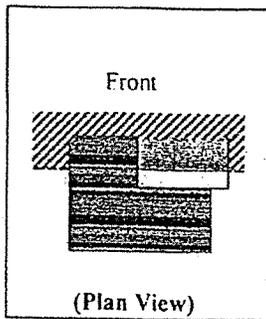
**A front addition that complies with all setbacks.** This example proposes an addition on the front of a house. Like the previous example, this proposed change is permitted by right since all of the changes comply with the setback requirements.



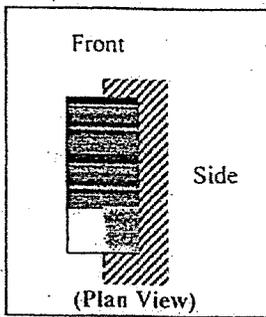
**A front addition that encroaches upon a setback.** This example proposes an addition on the front of a house. However, unlike the previous example, this addition is within the front setback and would decrease the distance from the front line to the house. Thus, this addition requires a special permit.



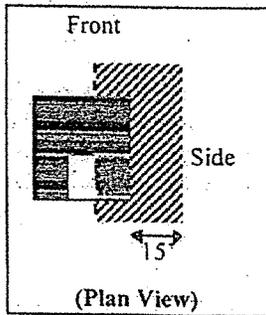
**An addition that encroaches upon the setbacks, but does not decrease distances from lot lines.** This example proposes the widening of a portion of the existing structure within a setback. Since the addition does not extend closer to any lot line than the existing structure, and assuming that the addition does not increase the height of the structure, this proposed change is permitted by right.



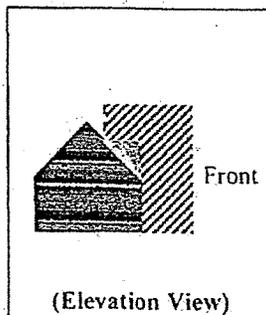
An addition that encroaches upon the setbacks, but also decreases the distance from a lot line. This example proposes the widening of a portion of the existing structure within a setback. Unlike the previous example, this addition extends beyond the existing structure. Since the addition would decrease the distance from the side lot line to the structure, this proposal requires a special permit.



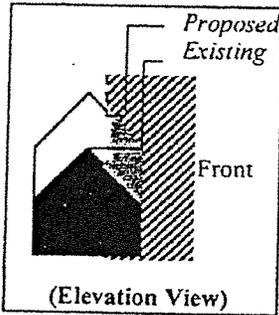
An addition that encroaches upon a setback, but also decreases the distance from a lot line. This example proposes an addition on the rear of a house that encroaches on the side setback. This proposed change requires a special permit, since the portion of the addition that is within the setback is closer to the rear line than the existing structure.



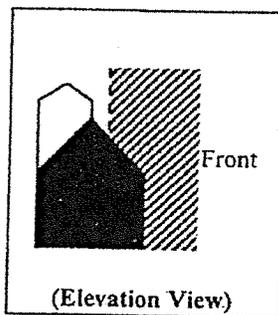
An alteration that would prevent compliance with another regulation. This example proposes to add a garage to the side of the house. Although the addition does not decrease the distance to any lot line, it prevents placing the driveway 15' away from the side lot line. Thus, this proposal requires a special permit.



An alteration within a setback that does not increase the overall height of the structure. This example proposes to add a dormer on the front of a house that encroaches upon the front setback. Since the addition does not decrease the distance to any lot line, and the top of the portion within the setback is no higher than the top of the existing structure, this addition is permitted by right.



**An alteration which increases the overall height of the structure.** This example proposes to add a second floor to a structure that encroaches upon the front setback. Since the height of the proposed addition within the setback (*Proposed*) is greater than the height of the existing structure (*Existing*), this alteration requires a special permit.



**An alteration that increases the overall height, but does not encroach upon any setback.** This example proposes to add a second floor to the portion of a structure that does not encroach upon any setbacks. This alteration is permitted by right.

2. A non-conforming use which has been discontinued for two years shall be considered as abandoned and shall not be re-established and any future use shall conform with this By-Law.
3. A non-conforming use which has been damaged or destroyed by fire or other cause not resulting from any deliberate act of the owner may be repaired or rebuilt and used as before, provided that such restoration is commenced within 18 months and completed within an additional 18 months, and does not exceed the size of the original non-conforming use or building.

[END OF SECTION I]

## SECTION II: ESTABLISHMENT OF A ZONING DISTRICT AND USE REGULATIONS

A. Zoning District: The entire Town of Shutesbury is hereby designated as a Rural Residential District. This Zoning District may only be changed by the adoption of an amendment as provided in Chapter 40A of the Massachusetts General Laws.

B. Uses Allowed By Right:

1. Single, detached one-family dwelling, provided that:

(a) The sewage disposal system shall comply with Title 5 of the State Environmental Code, 310 Code of Massachusetts Regulations (CMR) 15.00, as the same may be hereafter amended or replaced; and

(b) The sewage disposal system and well shall comply with all local regulations of the Shutesbury Board of Health (including but not limited to inspection prior to conversion, pursuant to Section III of said Board of Health regulations), as the same may be hereafter amended or replaced; and

(c) The lot on which the building or structure stands includes a minimum of two (2) off-street parking spaces; and

(d) The dwelling meets the minimum standards of fitness for human habitation, as provided by the state "Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)", 105 Code of Massachusetts Regulations (CMR) 410 (adopted under authority of Massachusetts General Laws, Chapter 111, Sections 3 and 127A), as the same may be hereafter amended or replaced.

2. Two-family dwelling, provided that:

(a) The sewage disposal system shall comply with Title 5 of the State Environmental Code, 310 Code of Massachusetts Regulations (CMR) 15.00, as the same may be hereafter amended or replaced; and

(b) The sewage disposal system and well shall comply with all local regulations of the Shutesbury Board of Health (including but not limited to inspection prior to

conversion, pursuant to Section III of said Board of Health regulations), as the same may be hereafter amended or replaced; and

(c) The lot on which the building or structure stands includes a minimum of two (2) off-street parking spaces for each dwelling unit; and

(d) The dwelling meets the minimum standards of fitness for human habitation, as provided by the state "Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)", 105 Code of Massachusetts Regulations (CMR) 410 (adopted under authority of Massachusetts General Laws, Chapter 111, Sections 3 and 127A), as the same may be hereafter amended or replaced.

3. Farm orchard, greenhouse, tree nursery, truck garden or woodlot whether operated for private or commercial purposes. The retail sale of agricultural or horticultural products may be included with any of the above uses provided the major portion of the products for sale has been raised on the premises, and provided that no products are displayed for sale within twenty (20) feet of the street line.

4. Governmental, educational, religious or other non-profit institutional use.

5. Accessory uses shall be permitted as follows, provided that they are customarily incidental to a permitted main use on the same premises and are not detrimental to a residential neighborhood. Except as indicated below, there shall be no exterior indication of the accessory use and no exterior display of merchandise. No more than five persons who are not living on the premises are to be regularly employed on the premises, provided that adequate off-street parking be made available and that the residential character of the neighborhood be preserved. No exterior alterations shall be made which will change the residential appearance of the dwelling.

a. Use of space in a dwelling for a customary home occupation such as dressmaking, laundering, baking, small repair shop, office or studio (or similar use), provided that such use is maintained by resident occupants and provided that such activity is clearly secondary to the use of the premises for dwelling purposes.

b. Use of property in connection with his/her trade by a resident scientific researcher or developer, carpenter, contractor, electrician, painter, plumber, lumberman or other artisan (provided that no manufacturing or assembly work requiring substantially continuous employment shall be carried on and) provided that all storage of materials, supplies or equipment shall be within the principal building or within suitable accessory buildings or yards.

c. Renting rooms to lodgers, boarders or tourists provided that no separate cooking facilities are maintained, and provided that no more than three rooms are rented. Accommodations shall be limited to a total of six persons in addition to the resident family.

d. Swimming pool provided it is used only by the residents of the premises and their guests, and provided that no portion of the water area shall be closer than twenty-five (25) feet to any property line.

6. Conservation areas for water, water supply, plants and wildlife.

C. Uses Which May Be Allowed by the Board of Appeals, upon written application to the Chair of said Board, as a special exception, after a public hearing and subject to appropriate conditions and regulations where such are deemed necessary. Before a special permit can be issued a public hearing must be held within 65 days of the application date. Proposed uses of land which create undue traffic congestion, land erosion, or appear to be hazardous, injurious, noxious, detrimental or offensive are expressly prohibited.

1. Golf course, riding stable, or similar recreational area.
2. Private school, nursery school or kindergarden.
3. Non-profit recreational structure or facility.
4. Waterfront or beach area for swimming or related activities when used for commercial purposes.
5. Nursing home, private sanitarium or similar use.

6. Communications facility or other public utility or public carrier use.
7. Medical or dental center.
8. Kennel or veterinary hospital.
9. Barber or beauty shop operated by residents of a dwelling.
10. Antique or gift shop operated by residents of the premises in a dwelling or accessory building, provided items for sale are not displayed outdoors. No more than two persons who are not resident in the dwelling are to be regularly employed therein. Except for an accessory sign and for appropriate off-street parking facilities, no external change is to be made in the residential appearance of the buildings or the lot. A small repair shop for household appliances or similar items may be set up under this section.
11. Motel or restaurant, in which all food is served and consumed within the building. Appropriate off-street parking facilities, suitably surfaced, shall be provided.
12. Conversion of a dwelling, existing at the time of the adoption of this Bylaw, into a two-family dwelling provided that floor area, yard, lot size, water supply and sewage disposal requirements can be met.
13. Use of private lands, ponds and streams for rental or lease to individuals or organizations for hunting, fishing or similar purposes provided that suitable acreage is available for such use. Minimum lot, yard and building requirements shall apply to any structure erected thereon.
14. Commercial camping or recreation area of fifty (50) acres or more, under single ownership, for cabins, tents, camper units or trailers, for seasonal or part-time occupancy only. Under the provisions of this section, the sites, facilities or buildings, which may be used or occupied for a maximum of 180 days during any 12-month period for recreational purposes, shall not be subject to the lot area and yard requirements which pertain to other residential use; however, such development shall not exceed a density of one camping unit per acre. Except for supervisory or maintenance personnel, no part of the premises shall be occupied on a permanent basis. Any such use of land for purposes of commercial recreation shall be subject to the granting of an appropriate permit by the Board

of Health, under the provisions of Sections 32 A-D, Chapter 140 of the Massachusetts General Laws and subject to approval by the Massachusetts Department of Public Health under the Sanitary Code for Developed Type Camp Grounds. These approvals shall be obtained prior to the public hearing before the Board of Appeals. A definitive site plan showing all camping and tenting areas, trailer or building sites, water supply and sanitary facilities shall be filed with the Board of Appeals and it must be displayed at the public hearing. Before making a final decision, the Board of Appeals shall provide the Planning Board an opportunity to report in writing (within fifteen (15) days of notification) its views on the feasibility of the proposed land use.

15. Any other retail business or consumer service, subject to appropriate conditions and safeguards where such are deemed necessary, provided that no approval be given if the public convenience and welfare are not substantially served.
16. Accessory uses which are necessary for scientific research, scientific development or related production activities which are permitted by right.
17. One accessory apartment per lot, to help the Town meet its housing needs without detracting from its rural character, provided that all of the conditions below are satisfied. Conditions (a) through (j) below shall be ongoing conditions listed in the Special Permit.
  - a. The lot must have an area of at least 45,000 square feet.
  - b. The principal one-family dwelling, including the accessory apartment, must satisfy all side and rear yard requirements for one-family dwellings in effect at the time the application for a Special Permit is submitted.
  - c. Either the principal one-family dwelling or the accessory apartment must be occupied by the owner of the property. The owner must also own the entire lot, any structures thereon, and both dwelling units. Prior to issuance of a Special Permit, the owner(s) must submit a notarized letter to the Building Inspector stating that they will occupy one of the dwelling units as their permanent or primary residence, except for bona fide temporary absences. Upon sale or transfer of the property to a new owner, the new owner must submit an identical notarized letter to the Building Inspector. If such a letter is not submitted within thirty (30) days of the recording of the deed, the Special Permit shall lapse.
  - d. In addition to the accessory apartment, the lot may contain no more than a single, detached one-family dwelling and uses accessory to that dwelling which are permitted by this Zoning Bylaw.

- e. No more than one curb cut or driveway access shall be permitted, unless the lot already had multiple access points on April 1, 2005, or the Board of Appeals determines that a second curb cut will improve public safety and not detract from the rural character of the road.
- f. The lot must have a minimum of three off-street parking spaces, which may include internal garage bays.
- g. The accessory apartment shall contain no more than 800 square feet of floor area and no more than two bedrooms.
- h. An accessory apartment shall be a complete dwelling unit with a separate entry; kitchen facilities; at least one bedroom; and a bathroom with sink, toilet and bathing facilities. It may have an internal connection to the principal dwelling unit.
- i. The creation and maintenance of the accessory apartment in an existing structure shall be accomplished in a manner that does not detract from its architectural character.
- j. An accessory apartment may be located within or attached to the principal dwelling, within a garage or barn that was in existence on April 1, 2005, or within a new accessory structure located no more than seventy-five feet from the principal one-family dwelling.
- k. A Special Permit for an accessory apartment may only be granted subject to obtaining any required approvals from the Board of Health.
- l. An application for a Special Permit for an accessory apartment shall include, in addition to information required for a building permit, any information necessary to show proposed interior and exterior changes and to determine compliance with the conditions of this subsection, including a plot plan, floor plans, and exterior building elevations for any existing façade that will be altered. To ensure compliance with the requirements of this subsection 17, the special permit granting authority may require such plans to be prepared and stamped by qualified professionals.
- m. For purposes of Section III (F) of this Zoning Bylaw, Rate of Development, an accessory apartment shall be counted as one dwelling unit.
- n. Nothing in this subsection 17 shall be construed to change or reduce any dimensional or area requirements of this Zoning Bylaw relative to single-family dwellings and accessory structures thereto or to allow any uses not otherwise permitted by this Zoning Bylaw, other than accessory apartments as allowed herein.

[END OF SECTION II]

### SECTION III: SPECIAL REGULATIONS

#### A. Signs are Allowed as Follows:

1. One sign for each family residing on the premises, indicating the name of the premises and the name of the owner or occupant provided such sign does not exceed two (2) square feet in area.
2. One sign, not exceeding three (3) square feet in area, for a permitted accessory use located on the premises.
3. [Section III A. 3. Disapproved by the Attorney General on August 31, 2005 and deleted.]
4. Temporary signs pertaining to the construction, lease or sale of the premises provided such signs do not exceed twelve (12) square feet in total area.
5. Signs or bulletin boards not exceeding twenty-four (24) square feet in area in connection with public, charitable or religious uses.
6. Signs for commercial activities allowed by the Board of Appeals shall not exceed twenty (20) square feet in total area for any retail or consumer service nor more than thirty (30) square feet in total area for any commercial use.
7. No sign shall be higher than fifteen (15) feet from the natural ground.
8. No sign shall be located off the premises to which it applies except as indicated in Section III, B.
9. [Section III a 9. disapproved by the Attorney General on August 31, 2005 and deleted.]

- B. Signs Allowed by the Board of Appeals: Directional or identification signs are allowed for a limited period as a special exception where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to size, location or design.

C. Special Sign Restrictions:

1. No sign or advertising device shall incorporate motion or be lighted by a change in light intensity.
2. Signs or other advertising devices may be illuminated, but such illumination shall be of an indirect nature or shall be shielded by translucent material.
3. Display of advertising painted on or attached to a vehicle is prohibited, when the primary use of the vehicle is for display rather than transportation, and where the vehicle is usually parked within sight of a public way.

D. Parking Requirements: Under this Bylaw it is intended that a minimum of two off-street parking spaces with adequate disposal of storm water shall be provided on the premises. More parking spaces may be required as the Building Inspector may deem necessary for the use of the property.

E. Prohibited Uses:

1. The development or operation, on a single recorded lot, of more than one of the principal uses described in this Bylaw is prohibited except where the principal uses are clearly complementary to each other or as specifically provided in this Bylaw.
2. Individual trailer or mobile home used as a dwelling. The following exceptions are allowed:
  - a. an individual trailer or mobile home may be occupied as an accessory to a dwelling without special permit, for up to but not exceeding fourteen (14) days per year;
  - b. an individual trailer or mobile home may be occupied for up to but not exceeding eighteen (18) months during the reconstruction of a dwelling on the same property which was destroyed by fire or other catastrophe, providing such reconstruction building permit is issued and valid;
  - c. an individual trailer or mobile home may be used as provided under Section II.C.14 or these Bylaws; providing that 1) adequate and lawful means are provided for health and safety, including written permission by the Board of Health, and 2) during periods exceeding fourteen (14) days when such trailer or mobile home is not occupied, it shall

either be removed from the premises or stored with no occupants or other use, indoors or outdoors in the rear yard of a dwelling at least twenty (20) feet from the rear and side lot lines. The parking place of a trailer or mobile home, in registered use as a vehicle, on the premises of a dwelling, is not limited by this Section III.E.2 of these Bylaws.

3. Trailer or mobile home park.
4. Cellar or basement dwelling in which more than one-half (1/2) of the height measured from the floor to the finished ceiling is below the average grade of the adjoining ground.
5. Commercial junk yard or refuse disposal area.
6. Signs or floodlights which constitute a hazard to pedestrian or vehicular traffic because of the intensity or direction of their illumination.
7. No lot be so reduced or altered as to fail to satisfy any minimum area or yard required for a permitted principal use within the town. See Section IV below.
8. The construction and habitation of multiple dwelling units, said multiple dwelling unit to be defined as a structure containing more than two separate dwelling units.

#### F. Rate of Development

1. **PURPOSE.** The purposes of this Section III.F, "Rate of Development," are to (a) promote orderly residential growth in the Town of Shutesbury, consistent with the rate of growth over the last 10 years (expressed herein as building permits issued for new dwelling units); (b) phase growth so that it will not unduly strain the community's ability to plan for and provide basic public facilities and services; (c) provide the Town and its boards and agencies the information and reasonable time necessary to preserve and enhance existing community character, safety, health, and the value of property; (d) ensure the greatest degree of fairness and equal opportunity to all in the distribution of available building permits, and (e) allow time for the Town to fully implement the Master Plan.

2. **GENERAL.** Beginning on the date of the adoption of this by-law, building permits (hereinafter, "permits") for no more than eight (8) new dwelling units shall be issued in each of the calendar years 2007 and 2008. More than eight (8) permits may be issued in one year if paragraph III.F3.e below applies. For the purposes of this Section F, a one-family structure shall constitute one dwelling unit, a two-family structure (duplex) shall

constitute two dwelling units, an accessory apartment shall constitute one dwelling unit, and a one-family structure with an accessory apartment shall constitute two dwelling units.

3. PROCEDURES. Any permits shall be issued in accordance with the following procedures:

- a. Any natural person, partnership, corporation, realty trust or legal entity may apply for no more than one permit in any given month. In the case of an application constituting two dwelling units, the aforesaid interval shall be two months. For the purposes of this section, subsequent applications in the same one-month or two-month period, as the case may be, by any natural person, partnership, corporation, realty trust or legal entity which in any way may be construed as having a common ownership, interest or control with previous applications in the same month or months are prohibited, and shall be returned to the applicant.
- b. Permits shall be issued on or before Friday (or, in case of a holiday, on whatever day is the last day of the week that the Franklin County Cooperative Inspection Program offices are open for Building Inspector's business) of each week by the Building Inspector (following approval by the Building Inspector). The Building Inspector shall act on each permit in order of submission. Any permit application that is incomplete or inaccurate shall be returned to the applicant and shall require a new submission.
- c. From the first Friday in January through the eighth (8th) Friday of the year, either no (0) permit if there are no approved applications awaiting issuance, or one (1) permit if there is one or more approved applications awaiting issuance, shall be issued in any given week. If all eight (8) permits have not been issued by the eighth (8th) Friday of the year, the remaining permits shall be issued for approved applications at the rate of one or more per week until all eight (8) permits are issued for that year. Should the Building Inspector issue seven (7) permits and subsequently receive a permit application for a two-family structure, the application shall be passed over and retained by the Building Inspector (see III.F.3.g, below). In circumstances where paragraph III.F.3.e, below, applies, there may be more than eight (8) permits available for issuance.
- d. The Building Inspector shall mark each application with the time and the date of submission, and shall act on each

application in a timely manner. He/she shall issue approved permits in accordance with the schedule in paragraph III.F.3.c, above. If the Building Inspector has more approved permits in any given week than he/she is authorized to issue, the Building inspector shall retain said permits to be issued in the order in which the applications were submitted.

- e. If any permit is deemed abandoned or invalid in the same calendar year in which it was issued, then it shall be returned and counted as an additional permit available for issuance during that same calendar year. A permit which is deemed abandoned or invalid in a calendar year different from the year in which it was issued shall be returned and counted as an additional permit to be issued during the calendar year in which it is deemed abandoned or invalid only if 1) there were more approved applications for permits than were issued in the year when the said permit was issued, and 2) if there are any intervening years between the calendar year of issuance and calendar year in which said permit is deemed abandoned or invalid, there were also more approved applications for permits than were issued during all of those intervening years.
- f. Permits not issued in any calendar year shall not be available for issuance in any subsequent year.
- g. By the first Friday of January during any calendar year in which this Section III.F of this by-law is in effect, the Building Inspector shall determine whether or not each approved application for which a permit has not been issued during the previous calendar year shall be retained. Upon being informed in writing by the applicant before said first Friday in January that the applicant desires the application to remain in effect, the Building Inspector shall continue to treat said application as an approved but not issued application in accordance with this Section III.F. All approved applications for which a permit has not been issued, and for which the applicant has not informed the Building Inspector in writing by the said first Friday in January of the applicant's desire for the application to remain in effect shall not be retained, and the application shall be returned to the applicant.

4. **AFFORDABLE HOUSING.** Except as provided herein and upon a determination by the Planning Board under a special permit, dwelling units which meet special needs in affordable housing provision shall be exempt from the provisions of this Section III.F.. Such special permit shall be granted if said dwelling units are housing units that are eligible for inclusion in

the Town's "Subsidized Housing Inventory" for purposes of G.L. Chapter 40B as determined by the Massachusetts Department of Housing and Community Development. Affordable dwelling units exempted under this Subsection III.F.4 shall nevertheless be counted toward the eight (8) permit yearly maximum established in Subsection III.F.2, above.

5. **EXEMPTIONS.** The provisions of this section III.F shall not apply to, nor limit in any way, the granting of building or occupancy permits required for enlargement, restoration, rehabilitation, or reconstruction of dwellings existing on lots as of the date of passage of this by-law.

6. **RELATION TO REAL ESTATE ASSESSMENT.** Any land owner denied the issuance of an approved permit because of the provisions in sections III.F may appeal to the Board of Assessors, in conformity with the General Laws of Massachusetts Chapter 59, Section 59, for a determination as to the extent to which the temporary restriction on development of such land shall affect the assessed valuation placed on such land for purposes of real estate taxation, and for abatement as determined to be appropriate.

7. **SEVERABILITY.** If any provision of this by-law is held invalid by a court of competent jurisdiction, the remainder of the by-law shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this by-law shall not affect the validity of the remainder of the Shutesbury Zoning By-Law.

#### G. Back Lots with Open Space Setaside

Back lots with Open Space Setaside (BOSS) will be allowed by the Planning Board by Special Permit.

##### 1) Purposes

The purposes of this Section, in addition to the general purposes of these Zoning Bylaws, are: to encourage the efficient use of land resources in new residential development; to increase opportunities for the preservation of agricultural land, forested land, and other open space; to preserve the scenic qualities of Shutesbury; and to protect and enhance the value of properties in Shutesbury by enabling landowners to create appropriate patterns of land ownership, use, and development subject to public review and approval.

##### 2) Eligible Parcels

Land eligible to be considered pursuant to this category shall be contiguous parcels which abut the types of roadways eligible for ANR (Approval Not Required) development pursuant to Massachusetts General Laws Ch. 41, Sec. 81L, have vital access as contemplated by Massachusetts General Laws Ch. 41, Sec. 81M and which have

lot frontage as required by Shutesbury's Zoning Bylaws. Contiguous parcels include lots in single ownership that are separated only by a public way.

Applicants are encouraged to prepare a preliminary sketch of the proposed Back Lots and ANR lots to be protected and to meet with the Planning Board to discuss such proposal prior to filing. The Planning Board will work with the landowner to create a plan that meets the best interests of the landowner and the town.

### 3) General Description

For eligible parcels, the owner or prospective developer may petition for a Special Permit from the Planning Board to create Back Lots meeting the following description: each lot shall be at least 90,000 square feet in area, shall have no or reduced roadway frontage as defined by Massachusetts General Laws Ch 41, Sec. 81L, and shall be accessible from a public way by means of a deeded right-of-way across land of others. This right of way shall be a common driveway serving up to four Back Lots. If two or more Back Lots are created on a tract, they shall be contiguous and compactly laid out to minimize development of land wherever possible.

As a condition of the Special Permit to create one or more Back Lots, the applicant shall formally and permanently place conservation restrictions (Ch. 184 sections 31-33) on the same number of ANR lots having a minimum area of 90,000 square feet and 250 feet of lot frontage for each Back Lot created and meeting the requirements outlined below. The protected property shall have contiguous road frontage and a minimum depth of 200 feet measured from the centerline of the road, or a depth deemed practical by the Planning Board, based on topography, physical, historic, and visual circumstances.

### 4) General Requirements

A Special Permit may be granted by the Planning Board if it finds that the applicant's BOSS proposal would serve the purposes set forth above better than an ANR division of land creating the same number of lots, and would meet general standards for Special Permits set forth in these Zoning Bylaws, and would meet the following criteria:

- a. For each Back Lot created, a defined portion of the tract of land having a minimum area of 90,000 square feet and at least two hundred and fifty (250) feet of lot frontage eligible for

ANR development which meets the requirements of Shutesbury's Zoning Bylaws, and having vital access as contemplated by MASSACHUSETTS GENERAL LAWS Ch. 41 Sec. 81M shall be preserved and permanently restricted to agricultural, forestry, conservation and/or recreational use in accordance with the provisions of MASSACHUSETTS GENERAL LAWS Ch. 184, Sec 31-33. Acreage counting towards the minimum requirements for protected roadside land under the conservation restriction shall not include wetlands areas defined by MASSACHUSETTS GENERAL LAWS Ch. 131, Sec. 40 (Massachusetts Wetlands Protection Act). Back Lots created pursuant to this section shall not be required to meet frontage requirements of Shutesbury's Zoning Bylaws.

b. Parcels upon which Back Lots are to be placed must have access via a deeded right-of-way to a public way prior to Planning Board endorsement under its regulations governing the subdivision of land.

c. The permanently restricted land shall form a single contiguous tract. The procedures for creating such Back Lots can be found in Shutesbury's Subdivision regulations, Section I. I. B.

d. The restricted roadside land shall not be crossed by any access road or driveway serving building lots, except by the common driveway permitted to serve the Back Lots.

e. The maximum number of Back Lots that may be created shall be equal to the number of roadside lots that meet the subdivision "approval not required" (ANR) criteria and Shutesbury's zoning criteria of 250 feet of frontage, vital access as contemplated by Massachusetts General Laws Ch. 41, Sec. 81M and the zoning criteria of 90,000 square feet of area and shall not exceed four (4) lots for every common driveway. Additionally, for every Back Lot created, on-site septic system soil evaluations certified by the Board of Health are required to confirm that each corresponding ANR lot could be built upon pursuant to 310 CMR 15.00 (Title 5 of the Massachusetts Environmental Code), and Massachusetts General Laws Ch. 111, Sec. 31 (Board of Health) or their equivalents. The Planning Board reserves the right to physically inspect the site with members of the Board of Health.

f. All Back Lots created shall be in a single, compact portion of the original eligible parcel to the maximum extent possible. Dwelling units shall be integrated into the existing landscape through placement of buildings within woodland, along edges of fields, or locations visually screened by natural vegetation or topographic features, to the maximum extent possible. Developers are encouraged to construct buildings in a manner which will have the least visual impact as viewed from the roadside. Developers are further encouraged, in the case of farmland to be protected, to provide a vegetated buffer of 50 feet between residential lot lines and farmland to minimize conflicts between residential and farming activities.

g. All natural site features including water courses, one hundred year flood plains, wetlands, ponds, other water bodies, marshes, scenic points, and historic sites shall be preserved.

h. Common driveways shall be used to serve Back Lots in accordance with this Bylaw Section VI:C. A Special Permit application for BOSS featuring a common driveway shall not be granted until satisfactory legal documents have been submitted and approved to guarantee each Back Lot owner access over the common driveway, to guarantee that the common driveway cannot be submitted to the Town for acceptance as a public way, and to guarantee that all lot owners using the driveway shall share equitably in the costs of its maintenance.

i. On Back Lots created under the provisions of this section, the Planning Board has the option to require that building envelopes be defined on the plan submitted to the Planning Board to show placement of buildings and other structures for each proposed Back Lot.

j. Construction on each Back Lot shall be limited to one single-family house and related accessory buildings. Outbuildings and other structures for agricultural or horticultural use are exempted from this restriction.

k. The plan submitted to the Planning Board for approval shall state both on the written application and on the accompanying plans that no further subdivision of land will take place upon the common driveway. Upon granting the Special Permit, the Planning Board will approve the plan with a condition limiting the lots upon which buildings may be erected to the number

specified on the plan. Such plan will include on its face the following notation: "the Common driveway(s) shown on this plan shall not be considered a 'way' shown on a subdivision plan for purposes of Massachusetts General Laws Sec. 81L. "

l. No Back Lot of any size, once created, shall be further divided.

m. Every deed conveying a Back Lot created under this section shall incorporate by reference the Special Permit authorizing the lot's creation, and any conditions imposed by said permit.

#### 5) Common Driveway Standards.

A common driveway is a driveway that begins at a public way and provides access to one or more building lots. A common driveway serving up to and no more than four Back Lots shall conform to the following requirements and standards.

a. The following minimum requirements must be met for a common driveway serving one or more Back Lots:

(i) An easement providing permanent access for all properties served by the driveway shall be provided upon application and, if approved, recorded by the applicant in the Registry of Deeds prior to issuance of any building permits.

(ii) The Special Permit shall state that the driveway is not a private road or a public road, that it does not meet standards for a Town road and/or public way, and that the driveway shall permanently remain a private driveway.

(iii) Maintenance of the common driveway shall be assured through a homeowners association or private driveway maintenance agreement to be recorded with the deed and approved by the Planning Board and binding upon those served by the driveway, which shall require the landowners to maintain the driveway to the standards of this bylaw at their mutual and exclusive expense. Such maintenance shall include keeping the driveway clear of tree branches to a height of 15 feet, clearing snow, and sanding of ice to provide year-round access for emergency vehicles.

(iv) The grade, length, and location of common driveways and adjacent areas shall be constructed and maintained to provide adequate access and turnaround for vehicles, including emergency vehicles, year round. To assure this, common driveways shall conform with the design standards stated in Shutesbury's Subdivision Regulations for common driveways, and Section VI. C. of the Zoning Bylaw.

#### 6) Conservation Restriction Requirements

a. A Conservation Restriction means a right, in perpetuity, and in accordance with Massachusetts General Law Chapter 184 sections 31-33, stated in the form of a restriction in a deed, appropriate to retaining land predominantly in its agricultural farming, forest, or recreational use and forbidding or limiting any or all of the following:

(i) Construction or placing of buildings except those used for agricultural purposes;

(ii) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other mineral substance in such a manner as to adversely affect the land's overall future agricultural, forest, or recreational potential; or

(iii) Other acts or uses detrimental to such retention of the land for agricultural, forest, or recreational use.

b. The Conservation Restriction placed on the land shall meet the following minimum criteria:

(i) The Conservation Restriction shall be held by the Town of Shutesbury Conservation Commission or by a non-profit land trust approved by the Planning Board, or jointly.

(ii) The Conservation Restriction shall be recorded by the Grantor in the Franklin County Registry of Deeds prior to issuance of any Building Permit for construction on any Back Lot.

(iii) The Conservation Restriction shall be approved by the Commissioner of the Department of Food and Agriculture or the Secretary of the Executive Office of

Environmental Affairs as appropriate, and additionally approved by the Shutesbury Selectboard if the restriction is held by a non-profit land trust.

(iv) The land covered by the conservation restriction shall be noted on the plan and in the Special Permit granted by the Planning Board.

(v) The form and content of the conservation restriction shall be consistent with the sample included in the Shutesbury Subdivision Regulations.

c. Protected Open Space may be either retained by the original owner or entity, or may be conveyed out as follows:

(i) Conveyed to an incorporated non-profit Homeowner's Association made up of the owners of the Back Lot development subject to a covenant, running with the land which states that the ownership and membership within the Homeowner's Association shall pass with conveyances of the lots into perpetuity. In addition, the covenant established shall specify that each lot owner has equal say in determining the affairs of the organization, and that costs shall be assessed equitably to each lot.

(ii) Conveyed to a non-profit land trust whose principal purpose is to conserve open space subject to the covenant requiring employment of land management practices which will ensure that existing agricultural fields and pastures will be plowed or mowed at least once per year. Included with the covenant shall be copies of a lease, for a minimum of five years, with a farmer or operator who will use the land for agricultural purposes, or

(iii) Conveyed to the town at no cost. Such a conveyance shall be the option of the town and shall require approval at Town Meeting, or,

(iv) Conveyed to an abutter, or other interested party.

## **H. Wireless Communication Facilities**

### **1. Purpose and Intent**

The purpose of this Section is to establish standards for siting wireless telecommunication towers and facilities in Shutesbury. The intent of this Section is to:

- A. Encourage the location of towers on pre-existing structures so as to minimize the total number of towers and visual impact upon the community;
- B. Require the co-location of new and existing tower sites thereby reducing the need for new facilities;
- C. Locate towers and facilities, to the extent possible, in areas where adverse environmental, historic, and visual impact to the community and adjacent property is minimal;
- D. Enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently; and
- E. Make available wireless telecommunications tower locations on a preferential basis to local municipal agencies on the same financial terms as commercial providers.

### **2. Definitions**

As used in this Section III. H., the following definitions apply:

**APPLICANT** shall mean any person applying for a special permit to construct, erect, install, operate, or substantially modify a Wireless Communication Facility, Wireless Communication Device or Wireless Communication Structure, or such person's agent, representative, or successor in interest. An Applicant or at least one of the Co-Applicants if there is more than one Applicant in an application must be a Telecommunications Service Provider.

**APPLICATION** shall mean the process of submission, consideration, and action on an Applicant's request for a Special Permit to construct, erect, install, operate, or substantially modify a Wireless Communications Facility, Device, Structure or Building; and the forms, documents, and information presented to the town in the course of said request. The application includes verbal representations made by and on behalf of the Applicant to the Planning Board.

**DISTANCE** shall mean horizontal distance, measured on a horizontal plane.

**FAA** shall mean the Federal Aviation Administration.

**FCC** shall mean the Federal Communications Commission.

**HEIGHT** shall mean the distance measured from the pre-existing ground level to the highest point on the structure.

**NON-RESIDENTIAL STRUCTURES** shall mean structures that do not contain any dwelling units, including but not limited to grain silos, water towers, and church steeples.

**TELECOMMUNICATIONS SERVICE PROVIDER** shall mean a corporation or organization that provides wireless communications service to the public through explicit license by the FCC as contemplated by the "Telecommunications Act of 1996" in the term "carrier".

**WIRELESS COMMUNICATION BUILDING** shall mean any building or shelter used to house equipment primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation, and is an accessory to a wireless communication structure.

**WIRELESS COMMUNICATION DEVICE** shall mean any antenna, appurtenance, wiring or equipment used in connection with the reception or transmission of electromagnetic radiation which is attached to a structure.

**WIRELESS COMMUNICATION FACILITY** shall be used as a general term to include wireless communication building, wireless communication device, and wireless communication structure, and shall exclude communication relay structures, TV broadcast systems, radio broadcast systems and similar systems.

**WIRELESS COMMUNICATION STRUCTURE** shall mean any structure or tower intended to support equipment used for the transmission and reception of electromagnetic radiation, including antennae, wiring, or other devices attached to or mounted on a structure.

**WIRELESS COMMUNICATION TOWER** shall refer to any structure whose height greatly exceeds its width and which is used for the mounting of wireless communication devices.

### **3. Exemptions**

The following shall be exempted from this bylaw and are permitted by right:

- A. Wireless Communication Facilities used for town or state emergency services, subject to the standards in Sections 4.C. and D., and 5.A. below.
- B. Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the FCC and used solely for that purpose.
- C. Wireless communication structures and devices used expressly for home television reception and personal wireless communications.

### **4. General Standards**

- A. Wireless telecommunications facilities may be located in the Town of Shutesbury upon the granting of a Special Permit from the Planning Board in accordance with the requirements set forth herein and the requirements for Special Permits contained in Section V.C.2.
- B. Wherever feasible, wireless communication devices shall be located on existing towers or other non-residential structures, minimizing proliferation of new towers.
- C. Wireless communication structures shall be built with structural integrity to accommodate devices operated by another carrier with little or no modification.
- D. Wireless communication buildings shall be no larger than 500 square feet and 12 feet high, shall be designed to match other accessory buildings on site, and shall be used only for the housing of equipment related to the particular Wireless Communication Facility on site.

## 5. Siting and Height Requirements

### A. Setbacks

1. The minimum horizontal distance from the base of the wireless communication structure and any attached wireless communication devices to any property line or road right-of-way shall be the greater of the following:
  - a. the tower height plus 10 feet; or
  - b. the "fall zone," as determined by a licensed professional engineer, plus 10 feet.
2. The minimum horizontal distance between the wireless communication structure and existing abutting residences shall be three times the height of the structure.
3. The wireless communication facility, including guy wires and anchors, shall comply with applicable zoning setback requirements.

B. The height of the wireless communication structure and any attached wireless communication devices shall be no greater than 100 feet, unless the Planning Board waives this requirement. In the event that the Applicant seeks a waiver of this height limit, the Applicant shall provide documentation clearly showing that the additional height is necessary (1) to avoid construction of another tower, or (2) to allow the carrier to provide adequate coverage. Such documentation shall include demonstrated consideration of alternative siting locations along with associated maps of service areas of different signal strengths. Tower height shall be measured from grade, and shall include the tower itself, its base pad, and any attached facilities.

C. The wireless communication structure shall, when possible, be sited off ridge lines and where visual impact is the least detrimental to valuable historic and scenic areas. Valuable areas shall be determined by the Planning Board, and may be views that Shutesbury has identified as scenic in the Shutesbury Open Space and Recreation Plan or the Shutesbury Master Plan, or areas that are listed in the Massachusetts Landscape Inventory, Massachusetts General Laws Ch.131 S.39A, conducted by the Massachusetts Department of Environmental Management, 1982.

D. No new wireless communication structure shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the Planning Board that no existing wireless communication structure or other non-residential structure can accommodate the Applicant's proposed wireless communication device. Evidence submitted to demonstrate that no existing structure can accommodate the Applicant's proposed device may consist of any of the following where each such structure is specifically identified:

1. No existing wireless communication structures or non-residential structures are located within the geographic area required to meet the Applicant's engineering requirements.
2. Existing wireless communication structures or non-residential structures are not of sufficient height to meet the Applicant's requirements.
3. Existing wireless communication structures or non-residential structures do not have sufficient structural strength or cannot be strengthened to support the proposed wireless communication device.

4. The proposed wireless communication device would cause electromagnetic interference with the existing devices on the site, or the existing devices would cause interference with the proposed wireless communication device.
5. The fee, costs, or contractual provisions required by the owner in order to share an existing wireless communication structure or to adapt an existing structure for use are unreasonable. Unreasonable cost would be twice the cost of building a new structure.
6. The Applicant demonstrates that there are other limiting factors that render use of existing structures unreasonable.

## **6. Design Requirements**

- A. Wireless communication structures shall be designed to accommodate the maximum number of users technologically possible, consistent with the requirements and limitations of this bylaw (e.g., limitations on tower height).
- B. There shall be no signs or advertisements, except for no trespassing signs and a required sign giving the phone number where the responsible party can be reached on a 24-hour basis.
- C. All wireless communication structures and devices shall be colored, molded, and/or installed to blend into the structure and/or landscape.
- D. Wireless communication facilities shall be fenced to control access (not necessarily the entire property).
- E. Night lighting of wireless communication facilities shall be prohibited unless required by the FAA. If required by the FAA, a copy of the FAA permit requiring night lighting shall be submitted with the application.
- F. There shall be a maximum of one parking space for each facility to be used for parking in connection with maintenance of the site and not to be used for storage of vehicles or other equipment.
- G. Existing on-site vegetation shall be preserved to the maximum extent possible.
- H. Vegetative screening shall be used to screen abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

## **7. Application Process**

- A. The Shutesbury Planning Board is hereby designated the Special Permit Granting Authority to grant Special Permits for wireless telecommunications towers and facilities in accordance with Massachusetts General Laws (Ch. 40A, Section 9), applicable provisions of this bylaw, and in accordance with any rules and regulations that the Planning Board may adopt relative hereto.
- B. A Special Permit granted under this bylaw shall expire within two (2) years of the date of issuance of the permit, if no Wireless Communication Facility is constructed.
- C. Failure to provide all of the required materials and information shall be grounds for denial of an application. The Planning Board may require additional or supplemental information at its discretion, and the Applicant's failure to timely provide such information shall also be grounds for denial of the application.
- D. The Applicant or Co-Applicant must be a telecommunications service provider.

E. Submission requirements for a new Wireless Communication Facility shall include:

1. Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" by 36" sheets at a scale of 1"=40' or 1"=200', where appropriate, on as many sheets as necessary which show the following:
  - a. north arrow, date, scale, seal(s) of licensed professional(s) who prepared the plans and space for reviewing engineer's seal
  - b. name and address of landowner and names and addresses of abutters
  - c. property lines and location of permanent structures and buildings, within a 500-foot radius of the proposed wireless communication structure
  - d. existing (from a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contour lines at a maximum of two-foot contour intervals and spot elevations at the base of all proposed and existing structures
  - e. vegetation to be removed or altered
  - f. plans for drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure
  - g. delineation of wetlands, if any
  - h. location of the wireless communication structure, including supports and guy wires, if any
  - i. plans for anchoring and supporting the structure, including specifications of hardware and all other building materials, and wind/ice survivability estimates
  - j. plans for accessory buildings
  - k. layout and details of surfacing for access road and parking
  - l. amenities such as lighting, fencing, and landscaping
  - m. four view lines in a one-to-three mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals, plus additional view lines from any historic, scenic, or other prominent areas of Shutesbury, as determined by the Planning Board, based on scenic views and areas identified in the Shutesbury Open Space and/or Master Plan.
2. A map showing all areas covered/served by the proposed wireless communications structure and device of different signal strengths, and the interference with adjacent service areas.
3. A narrative description of the type of service being provided, including the number of channels or number of supported communication links, maximum RF power level, effective radiated power, ranges of frequencies of operation both transmit and receive, and type(s) of modulation.
4. A report setting forth the proposed power density of the Facility that demonstrates how FCC standards for RF emissions are met.
5. If the service requires point-to-point links or other relay or RF communications not specifically between the subscriber and the facility, details of such additional communications requirements shall also be described.

6. A locus map at a scale of 1"=1000', which shall show streets and landscape features
  7. A description of the soil and surficial geology of the proposed site
  8. A narrative report written by the proposed operator of the Wireless Communication Facility and a licensed professional engineer which shall:
    - a. describe the justification of the proposed site
    - b. describe the structure and the technical, economic, and other reasons for the facility design
    - c. describe the capacity of the structure, including the number and type of additional facilities that it can accommodate
    - d. describe the actions to be taken if the electromagnetic radiation from the facility should exceed levels designated by the FCC
    - e. describe the projected future needs of the operator of the Wireless Communication Facility, and how the proposed wireless communications facility fits with future projections to serve Shutesbury and adjacent communities
    - f. describe leasing agreement should another carrier desire to co-locate
    - g. describe special design features to minimize visual impact of the proposed wireless communication facility.
    - h. provide simulated graphical depictions of the appearance of the facility from all public ways where it may be seen.
  9. Proof of approval of all other necessary permits needed for construction and operation.
  10. Evidence that a valid license has been granted to the Applicant (or Co-Applicant) for the specific service in the specific location by the FCC. A photocopy of such license is sufficient for the application, although other evidence may be required prior to approval.
- F. Submission requirements for a wireless communication device located on an existing wireless communication structure or non-residential structure (including co-location with another carrier) shall include:
1. All information described in subsection E above except for the narrative report described in Subsection E8.
  2. A narrative report written by the proposed Wireless Communication Facility operator and a licensed professional engineer which shall:
    - a. include a draft contract between the non-residential structure owner and the Applicant
    - b. demonstrate that the wireless communication structure or non-residential structure to which the device will be mounted has the structural integrity to support such a device,
    - c. describe the actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
    - d. describe the projected future needs of the carrier, and how the proposed facility fits with future projections.
  3. If the proposed facility adds more than 5 feet to the height of the non-residential structure at the effective date of this bylaw, the Planning Board may require a demonstration of height with balloons, as described in H.8.A below.

G. The information required in Subsection E or F shall be submitted along with the regular special permit application form, as follows: 1 copy to the Building Inspector, 1 copy to the Fire Chief, 1 copy to the Chief of Emergency Services or Department of Public Works, and 3 copies to the Planning Board.

### **8. Review and Approval**

A. The Planning Board may require the Applicant to perform an on-site demonstration of the visibility of the proposed tower by means of a crane with a mock antenna array raised to the maximum height of the proposed tower. A colored 4' minimum diameter weather balloon held in place at the proposed site and maximum height of the proposed tower may be substituted for the crane if approved by the Planning Board. The date and location of the demonstration shall be advertised at least 14 days, and not more than 21 days before the demonstration, and again in the public hearing advertisement in a newspaper with a general circulation in Shutesbury. Failure in the opinion of the Planning Board to adequately advertise the demonstration may be cause for the Planning Board to require another, properly advertised, demonstration.

B. In the event that the Planning Board determines that circumstances necessitate expert technical review, the Planning Board reserves the right to select expertise for the review, and the expense of the review shall be paid by the Applicant, as provided in the Planning Board's Regulations Governing Fees and Fee Schedules.

C. In granting a Special Permit for Wireless Communications Facilities, the Planning Board shall find:

1. That the Applicant has demonstrated to the satisfaction of the Planning Board that the requirements of this bylaw have been met.
2. That the size and height of the structure are the minimum necessary.
3. That the proposed Wireless Communication Facility will not adversely impact historic structures or scenic views.
4. That there are no feasible alternatives to the location of the proposed Wireless Communication Facility, including co-location, that would minimize their impact, and that the applicant has exercised good faith in permitting future co-location of Wireless Communication Facilities at the site.

D. When considering an application for a Wireless Communication Facility, the Planning Board shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences, and the requirement to use existing structures wherever feasible.

E. Any extension or construction of new or replacement towers or transmitters shall be require amendment of the Special Permit, following the same procedure required for siting a new wireless communication device on an existing structure.

### **9. Conditions of Use**

A. The Applicant shall post an initial performance bond or other security to cover construction costs, as well as an annual maintenance bond or other security to cover maintenance for the access road, site and structures, and additional security to cover the removal of the facility in the event of non-operation. The amount of such performance bonds or security shall be determined by the Planning Board.

B. Regulatory compliance. The applicant shall comply with the following additional post-approval requirements.

1. The special permit holder (or other owner or operator) shall demonstrate the structural integrity of the structure and continuing compliance with current standards of the FCC, FAA, and the American National Standards Institute with the Building Inspector, which shall be reviewed by a licensed professional engineer hired by the Town of Shutesbury and paid for by the Special Permit holder.
2. If the FCC or the FAA regulations are changed, the owner or operator shall bring the facilities into compliance within 6 months or earlier if a more stringent compliance schedule is included in the regulation.
3. Failure to comply with any regulations shall be grounds for the Planning Board to revoke this Special Permit and require removal of non-complying structures, buildings, and devices at the owner's expense.
4. If a wireless communication device is moved lower on the structure and the top of the structure is no longer needed, the non-operational part of the structure shall be removed in 120 days.

C. Removal and Repair.

1. An Applicant shall execute a covenant with the Planning Board agreeing to remove, within 180 days of notice from the Town, any Wireless Communication Facility not in operation for a period of 12 months, unless the non-operation is a result of major damage not caused by the fault of the owner or operator.
2. If the facility is not removed within 180 days, the Town shall remove said facility at the owner's expense.
3. In the event of major damage not caused by the fault of the owner or operator, repair must begin within 6 months of such damage.

## **I. Small Wind Energy Systems**

### **1. Purposes**

The purposes of this Section III.I. are to provide a permitting process for small wind energy systems (SWES) defined as a windenergy conversion system consisting of a wind turbine however mounted, a tower or pole, electrical conductor cables, associated control or conversion electronics, storage batteries, associated buildings, safety devices, access roads, and appurtenances thereto, which has a rated capacity of not more than 60 KW, so that they may be utilized in a cost-effective, efficient, and timely manner to reduce the consumption of utility-supplied electricity; to integrate these systems into the community in a manner that minimizes their impacts on the character of neighborhoods, on property values, and on the scenic, historic, and environmental resources of the Town; and to protect health and safety, while allowing wind energy technologies to be utilized.

### **2. Special Permit Requirement**

A. Small wind energy systems that comply with the requirements of this Section may be allowed by special permit from the Planning Board in accordance with the requirements set forth herein and the requirements for Special Permits contained in Section V.C.2. The Planning Board may grant a Special Permit only if it finds

that the application complies with the provisions of this bylaw and is consistent with the applicable criteria for granting special permits. The Planning Board may waive or adjust any of the requirements outlined below, consistent with the purposes of this Section, except for the special requirements for the reduction of setbacks in 3.B.4. below.

B. A site plan shall be prepared to scale by a registered land surveyor or licensed civil engineer showing the location of the proposed SWES and any associated buildings or appurtenances, distances to all property lines and abutting residences, existing and proposed structures, existing and proposed elevations, above ground utility lines, any other significant features or appurtenances, any measures designed to mitigate the impacts of the SWES, and, at the discretion of the Planning Board:

1. Existing Conditions and Proposed Improvements Maps including, without limitation, the following scaled information for both existing conditions and proposed improvements: locus map; adjacent streets and ways; lot boundaries; location and names of owners of adjacent properties; easements and restrictions; land use districts; overlay districts (if any); topography including contours; wetlands, waterbodies, watercourses, and areas subject to flooding; soil types; vegetation; farmland; trails; structures; and unique natural site features; as well as driveways and walkways; access and egress points and distances to nearest driveways and intersections; parking/loading areas; sidewalks; landscaping; utilities; septic and water supply systems; landscape features including screening, fencing, and plantings; open space or recreational areas; lighting; natural and man-made drainage infrastructure; vehicular circulation; signs; building plans and elevations; and other information required by the Planning Board.

2. Design features which will integrate the proposed SWES into the existing landscape, maintain neighborhood character, enhance aesthetic assets and screen objectionable features from neighbors and roadways; and control measures to prevent erosion and sedimentation during and after construction and to specify the sequence of grading and construction activities, location of temporary control measures, and final stabilization of the site.

3. If the land will be developed in more than one phase, a comprehensive plan for an entire property showing intended future development.

C. Any submittals required in this subsection 2.B. may be waived if in the opinion of the Planning Board the materials submitted are sufficient for the board to make a decision.

### **3. Design Requirements**

#### **A. Tower Height**

On parcels of less than one acre, the tower height shall not exceed 80 feet. For parcels of one acre or more, the tower height shall not exceed 160 feet. For purposes of this Section, tower height shall be measured from the average elevation of the existing grade at the base of the tower to the highest reach of the blade tip of the turbine.

#### **B. Setbacks**

1. The minimum horizontal distance from the base of the tower structure to any property line or road right-of-way shall be the greater of either: the tower height plus 10 feet; or the "fall zone," as determined by a licensed professional engineer, plus 10 feet.
2. No part of the SWES, including guy wire and anchors, may extend closer to the property boundaries than the set back for the zoning district in the dimensional requirements in Section IV.
3. The SWES shall be a minimum of three times its tower height from existing abutting residences as defined in Chapter 40A Section 11 of the Massachusetts Zoning Act.\*
4. The Planning Board may reduce the above setback distances for the SWES in the course of its review of the application, consistent with the requirements of public health, safety, and welfare and the purposes of this Section I. If the setback distances are reduced so that the "fall zone" of the tower includes land on abutting property, such reduction shall only be permitted if the affected abutting property owner(s) executes a recorded easement allowing the fall zone onto such abutting property.

#### C. Access

All small wind energy systems shall be designed and maintained to securely prevent unauthorized access.

#### D. Color and finish

A non-reflective exterior color designed to blend with the surrounding environment is encouraged. No logos, designs, decorations, or writing shall be visible at or beyond the property line.

#### E. Visual Impact

The applicant shall demonstrate through project site planning and proposed mitigation that the SWES minimizes impacts on the visual character of surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design or appearance, buffering, screening, or lighting. All electrical conduits shall be underground.

#### F. Noise

Small Wind Energy System shall comply with the Massachusetts noise regulation (310 CMR 7.10).

#### G. Compliance with FAA requirements

All SWES towers shall also comply with applicable FAA regulations.

### 4. General Requirements

#### A. Construction

The construction, operation, maintenance and removal of wind facilities shall be consistent with all other applicable Town, State, and Federal requirements, including all applicable health, safety, construction, environmental, electrical, communications and aviation requirements.

#### B. Operation and Maintenance

An application for a Special Permit for a SWES shall include a plan for the general procedures for safe and effective operation and maintenance of the facility.

\*The Massachusetts Zoning Act Chapter 40A Section 11 defines "abutting" as 300 feet from the property lines in any direction.

**C. Approved Wind Turbines**

Small Wind Turbine makes and models must appear on the approved list of the California Energy Commission Lists of Eligible Small Wind Turbines or New York State Energy Research and Development Qualified Wind Generators, or a similar list approved by the Commonwealth of Massachusetts if available.

**D. Compliance with State Building Code**

Building permit applications for small wind energy systems shall comply with the state building code and all applicable electrical codes.

**E. Utility Notification**

No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

**5. Abandonment and Removal****A. Abandonment**

A SWES shall be considered to be abandoned if it is not operated for a period of two years, or if it is designated a safety hazard by the Building Inspector. If the Building Inspector determines that a SWES is abandoned, the owner shall be required to physically remove the SWES within 90 days of written notice from the Building Inspector. The owner shall have the right to respond to the written notice of abandonment within 30 days of such notice. If the owner can provide information to demonstrate that the SWES has not been abandoned, the Building Inspector may withdraw the notice of abandonment. If the property owner fails to remove the small wind energy system in accordance with the requirements of this section after 90 days of such notice and the Building Inspector has not withdrawn said notice, the Town shall have the authority to enter the property and physically remove the facility at the owner's expense.

**B. Removal**

"Physically remove" shall include, but not be limited to:

1. Removal of SWES, any equipment shelters, and security barriers from the subject property.
2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
3. Restoring the location of the SWES to its natural condition, except that any landscaping and grading shall remain in the after-condition.

[END OF SECTION III]

**SECTION IV: DIMENSIONAL REQUIREMENTS FOR LOTS**

- A. Each one-family dwelling or other principal building or structure hereafter erected or placed on land within the Town of Shutesbury shall be on a lot with a minimum area of at least ninety thousand (90,000) square feet and a continuous frontage of at least two hundred fifty (250) feet measured along the street line (where the lot meets the right-of-way of the street).
- B. Each two-family dwelling hereafter erected or placed on land within the Town of Shutesbury shall be on a lot with a minimum area of at least one hundred eighty thousand (180,000) square feet and a continuous frontage of at least five hundred (500) feet measured along the street line.
- C. There shall be side and rear yards of at least twenty-five (25) feet between any building or structure and the lot line.
- D. The front yard shall be at least seventy-five (75) feet deep as measured from the street line.
- E. The lot shall be at least fifty (50) feet wide as measured between the side lot lines from the frontage to the dwelling site.
- F. In situations where an application is made to change an existing use (including but not limited to, rehabilitation or conversion of one-family to two-family dwelling), the Massachusetts General Laws Chapter 40, Section 6 apply.

[END OF SECTION IV]

## SECTION V: ENFORCEMENT AND ADMINISTRATION

A. Enforcement: This Bylaw shall be enforced by the Building Inspector. No building or structure shall be erected, altered or moved and no major use of land or of a building shall be commenced or changed unless a building permit has been issued by the Building Inspector. With each application for a permit to build, alter or change in use, there shall be filed with the Building Inspector a plan showing the lot and the location of the building or proposed buildings or structures, including water supply and sewerage facilities, to be erected or changed thereon. There must be a Substantial Start of Construction (as that term is defined in Section VI of this bylaw) within six (6) months after a building or special permit has been issued, and construction must proceed toward completion in a reasonably continuous and expeditious manner. Each special permit shall be valid for two (2) years only from date of issuance.

1. Any person violating any provision of this Bylaw may be fined not more than three hundred dollars (\$300.00) for each offense. Each day that such violation continues shall constitute a separate offense. Notice of such offense shall be delivered by the Building Inspector or by Registered or Certified Mail. In addition to the foregoing enforcement provisions, there shall be available all actions and proceedings, civil or criminal, allowed by any applicable provision of law, including but not limited to Massachusetts General Laws, Chapter 40A, Section 7, as the same may be hereafter amended or replaced.

2. **NON-CRIMINAL DISPOSITION.** In addition to the procedures for enforcement as described above, the provisions of this Zoning Bylaw may also be enforced, by the Building Inspector, by non-criminal complaint pursuant to the provisions of Massachusetts General Laws, Chapter 40, Section 21D, as the same may be hereafter amended or replaced. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of this bylaw shall be twenty-five dollars (\$25.00) for the first offense; fifty dollars (\$50.00) for the second offense; one hundred dollars (\$100.00) for the third offense; and two hundred dollars (\$200.00) for the fourth and each subsequent offense.

B. Compliance With Other Legal Requirements

1. All applications for building permits shall document compliance by signature from all of the municipal agencies or officials listed below. If the Building Inspector has written indication

from an agency or official that signature is not required for specific types of projects or permits, then said signatures need not be obtained. Compliance requirements for minor remodeling or repair of existing buildings shall be at the Building Inspector's discretion. Listed below are the agencies and officials, with their legal requirements:

- a. Massachusetts Wetlands Protection Act, any local wetlands bylaw and regulations implementing said bylaw -- Conservation Commission;
- b. State Sanitary Code and any local Board of Health regulation -- Board of Health;
- c. smoke detection system which is safe and appropriate in the opinion of the Fire Department -- Fire Department;
- d. driveway regulations and curb cut provisions in Section VII of these Zoning Bylaws -- Building Inspector;
- e. these Zoning Bylaws -- Building Inspector;
- f. State Building Code (including plumbing and electrical codes), and any other legal requirements not specified above -- Building Inspector.

2. As required by Massachusetts General Laws, Chapter 40, Section 54, "No building permit shall be issued for the construction of a building which would necessitate the use of water therein, unless a supply of water is available therefor either from a water system operated by a city, town or district, or from a well located on the land where the building is to be constructed, or from a water corporation or company, as defined in Section one of Chapter one hundred sixty-five."

3. Sanitation: No building permit shall be issued prior to issuance of a sewage disposal permit by the Board of Health. The State Sanitary Code of the Department of Health shall be considered a part of these Zoning Bylaws and shall be strictly enforced by the Board of Health.

C. Board of Appeals: There is hereby established a Board of Appeals of three (3) members and two (2) associate members, to be appointed by the Selectboard, as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction as indicated in Chapter 40A:

1. Appeals: To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws, or by any officer or board of the Town or by any person aggrieved by any decision of the Selectboard or other administrative official in violation of any provisions of Chapter 40A of the General Laws or of this Bylaw.

2. Special Permits: Special permits are governed by Massachusetts General Laws, Chapter 40A, Sections 6 and 9, as the same may be hereafter amended or replaced.

Section 6, Paragraph 1, deals with nonconforming structures and uses. It provides that, "Pre-existing nonconforming structures or uses may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or bylaw that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming (structure or) use to the neighborhood." The only cases in which a building permit for an existing nonconforming structure must be issued as a matter of right are those "where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure." General Laws, Chapter 40A, Section 6, Paragraph 1.

Section 9 covers other special permits, generally those dealing with new structures or uses (or both). As provided by that statute, special permits may be issued only for uses which are in harmony with the general purpose and intent of this bylaw, and shall be subject to general or specific (or both) provisions set forth herein; and such permits may also impose conditions, safeguards and limitations on time or use.

a. A special permit granted under this bylaw shall lapse in two years (not including time required to pursue or await the determination of an appeal referred to in Section 17 of said Chapter 40A) of the date that it is granted by the Board of Appeals, unless within that time a substantial use thereunder has commenced, or (in the case of a permit for construction) unless within that time substantial construction has commenced.

b. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities

permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.

c. The Board of Appeals may grant a special permit authorized by this Bylaw if said Board finds, when applicable, that:

(1) The proposal is suitably located in the neighborhood in which it is proposed, or is suitably located in the total Town, as deemed appropriate by the Board of Appeals;

(2) The proposal is compatible with existing Uses and other Uses permitted by right in the same District;

(3) The proposal would not constitute a nuisance due to air or water pollution, flood, noise, dust, vibration, lights, or due to any other facts which in the opinion of the Zoning Board of Appeals would be a public or private nuisance;

(4) The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians;

(5) Adequate and appropriate facilities would be provided for the proper operation of the proposed use.

(6) The proposal reasonably protects the adjoining premises against any possible detrimental or offensive uses on the site;

(7) The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements;

(8) The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment

incidental to the normal operation of the establishment or use; and

(9) The proposal provides adequate methods for disposal or storage of sewage, refuse and other wastes resulting from the uses permitted or permissible on the site, drainage of surface water; erosion and sedimentation control; and the effect of any cutting or filling of soil.

3. Variances: To authorize upon appeal or petition in specific cases such variance from the terms of this Bylaw as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Bylaw would result in unnecessary hardship. A variance from the terms of this Bylaw shall not be granted by the Board of Appeals unless and until:

[Section V C. 3. a. and b. disapproved by the Attorney General on August 31, 2005 and deleted.]

c. In granting any variance, the Board may impose limitations both of time and use, and prescribe appropriate conditions and safeguards. Violation of such limitations, conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Bylaw.

4. Amendment: This Bylaw may be amended from time to time at any annual or special town meeting as provided in Massachusetts General Laws, Chapter 40A, Section 5, as the same may be hereafter amended or replaced.

5. Validity: Where this Bylaw imposes a greater restriction upon the use, height and the area of structures or the use of premises than is imposed by other Bylaws or Rules and Regulations, the provisions of this Bylaw shall control. Each part of this bylaw shall be construed as separate to the end that if any provision, section, subsection, paragraph, sentence, clause, phrase or word thereof shall be held invalid for any reason, the remainder of said bylaw shall continue in full force.

[END OF SECTION V]

## SECTION VI: DRIVEWAYS AND CURB CUTS

### A. Driveway Regulations

1. The driveway shall be designed before a building permit for a newly constructed dwelling is approved, and the driveway construction shall be completed before any occupancy or use of the premises is permitted.
2. The traveled portion of the driveway shall be located no less than fifteen (15) feet from any abutting property lot line unless either a special permit or a permit for a Common Driveway is granted by the Board of Appeals.
3. The grade of each driveway where it intersects with the street line shall not exceed five percent (5%) for a distance of twenty (20) feet from the street line, and from the street line to the traveled portion of the street.
4. All driveways shall be designed and constructed in a manner to assure reasonable and safe access to all vehicles, including but not limited to emergency vehicles of all types. The traveled portion of a driveway shall be a minimum of twelve (12) feet wide in order to insure such access.
5. All driveways shall be designed and constructed so as to reasonably minimize any drainage problem upon or adjacent to any street or lot.

### B. Curb Cut Permit

1. No owner or occupant of land, abutting upon a town way of Shutesbury or any public way which, by statute, said town is obligated to repair and maintain, shall construct any private road or driveway thereon, so as to extend into such public way, without first having obtained a written permit therefor from the Building Inspector and the Superintendent of Highways having charge of the maintenance and repair of such public way.
2. If the curb cut is for forestry, agriculture or other purpose not involving construction that requires a building permit, then the plan provided for herein (see paragraph 4 below) shall be submitted only to the Superintendent of Highways who shall have the sole authority to issue the curb cut permit without approval of the Building Inspector.

3. The Building Inspector (or in cases where no building permit is required, only the Superintendent of Highways) shall issue the curb cut permit within forty (40) days or shall render a decision in writing specifying the reason(s) for denial of said permit and shall base that decision upon consideration of public safety. Whoever by him/herself being the owner or occupant, or by his/her agents or servants, violates this regulation, shall be punished by a fine not to exceed one hundred dollars (\$100.00) per day, and shall be liable in tort to the Town of Shutesbury for all damages caused thereby, and for the cost and expense of removing the obstructing material and of restoring the said way to its former condition.

4. Any applicant for a curb cut permit shall provide both the Highway Superintendent and if paragraph 2 above does not apply, also provide the Building Inspector with a scaled drawing of the proposed private road or driveway, showing all information that either the Building Inspector or the Highway Superintendent, in their discretion and judgement, consider necessary or appropriate in order to make their decision. Such information includes, but is not limited to, the following:

- a. scale and north point;
- b. name of intersecting town or public way;
- c. location, design, dimensions (including length and width), intended use, and grade(s), of the proposed private road or driveway;
- d. surfacing and construction materials;
- e. drainage provisions;
- f. applicant's individual and/or firm name, with applicant's address, telephone number and signature;
- g. the Assessors' parcel number (from tax maps).

C. Common Driveways

1. At most, four (4) lots may be connected, served by, or otherwise share a Common Driveway. A Common Driveway shall lie entirely within the lots being served. Common Driveways are a use which is allowed by special permit only, and this special permit is issued by the Board of Appeals, at the discretion of the Board of Appeals. The applicant(s) must provide all of the following:

- a. evidence of deeded covenants for all affected lots which include provisions for continued maintenance, which are adequate in the opinion of the Board of Appeals;
- b. guarantees including but not limited to financial security as provided by the Shutesbury Regulations entitled "Regulations Governing the Subdivision of Land", that the Common Driveway will be constructed if the permit is issued;
- c. a plan signed by a registered professional engineer for the Common Driveway showing grades, subsurface preparation, drainage and surface materials.

2. The Common Driveway must be designed to safely handle the proposed traffic, and must meet at least the regulations for driveways in this Bylaw, and additionally, the Board of Appeals may require certain standards of subsurface preparation, drainage, and surfacing as it sees fit, but will not exceed the requirements for a "Minor Street" as defined in the Shutesbury Regulations entitled "Regulations Governing the Subdivision of Land."

3. A Common Driveway shall in no way exempt the applicant(s) from meeting frontage requirements for each individual building lot.

[END OF SECTION VI]

SECTION VII: DEFINITIONS: In this Bylaw certain terms shall have the meanings indicated below:

- A. Accessory Use or Building: A use or building which is incidental or subordinate to the principal use or building.
- B. Building: Any roofed structure, permanently located on the land, used for housing or enclosing persons, animals or materials.
- C. Common Driveway: A driveway which is not entirely contained within the lot being served.
- D. Dwelling, One-Family: A building designed for and occupied by not more than one family.
- E. Dwelling, Two-Family: A building designed for or converted for occupancy by two families living in separate dwelling units.
- F. Family: One or more persons (including necessary domestic employees) residing in a single dwelling unit. If composed of persons unrelated by blood, marriage or adoption, such a group, residing cooperatively in one dwelling unit, shall not contain more than five persons.
- G. Farm: A tract of land devoted primarily to agricultural or horticultural use. Includes necessary personnel, structures, buildings, animals and equipment but not residential or commercial structures other than those directly related to farm operation.
- H. Frontage: The distance between the sidelines of a lot measured along the street line (where the lot meets the right-of-way of the street), being an unbroken distance along a street, and also provided that there are both rights of access and potential safe year-round practical vehicular access, unimpeded by:
  1. wetlands, unless a wetlands crossing has been approved by the Conservation Commission; or
  2. topography which prevents a proposed driveway from meeting the requirements of Section VI.A of these bylaws, unless the Board of Appeals has granted an exception as provided in said Section VI.A; or
  3. other natural barriers;

between the street line and a potential building site, and the street has been determined by the Planning Board to provide adequate access to the lot under the provisions of the Subdivision Control Law and the Town of Shutesbury Subdivision Regulations entitled "Regulations Governing the Subdivision of Land."

- I. Habitable Floor Area: As defined in the State Department of Public Health's Minimum Standards of Fitness for Human Habitation; in brief, those heated areas used daily for living, eating, cooking and sleeping but excluding garages, circulation areas, closets and other storage areas or space in a basement in which more than one half (1/2) of the height measured from the floor to the finished ceiling is below the average grade to the adjoining ground.
- J. Junk Yard: Land or structure used commercially for collecting, storing or selling wastepaper, rags, scrap metal or discarded material; or for collecting, dismantling, storing or selling inoperative machinery or vehicles or parts thereof for commercial purposes.
- K. Lot: A tract of land under separate ownership, occupied or intended to be occupied by a dwelling or other principal building and the structures and areas adjacent to such use, having frontage on a street and defined by metes and bounds in a deed or shown on a plan recorded in the Registry of Deeds.
- L. Signs: Any permanent or temporary exterior structure, device, letter, word, display, pennant, insignia or trade flag which is used as an announcement, direction or advertisement and which is visible from any public street or from abutting property.
- M. Street: A public way, or a private way shown on the Definitive Plan of a subdivision approved by the Planning Board, and also located within the Town of Shutesbury, which affords the principal means of vehicular access to abutting property and which, as defined, includes the entire right-of-way.
- N. Structure: A combination of materials assembled at a fixed location to give support or shelter or for other purposes. Shall include a building, framework, swimming pool, shed, platform, tower or similar object.
- O. Trailer or Mobile Home: A movable or portable housing unit, built on a chassis and originally designed to be independent of a permanent foundation, whether or not subsequently connected to a foundation or utilities.
- P. Variance: A variation from the terms of this Bylaw which may be permitted by the Board of Appeals under Section 15-3 of Chapter 40A of the General Laws.

- Q. Yard, Front: A space, beginning where the frontage is measured, extending across the full width of the lot, and entirely within the lot.
- R. Substantial Start of Construction: The term "substantial start of construction" means either:
1. where the construction requires a foundation, completion of the foundation so it is ready for a foundation inspection; or
  2. in cases where such construction does not require a foundation, the substantial alteration of the existing structure or creation of a new structure (such as demolition, framing, roofing, etc.) for the purposes intended.

[END OF SECTION VII]

[END OF SHUTESBURY ZONING BYLAW]

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## **Town of Shutesbury Community Preservation Bylaw**

### **Chapter 1: Establishment**

The Town of Shutesbury hereby establishes a Community Preservation Committee, consisting of nine (9) voting members pursuant to MGL Chapter 44B, Section 5. The composition of the committee, the appointment authority and the term of office for the committee members shall be as follows:

One member of the Conservation Commission as designated by the Commission for a term of three years.

One member of the Historical Commission as designated by the Commission for a term of three years.

One member of the Planning Board as designated by the Board for a term of one year and thereafter for a term of three years.

One member to act in the capacity of, or perform like duties of, a member of a housing authority; this member is to be appointed by the Select Board for an initial term of two years and thereafter for a term of three years.

One member of the Open Space Committee as designated by the Committee for an initial term of three years.

One member of the Finance Committee as designated by the Committee for an initial term of three years.

One member of the Recreation Committee as designated by the Committee for an initial term of three years.

One member to act in the capacity of, or perform like duties of the Board of Park Commissioners; in the absence of such Board the Select Board shall designate a member of the Select Board for a term of one year, and to reappoint thereafter on an annual bases.

One At-large member to be appointed by the Board of Selectmen, for a term of two years and thereafter for a term of three years.

Should any of the Commissions, Boards, Councils or Committees who have appointment authority under this Chapter be no longer in existence for what ever reason, the appointment authority for that Commission, Board, Council, or Committee shall become the responsibility of the Select Board.

### **Chapter 2: Duties**

(1). The community preservation committee shall study the needs, possibilities and resources of the town regarding community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the recreation committee and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town.

(2). The community preservation committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

(3). The community preservation committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

(4) In every fiscal year, the annual revenues of the community Preservation Fund shall be distributed among open space, historic resources, community housing and administrative and operating expenses of the community Preservation committee, according to the following allocation:

- Not less than ten percent (10%) of the annual revenues in the community preservation Fund shall be spent , or set aside for later spending, for open space (not including land for recreational use); additional revenues allocated to open space beyond this ten percent may include land for recreational use
- Not less than ten percent (10%) of the annual revenues shall be spent, or set aside for later spending, for historic resources
- Not less than ten percent (10%) of the annual revenues shall be spent, or set aside for later spending for community housing

### **Chapter 3: Requirement for a quorum and cost estimates**

The community preservation committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the community preservation committee shall constitute a quorum. The community preservation committee shall

approve its actions by majority vote. Recommendations to the Town Meeting shall include their anticipated costs.

#### **Chapter 4: Amendments**

This Chapter may be amended from time to time by a majority vote of the Town Meeting, provided that the amendments would not cause a conflict to occur with MGL, Chapter 44 B.

#### **Chapter 5: Severability**

In case any section, paragraph or part of this chapter be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

#### **Chapter 6 Effective Date**

Following Town Meeting Approval, this bylaw shall take effect immediately upon submittal to the Attorney General of the Commonwealth. Each appointing authority shall have thirty (30) days after submittal to the Attorney General to make their initial appointments. Should any appointing authority fail to make their appointments within that allotted time, the Select Board shall make the appointment.

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Town of Shutesbury

**Number:** 990501

Telecommunications Tower Bylaw

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**Bylaw Name**

Adopted at the **Annual/Special** Town Meeting held: May 1, 1999

and approved by the Attorney General's Office on August 3, 1999

**Amendments:**

Town Meeting date	Attorney General approval date
May 5, 2001	August 21, 2001

As voted at the May 1, 1999 Annual Town Meeting and Amended May 5, 2001

Approved by the Attorney General August 27, 2001

### **I. Purpose and Goals**

The purpose of this bylaw is to establish general guidelines and outline the special permitting process to site any tower, such as, but not limited to wireless telecommunication towers and facilities anywhere in Shutesbury. The goals of this bylaw are to:

1. Encourage the location of towers on municipal land or on pre-existing structures so as to minimize the total number of towers and visual impact upon the community;
2. Require the co-location of new and existing tower sites thereby reducing the need for new facilities;
3. Locate towers and facilities, to the extent possible, in areas where adverse environmental, historic, and visual impact to the community and adjacent property is minimal;
4. Enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently; and
5. Make available all wireless telecommunications tower locations to local municipal agencies.

### **II. Definitions**

DISTANCE shall be measured on a horizontal plane.

FAA shall mean the Federal Aviation Administration.

FCC shall mean the Federal Communications Commission.

HEIGHT shall be the distance measured from the pre-existing ground level to the highest point on the structure.

NON-RESIDENTIAL STRUCTURE shall mean such structures as but not limited to, buildings, grain silos, water towers, and church steeples, but does not include houses or apartments.

WIRELESS COMMUNICATION BUILDING shall mean any building or shelter used to house equipment primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation, and is an accessory to a wireless communication structure.

WIRELESS COMMUNICATION DEVICE shall mean any antenna, appurtenance, wiring or equipment used in connection with the reception or transmission of electromagnetic radiation which is attached to a structure.

WIRELESS COMMUNICATION FACILITY shall be used as a general term to include wireless communication building, wireless communication device, and wireless communication structure.

WIRELESS COMMUNICATION STRUCTURE shall mean any structure or tower intended to support equipment used for the transmission and reception of electromagnetic radiation, including antennae, wiring, or other devices attached to or mounted on a structure.

**APPLICANT** Any person applying for a special permit to construct, erect, install, operate or substantially modify a Wireless Communications Facility, Wireless

Communication Device or Wireless Communication Structure, or such person's agent, representative or successor in interest. An Applicant or at least one of the co-applicants if there is more than one Applicant in an Application must be a Telecommunications Service Provider.

APPLICATION shall mean the process of submission, consideration, and action on an Applicant's request for a special permit to construct, erect, install, operate or substantially modify a Wireless Communications Facility, Device, Structure or Building; and the forms, documents, and information presented to the town in the course of said request. The Application includes verbal representations made by and on behalf of the Applicant to the Planning Board.

TELECOMMUNICATIONS SERVICE PROVIDER shall mean a corporation or organization that provides wireless communications service to the public through explicit license by the FCC as contemplated by "The Telecommunications Act of 1996" in the term "carrier".

TOWER shall refer to any structure whose height greatly exceeds its width.

### III. Exemptions

There shall be no exemptions from this bylaw, and it shall apply to all towers in the town of Shutesbury, except the following shall be exempted from this bylaw:

- A. Wireless Communication Facilities used for town or state emergency services.
- B. Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the FCC and used solely for that purpose.
- C. Wireless communication structures and devices used expressly for home television reception and personal wireless communications.

### IV. General Guidelines

A. A wireless telecommunications tower and facilities may be located in the Town of Shutesbury upon the granting of a Special Permit from the Planning Board in accordance with the requirements set forth herein. The submission of a site plan will be required prior to granting of a Special Permit.

B. Wherever feasible, wireless communication devices shall be located on existing towers or other non-residential structures, minimizing proliferation of new towers.

C. Wireless communication structures shall be built so that the structural integrity of the facility is able to accommodate devices operated by another carrier with little or no modification.

D. Wireless communication buildings shall be no larger than 500 square feet and 12 feet high, shall be designed to match other accessory buildings on site, and shall be used only for the housing of equipment related to this particular Wireless Communication Facility.

E. Communication relay structures, TV broadcast systems, radio broadcast systems and other similar systems are not permitted under this telecommunications tower bylaw.

**V. Siting and Height requirements**

**A. Setbacks.**

1. The minimum distance from the base of the wireless communication structure to any property line or road right-of-way shall be at least 1.25 times the height of the structure and any attached wireless communication devices, to ensure an adequate fall zone.
2. The minimum distance from any guy wire, anchor, or brace to any property line or road right-of-way shall be equal to the length of the guy wire.
3. Setbacks for the wireless communication building shall comply with other zoning setback requirements.
4. The wireless communication structure and any attached wireless communication devices shall be a minimum distance of three times its height from school buildings, playgrounds, athletic fields, and abutting residences to prevent the structure from appearing to "tower" over and adversely affecting property values.

**B. The height of the wireless communication structure and any attached wireless communication devices shall be no greater than 100 feet. Any application for a structure in excess of 100 feet height shall be a request to waive this requirement. In the event that the Applicant seeks a permit for a tower of a height more than one hundred feet, documentation must be provided clearly showing that the additional height is necessary (1) to avoid construction of another tower, or (2) to allow the carrier to provide adequate coverage. Such documentation shall include alternative siting possibilities along with associated maps of service areas of different signal strengths. Tower height shall be measured from grade, and shall include the tower itself, its base pad, and any attached facilities .**

C. The wireless communication structure shall, when possible, be sited off ridge lines and where visual impact is the least detrimental to valuable historic and scenic areas. Valuable areas shall be determined by the Planning Board, and can be views that Shutesbury has identified as scenic in the Shutesbury Open Space and Recreation Plan or Shutesbury Comprehensive Plan, or are listed in the Massachusetts Landscape Inventory, MGL C.131s.39A, conducted by the Massachusetts Department of Environmental Management, 1982.

**D. No new wireless communication structure shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Board that no existing wireless communication structure or other non-residential structure can**

accommodate the Applicant's proposed wireless communication device. Evidence submitted to demonstrate that no existing structure can accommodate the Applicant's proposed device may consist of any of the following where each such structure is specifically identified:

1. No existing wireless communication structures or non-residential structures are located within the geographic area required to meet the applicant's engineering requirements.
2. Existing wireless communication structures or non-residential structures are not of sufficient height to meet the Applicant's requirements
3. Existing wireless communication structures or non-residential structures do not have sufficient structural strength or cannot be strengthened to support the proposed wireless communication device.
4. The proposed wireless communication device would cause electromagnetic interference with the existing devices on the site, or the existing devices would cause interference with the proposed wireless communication device.
5. The fee, costs, or contractual provisions required by the owner in order to share an existing wireless communication structure or to adapt an existing structure for use are unreasonable. Unreasonable cost would be equal to twice the cost of building a new structure.
6. The applicant demonstrates that there are other limiting factors that render existing structures unreasonable.

## **VI. Design Requirements**

- A. Wireless communication structures shall be designed to accommodate the maximum number of users as technologically possible, but within the requirements and limitations of this bylaw (e.g., limitations to tower height).
- B. There shall be no signs or advertisements, except for no trespassing signs and a required sign giving the phone number where the responsible party can be reached on a 24-hour basis.
- C. All wireless communication structures and devices shall be colored, molded, and/or installed to blend into the structure and/or landscape.
- D. The wireless communication facility shall be fenced to control access (not necessarily the entire property)

E. Night lighting of the wireless communication facility shall be prohibited unless required by the FAA. If required by the FAA, a copy of the FAA permit requiring night lighting should be submitted with the application.

F. There shall be a maximum of one parking space for each facility to be used for parking in connection with maintenance of the site and not to be used for storage of vehicles or other equipment.

G. Existing on-site vegetation shall be preserved to the maximum extent possible.

H. Vegetative screening shall be used to screen abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

## VII. Application Process

A. Approval. The Shutesbury Planning Board is hereby designated the Special Permit Granting Authority to grant Special Permits for wireless telecommunications towers and facilities. A Special Permit shall be granted by the Planning Board in accordance with Massachusetts General Laws (Ch. 40A, Section 9), provisions of this bylaw, and any rules and regulations that the Planning Board may adopt relative hereto.

B. Expiration. The Special Permit granted under this bylaw shall expire within two (2) years of the date of issuance of the permit, if no Wireless Communication Facility is constructed.

**C. Submittal. Failure to provide all of the required materials and information shall be grounds for denial of the application. The Planning Board may require additional or supplemental information at its discretion, and the applicant's failure to timely provide such information shall also be grounds for denial of the application. The applicant or co-applicant must be a telecommunications service provider. As part of any application for a special permit, Applicants shall submit:**

**For a new Wireless Communications Facility:**

**1. no changes i.e.,**

1. site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" by 36" sheets at a scale of 1"=40' or 1"=200', where appropriate, on as many sheets as necessary which show the following:

- a. north arrow, date, scale, seal(s) of licensed professional(s) who prepared the plans and space for reviewing engineer's seal
- b. name and address of landowner and names and addresses of abutters
- c. property lines and location of permanent structures and buildings, within a 500-foot radius of the proposed wireless communication structure.
- d. existing (from a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contour lines at a maximum of two-foot contour intervals and spot elevations at base of all proposed and existing structures
- e. vegetation to be removed or altered

- f. plans for drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
  - g. delineation of wetlands, if any
  - h. location of wireless communication structure, including supports and guy wires, if any
  - i. plans for anchoring and supporting the structure, including specifications of hardware and all other building material, and wind/ice survivability estimates.
  - j. plans for accessory buildings
  - k. layout and details of surfacing for access road and parking
  - l. amenities such as lighting, fencing, and landscaping.
- m. four view lines in a one-to-three mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals, plus additional view lines from any historic, scenic, or other prominent areas of Shutesbury, as determined by the Planning Board, based on scenic views and areas identified in the Shutesbury Open Space and/or Master Plan.

- 2. a. map showing all areas covered/served by the proposed wireless communications structure and device of different signal strengths, and the interference with adjacent service areas.
  - b. a narrative description of the type of the service being provided, including the number of channels or number of supported communication links, maximum RF power level, effective radiated power, ranges of frequencies of operation both transmit and receive, and type(s) of modulation.
  - c. a report setting forth the proposed power density of the Facility that demonstrates how FCC standards for RF emissions are met.
  - d. if the service requires point-to-point links or other relay or RF communications not specifically between the subscriber and the facility, details of such additional communications requirements shall also be described.
- 3,4. no changes

i.e.,

- 3. locus map at a scale of 1"=1000', which shall show streets and landscape features
- 4. description of the soil and surficial geology of the proposed site

- 5. h. Provide simulated graphical depictions of the appearance of the facility from all public ways where it may be seen.
- 6. a. Proof of approval of all other necessary permits needed for construction and operation, and
- b. evidence that a valid license has been granted to the applicant (or co-applicant) for this specific service in this area by the FCC. A photocopy of such license is sufficient for the application, although other evidence may be required prior to approval.

**For a new Wireless Communication Facility,**

1. site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" by 36" sheets at a scale of 1"=40' or 1"=200', where appropriate, on as many sheets as necessary which show the following:
  - a. north arrow, date, scale, seal(s) of licensed professional(s) who prepared the plans and space for reviewing engineer's seal
  - b. name and address of landowner and names and addresses of abutters
  - c. property lines and location of permanent structures and buildings, within a 500-foot radius of the proposed wireless communication structure.
  - d. existing (from a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contour lines at a maximum of two-foot contour intervals and spot elevations at base of all proposed and existing structures
  - e. vegetation to be removed or altered
  - f. plans for drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
  - g. delineation of wetlands, if any
  - h. location of wireless communication structure, including supports and guy wires, if any
  - i. plans for anchoring and supporting the structure, including specifications of hardware and all other building material, and wind/ice survivability estimates.
  - j. plans for accessory buildings
  - k. layout and details of surfacing for access road and parking
  - l. amenities such as lighting, fencing, and landscaping.
  - m. four view lines in a one-to-three mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals; plus additional view lines from any historic, scenic, or other prominent areas of Shutesbury, as determined by the Planning Board, based on scenic views and areas identified in the Shutesbury Open Space and/or Master Plan.
2. map showing all areas covered/served by the proposed wireless communication structure and device of different signal strengths, and the interference with adjacent service areas.
3. locus map at a scale of 1"=1000', which shall show streets and landscape features
4. description of the soil and surficial geology of the proposed site
5. narrative report written by the operator of the Wireless Communication Facility and licensed professional engineer which shall:
  - a. describe the justification of the proposed site
  - b. describe the structure and the technical, economic, and other reasons for the facility design
  - c. describe the capacity of the structure, including the number and type of additional facilities that it can accommodate
  - d. describe the actions to be taken if the electromagnetic radiation from the facility should exceed levels designated by the FCC
  - e. describe the projected future needs of the operator of the Wireless Communication Facility, and how the proposed wireless communications facility fits with future projections to serve Shutesbury and adjacent communities.

- f. describe leasing agreement should another carrier desire to co-locate
- g. Describe special design features to minimize visual impact of the proposed wireless communication facility.

**6. Proof of approval of all other necessary permits needed for construction and operation.**

**7. Demonstration.** The Planning Board may require the Applicant to perform an on-site demonstration of the visibility of the proposed tower by means of a crane with a mock antenna array raised to the maximum height of the proposed tower. A colored 4' minimum diameter weather balloon held in place at the proposed site and maximum height of the proposed tower may be substituted for the crane if approved by the Planning Board. The date and location of the demonstration shall be advertised at least 14 days, and not more than 21 days before the demonstration, and again in the public hearing advertisement in a newspaper with a general circulation in Shutesbury. Failure in the opinion of the Planning Board to adequately advertise the demonstration may be cause for the Planning Board to require another, properly advertised, demonstration.

**8. In the event that the Special Permit Granting Authority determines that circumstances necessitate expert technical review, the Special Permit Granting Authority reserves the right to select expertise for the review, and the expense of the review shall be paid by the applicant.**

**TO SITE a wireless communication device on an existing wireless communication structure or non-residential structure such as buildings, silos, steeples, water towers or other non-residential structures, including co-location with another carrier, provided that the new use does not add to the height of the structure, the Applicant shall submit:**

- 1. All information described in VII. C. 1 - 4, and 6, above.**
- 2. A narrative report written by the Wireless Communication Facility operator and licensed professional engineer which shall:**
  - a. include a draft contract between the non-residential structure owner and the Applicant
  - b. demonstrate that the wireless communication structure or non-residential structure to which the device will be mounted has the structural integrity to support such a device,
  - c. describe the actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
  - d. describe the projected future needs of the carrier, and how the proposed facility fits with future projections.
- 3. If the proposed facility adds more than 5 feet to the height of the non-residential structure at the effective date of this bylaw, the Planning Board may require a demonstration of height with balloons, as described in VII.A.7.**

In both cases, the above information shall be submitted along with the regular application form to the following: 1 copy to the building inspector, 1 copy to the Fire Chief, 1 copy to the Chief of Emergency Services or Department of Public Works, and 3 copies to the Planning Board.

4. In the event that the Special Permit Granting Authority determines that circumstances necessitate expert technical review, the Special Permit Granting Authority reserves the right to select expertise for the review, and the expense of the review shall be paid by the applicant.

### **VIII. Approval**

A. In granting a Special Permit for Wireless Communications Facilities, the Planning Board shall find:

1. That the Applicant has demonstrated to the satisfaction of the Planning Board that the requirements of this bylaw have been met.
2. That the size and height of the structure are the minimum necessary.
3. That the proposed wireless communication facility will not adversely impact historic structures or scenic views.
4. That there are no feasible alternatives to the location of the proposed Wireless Communication Facility, including co-location, that would minimize their impact, and the applicant has exercised good faith in permitting future co-location of Wireless Communication Facilities at the site.

B. When considering an application for a Wireless Communication Facility, the Planning Board shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences, and will encourage the use of existing structures.

C. Any extension or construction of new or replacement towers or transmitters shall be subject to an amendment of the Special Permit, following the same procedure as siting a new wireless communication device on an existing structure.

### **IX. Conditions of Use**

A. The Applicant shall post an initial bond to cover construction costs and an annual maintenance bond to cover maintenance for the access road, site and structures, and to cover the removal of the facility in the event of non-operation in an amount approved by the Planning Board.

B. Regulatory compliance.

1. annual certification demonstrating structural integrity and continuing compliance with current standards of the FCC, FAA, and the American National Standards Institute shall be filed with the Building Inspector by the Special Permit Holder, and shall be reviewed by a licensed professional engineer hired by the town of Shutesbury and paid for by the Special Permit holder.
2. If the FCC or the FAA regulations are changed, the owner or operator shall bring the facilities into compliance within 6 months or earlier if a more stringent compliance schedule is included in the regulation.
3. Failure to comply with any regulations shall be grounds for the Planning Board to revoke this Special Permit and require removal of non-complying structures, buildings, and devices at the owner's expense.

4. If the device is moved lower on the structure and the top of the structure is no longer needed, then the non-operational part of the structure shall be removed in 120 days.

C. Removal and Repair.

1. An Applicant must execute a covenant with the Planning Board agreeing to remove, within 180 days of notice from the town, the wireless communication facility not in operation for a period of 12 months, unless the reason for non-operation is the result of major damage.

2. If the facility is not removed within 180 days, the Town shall remove said facility at the owner's expense.

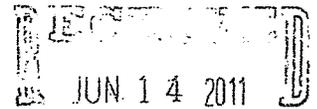
3. In the event of major damage, repair must begin within 6 months of damage. Major damage shall mean damage to the facility caused by no fault of the owner or operator.

A TRUE COPY

ATTEST Lisette Brunebridge  
Shutesbury Town Clerk

Spear Library

**BYLAWS OF THE MN SPEAR MEMORIAL LIBRARY  
SHUTESBURY, MASSACHUSETTS  
APPROVED BY THE TRUSTEES , APRIL 2011**



**ARTICLE I. MISSION STATEMENT**

BY:.....

The M. N. Spear Memorial Library strives to provide Shutesbury residents of all ages with materials and programs to meet their education, entertainment and information needs in an environment that fosters community. We aim to be a place where past and future are joined, not only in our collection of local historical information and current technological resources, but also by bringing together community members young and old to share and learn from one another. We endeavor to help all our patrons make the most of the current technologies that can provide vital information services, as well as entertainment and cultural enrichment.

**ARTICLE II. NAME AND AUTHORIZATION**

The name of this organization is the Board of Trustees of the M.N. Spear Memorial Library, a public library existing by virtue of the provisions of Chapter 78, D Section 10-13, and 21 of the Massachusetts General Laws (MGL), and the By-Laws of the Town of Shutesbury.

**ARTICLE III. RESPONSIBILITIES**

1. The Board shall have those responsibilities as provided by MGL, Chapter 78, Section 11 and the By-Laws of the Town of Shutesbury as regards the custody and management of the Library and of all property owned by the Town pertaining to the Library. The Board Shall be responsible for all monies appropriated by the Town for the Library and all money or property received by the Town by gift or bequest for the Library.
2. The Board shall appoint a qualified Library Director who shall be the executive and administrative office of the Library on behalf of the Board and under its review and direction. Responsibilities delegated by the Board to the Library Director shall include selection of books and other materials, maintenance of library collections, expenditure of funds with the approved budget, direction of library operations and provision of services to the public. The Library Director shall attend all Board meetings.
3. The Board shall establish written policies governing library activities and services, including a policy for the selection of library materials and the use of library materials and facilities which is in accord with the current standards of the American Library Association as provided for by the MGL, Chapter 78, Section 33.
4. The Board shall execute a written employment contract with the Library Director outlining the basic conditions of employment as provided for by the MGL, Chapter 78 Section 34.

#### **ARTICLE IV. OFFICERS**

1. The officers of the Board shall be a Chairperson, a Vice-Chairperson and a Secretary.
2. The Chair shall conduct all meetings, appoint all committees, serve as the official representative of the Board, and fulfill all legal functions on behalf of the Board.
3. The Vice-Chairperson, in the absence of the Chairperson, shall perform the duties of Chairperson.
4. The Secretary shall post all meetings as required by law, keep a true record of all meetings of the Board, (submit a copy to the town clerk) and be responsible for correspondence as directed by the Board.
5. Officers shall be elected from the Board at that regular meeting of the Board which immediately follows the Annual Town Meeting elections. The term of office shall be one year. In the event of a vacancy in any of the officer's positions during the year, that vacancy shall be filled by a vote of the Board.
6. The Treasurer will work, as needed, with the Library Director on the library budget.

#### **ARTICLE V. MEETINGS**

1. Regular meetings shall be held at the Shutesbury Town Hall on the second Tuesday of each month beginning at 7pm. Regular attendance is expected. A Trustee is expected to give advance notice to the Chairperson whenever he/she cannot attend a meeting. (email the Board)
2. Special meetings may be called by the Chairperson, or at the request of a majority of members.
3. A quorum shall be four members of the Board.
4. All meetings of the Board shall be subject to the State's Open Meeting Law as contained in the MGL, Chapter 39, Section 23A-23C. In particular, all meetings are open to the public unless held in executive session under terms of the law. A notice of all meetings will be filed with the Town Clerk at least 48 hours in advance of the meeting date and time, and a copy of the notice will be posted in the Town Hall. All records of minutes of meetings will be available for public inspection.
5. There shall be a prepared agenda which shall include: Call to order, approval of minutes of previous meetings, report of the Library Director, reports of other library staff, reports of committees, action items and other business.

#### **ARTICLE VI. COMMITTEES**

Special Committees for the study and investigation of special problems or for the performance of specially assigned tasks may be appointed by the Chairperson. Such committees shall function as ad hoc committees and shall consider only that purpose for which they are appointed. They shall disband when their work has been completed.

#### **ARTICLE VII COLLECTIVE AUTHORITY OF THE BOARD**

All decisions of the Board are made by the Board as a collective body. No individual member may make decisions or, with the exception of the Chairperson, act or speak for

the Board unless specifically authorized to do so by a vote of the membership of the Board.

**ARTICLE VIII. PARLIAMENTARY RULES**

Except as provided for by these By-Laws, the current edition of "Robert's Rules of Order" shall govern.

**ARTICLE IX. AMENDMENTS**

These By-Laws may be amended at any regular meeting of the Board with a quorum present, by a majority vote of the members present, providing that a motion presenting the amendment was duly made and seconded at the previous regular meeting.

**ARTICLE X. INCONSISTENT PROVISIONS**

To the extent that any provision of these By-Laws is inconsistent with any provision of the Massachusetts General Laws or the Town By-Laws, the Massachusetts General Laws or the Town By-Laws, as the case may be, shall govern.

Signatures:

Karen Traub Chair

Amy Beth

Gary Hirshfield

Michele Regan-Ladd- Secretary

Michel Sedor

Appendix

\* ATKINS RESERVOIR 5/7/88 8/30/83 (original) approved 11/5/84

\* BUILDING CODE 2/12/66 12/23/66

CAPITAL PLANNING 5/6/2000 - July 19, 2000

CURB CUT 5/2/87 8/24/87

DEMAND SUSPENSION REVOCATION OF LOCAL LICENSE 5/1/99 ← Not a bylaw or MGL acceptance

\* EXCESSIVE NOISE 6/15/89

\* FALSE ALARMS 6/15/89 10/12/89

HOUSE NUMBERS 5/1/93

\* TOWN BEACH 5/7/88

WETLAND PROTECTION 5/5/90 9/14/87 on first no record on

Check Aug 7, 1989 Art. 3 Motor boats @ Lake Wyola Approved by Div. of Fish & Wildlife Law Enforcement 9/15/89

\* These are recorded as having been sent to A.G. by Paul Vlach - no record of approval - call into AG office

\*\* info sent July - Nov. '66. Cannot find approval letter

directory & Oper 0

CHAPTER 802 OF STATE CODE 1972 PASSED

RECORDS ACCEPTED OR REJECTED

City/Town of SALISBURY

Date Recd.	G.L. Chapter	Amended by Chapter	of the Acts of	Date of Action	Result of Action	TOPIC
1/19/1912	503		1912	11/5/1912	Reject	Pensioning Laborers
7/1914	807		1913	3/17/1913	Accept	Workmens Camp.
3/1914	688		1914	11/3/1914	Accept	Eight Hour Day
1/17/1914	494		1914	3/16/1914	Accept	Sat. Half Holiday
1/1914	217		1914	11/3/1914	Accept	Laborers' Vacations
1/1914	790		1914	11/3/1914	Accept	Party Enrollment
1/1919	311 G		1919	11/4/1919	Accept	Continuation Schools
1923	516		1922	2/5/1923	Reject	Accounting System
1/1937	46		G.L.	12/20/1937	Accept	Ballots
1/1939	54	Sec 103 A	G.L.	2/6/1939	Accept	Absentee Voting
12:58PM 1/1939	187		1937	2/7/1938	Accept	Centre Cemetery
8.2000 1946	166		1946	11/5/1946	Accept	Est, Contributory Retirement
MAR. 972	486		1971	2/26/1972	Accept	Beano

City/Town of

File No.	G.L. Chapter	Amended by Chapter	of the Acts of Chapter 291 of the Acts of 1990	Date of Action	Result of Action Accept, Reject, etc.	TOPIC
2/10/91				5/4/91	accept	H HANSE E 9-1-1
NO. 449	48 <del>42</del> 444			5/5/51		ESTABLISH FIRE DEPARTMENT
	59 2 170			5/2/87		ELDERLY HOME OWNERS TAX EXEMPTION SURVIVOR'S SPOUSE
	40			10/26/64		ESTABLISH CONSERVATION COMMISSION
617-727-5914	32			4/3/05		FIRES IN OPEN AIR
	78			4/1/12		ESTABLISH CEMETARY COMMISSIONERS
	SECTION 401 ACTS 1913			3/16/14		TOWN CLERK ELECTED 3 YEARS
	140			2/10/62		JUNK DEALERS
	4/297A			2/11/56		ESTABLISH POLICE DEPARTMENT
12:59PM	45 E 14			2/14/59		ESTABLISH RECREATION BOARD
	152 E 69			2/11/56		WORKER'S COMP
MR. 8 2002	4006F			2/11/56		REPAIR OF PRIVATE WAYS
	40 E 8B			10/30/73		ESTABLISH COMMON DRAGINA
	103 E 54			2/6/39		ABSENTEE VOTING AT TOWN ELECTIONS ESTABLISH LIBRARY BOARD OF

AMENDED 2/3/36

2/3/71

11227A