

Planning Board Report to Town Meeting Regarding:

(1) Zoning Use Table Addition Relative To Energy Storage Systems

(2) Proposed Replacement Zoning Bylaw for Ground-Mounted Solar Electric Installations

Nov. 21, 2022

On October 17, 2022, the Shutesbury Planning Board held a public hearing to accept testimony and make a final recommendation about changes to the Zoning Use Table for Energy Storage Systems and about an updated version of the Ground-Mounted Solar Electric Installations zoning bylaw.

The change to the Energy and Utility section of the Zoning Use Table would add Energy Storage Systems (commonly, batteries) as a stated use. Energy Storage Systems would be prohibited as principal use in the Town of Shutesbury. The proposed replacement solar bylaw would include foundational rationale, clarify existing language, and add a range of requirements for use of Ground-Mounted Solar Electric Installations.

The following people were in attendance:

- Planning Board: Deacon Bonnar, Michael DeChiara, Jeff Lacy, Nathan Murphy, Robert Raymond; Jeff Weston; and Associate Member, Ashleigh Pyecroft
 - Absent: Steve Bressler
- Public: Donna MacNicol, town counsel; Miriam DeFant, Mike Vinskey, Leslie Bracebridge, Henry Geddes, Elizabeth Fernandez O'Brien, Bert Fernandez, Sharon Weizenbaum, and all other unidentified individuals.

Rationale

Representing the Planning Board, Jeff Lacy and Michael DeChiara explained the primary reasoning behind the Board's updates.

The Planning Board sought to address two developments that occurred in spring 2022. Most important was the June 2, 2022 decision by the Massachusetts Supreme Judicial Court (SJC) in the so-called Tracer Lane v. Waltham case whereby a municipality's ability to regulate large scale solar installations was more specifically defined. The second development was the failure of a proposed Energy Storage System zoning bylaw to pass at the May 21, 2022 Shutesbury Town Meeting. The Planning Board felt that by updating the Use Table and the existing solar bylaw, these developments would be addressed in a manner that clearly affirmed the Board's intent to protect public health, safety and welfare in Shutesbury.

Proposed Changes

The change in the Zoning Use Table, adds Energy Storage Systems to the Energy and Utility section. It prohibits Energy Storage Systems as a primary (i.e. standalone) use. In effect, this allows the use of Energy Storage Systems that are accessory uses to residences, a concern raised out of confusion by residents at Town Meeting.

There are numerous proposed changes in the updated Ground-Mounted Solar Electric Installations bylaw.

The most fundamental change was informed by the Planning Board's understanding of the SJC guidance emerging from the Tracer Lane v Waltham case and subsequently, the Kearsarge Walpole v. Lee case. In Tracer Lane, the SJC affirmed that while a municipality has broad ability to regulate solar energy generation as compared to other so-called Dover Amendment uses, but clearly stated that any zoning regulation regarding solar must be for the reasons of public health, safety and welfare. While the Shutesbury Planning Board believes that its current regulations are reasonable and based on the presumption of protecting public health, safety and welfare, the current solar bylaw does not explicitly make these assumptions clear. In order to comply with the SJC Tracer Lane decision, the Planning Board felt an updated version of the bylaw in which the underlying rationale to public health, safety and welfare was clearly expressed was crucial. The inclusion of the introductory Background section was added to establish an explicit and strong connection between the Shutesbury zoning regulations in the solar bylaw and the reasons they are needed for the protection of public health, safety and welfare.

Specifically, the solar bylaw identifies the protection of the following areas of concern as directly tied to the community's public health, safety and welfare:

- Drinking water wells
- Wetlands
- Unpaved roads
- A resilient ecosystem – local flora and fauna
- Forests
- Agricultural land
- Firefighting capacity/emergency response
- Historical and cultural resources

Additionally, both the Tracer Lane case and the subsequent Kearsarge case require that municipal zoning regulations allow for an adequate amount of land to be available for the development of large scale solar notwithstanding any limitations due to zoning regulation. The Planning Board reviewed the current bylaw and made slight modifications in the proposed bylaw to ensure that available land met this requirement.

The Planning Board felt that regulation of Energy Storage Systems remained a priority in regards to the threat to public health, safety and welfare. In light of the failed standalone Energy Storage Systems bylaw, the updated solar bylaw incorporates many of the previously proposed regulations in the context of an accessory use to solar generation. As noted earlier, this in combination with the changes to the Use Table, makes clear that Energy Storage Systems when secondary to a primary use, including residences, will be permitted by right.

The updated solar bylaw also includes the additional changes.

- Specific listing of the state and federal laws and regulations which large scale solar must comply with; the current bylaw only makes a general statement about compliance with all laws, bylaws and regulations
- Inclusion of definitions for large and small scale solar which are current will continue to be referenced in the Definitions section of the Shutesbury Zoning Bylaws.
- Inclusion of mitigation requirements related to stormwater.

- Inclusion of mitigation requirements related to noise and requirement for the submission of a noise assessment
- The right of the Planning Board to require an environmental monitor during construction and after significant weather events
- More specificity regarding Safety and Environmental Standards in relation to Habitat Impacts for Core Habitat, Critical Natural Landscapes, and Habitat of Potential Regional and Statewide Importance.
- More specificity regarding Safety and Environmental Standards in relation to Energy Storage Systems.
- Inclusion of a requirement for pre-submission documentation to better ensure data gathering with regards to historic preservation. This includes a more detailed process of notifications to assist with historic and cultural mitigation, and the submission of a Phase I Cultural Resource Survey Report.
- More detail regarding the documentation required to prove compliance with existing laws and regulations
- Inclusion of a requirement for a report on the impact on water volume, water storage, and drinking water well recharge.
- Inclusion of a requirement for Energy Storage System plans and documentation
- Inclusion of a requirement, if appropriate, for a Cultural Resource Management Plan or a Historic Properties Management Plan.

Legal Comment

Town Counsel, Donna MacNicol, reaffirmed that following the Tracer Lane and -Kearsarge cases, solar bylaws need to strike a balance in order to meet the state's legal guidance. In particular, as aforementioned, the Tracer Lane decision requires that the basis of any zoning regulations be preventing detriments to public health, safety and welfare. In addition, Ms. MacNicol reinforced that both cases require that solar bylaws allow for enough land to be available for solar development and that on their face bylaws are not too prohibitive.

Ms. MacNichol praised the Shutesbury bylaw for its introductory Background section which explicitly connected the regulations to the protection of public health, safety and welfare, thereby meeting the courts' requirements to establish the underlying rationale for regulation. She also indicated that, based on the Planning Board's calculations, the available land area available for solar development was adequate. (Jeff Lacy calculated that based on the size of the current 6 MW Wheelock solar installation, that the proposed bylaw would allow approximately 24MW of additional energy to be generated. He noted that the 6MW that the Wheelock installation generates is roughly equal to the amount of electricity that the Town of Shutesbury currently uses.)

Public Comments

Henry Geddes, Chair of the Shutesbury Historical Commission thanked the Planning Board for its comprehensive update. The Historical Commission unanimously agreed that the proposed solar bylaw brought clarity to the zoning requirements in regards to historic and cultural preservation and will ensure the Planning Board has all the information it needs to make determinations regarding historic and cultural preservation.

The Historical Commission did have two suggestions for changes:

1. Suggested changing the language regarding the rationale for historic preservation in section 8.10-1: Background, to better reflect the connection of historic preservation to emotional and mental health. Also to more explicitly reflect the importance of historic preservation of both Euro-American and Indigenous historical and cultural resources for all residents.
2. Adding a phrase about historical preservation to the citation of Chapter 808 of the Acts of 1975 otherwise known as the Zoning Act.

Miriam DeFant, also a member of the Historic Commission, stated that the intent of the suggested language by the Commission was to more firmly connect historic and cultural preservation to public health, safety and welfare.

The Planning Board indicated that it was open to looking at additional language regarding the historic preservation bullet in the Background section, 8.10-1. However, adding a phrase to the citation of Chapter 808 of the Acts of 1975 should not be changed since this would effectively alter the intent of including the verbatim legislative citation.

Donna MacNichol, asked for clarification regarding the requirement for a 4:1 ratio of developed to undeveloped land. Michael DeChiara highlighted that this requirement has been in the previous three versions of the solar bylaw and is directly intended to address the need to mitigate for carbon sequestration. He also pointed out that this was scalable – that there is no specific acreage required but rather the land set aside is based on the size of the proposed installation. Jeff Lacy indicated that the 4:1 ratio is an existing requirement in Shutesbury zoning for residential subdivisions, and unlike for subdivisions, the solar requirement is not for permanent conservation as it is with a subdivision; land set aside is for the life of the installation only. Donna stated that these explanations were appropriate to meet the legal requirements for reasonable solar regulation.

Additional minor corrections to address typos or to establish additional clarity and understanding were offered by Deacon Bonnar, MacNichol, Bert Fernandez, and Miriam DeFant. Items identified were corrected or addressed during the hearing via shared Zoom screen.

Board Actions

Jeff Lacy moved to close the hearing. Michael DeChiara seconded.

Jeff L – aye, Jeff W – aye, Robert – aye, Michael – aye, Deacon – aye. Nathan – abstain. Motion passes.

Michael DeChiara moved for the Planning Board to endorse the solar bylaw as discussed with subsequent amendment to the historic preservation reference in the Background session. Jeff Lacy seconded.

Jeff L – aye, Jeff W – aye, Robert – aye, Michael – aye, Deacon – aye. Nathan – abstain. Motion passes.