

Shutesbury Planning Board Meeting Minutes
March 28, 2016 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Jon Thompson, Jeff Lacy, Jim Aaron, Steve Bressler, and Ralph Armstrong

Planning Board members absent: Linda Rotondi

Staff present: Linda Avis Scott/Administrative Secretary

Guests: Chuck DiMare/34 Sumner Mountain Road, Genny Beemyn/West Pelham Road, Miriam DeFant and Rob Kibler/74 Pratt Corner Road, Attorney Michael Pill representing Lake Street Development Partners, Marnin Lebovits/Lake Street Development Partners, Lucy Gertz and Michael DeChiara/56 Pratt Corner Road, Gian DiDonna/86 Pratt Corner Road, Gordon Kimball/108 Wendell Road, Jane Costello/160 Pratt Corner Road, Mickey Marcus/New England Environmental, Tom Williams/37 Carver Road, and Andrea Cummings/69 Pratt Corner Road.

Bonnar calls the meeting to order at 7:15pm.

7:15pm DiMare Special Permit Common Driveway Case

Lacy: the special permit common driveway application has all the required documentation; a case number is needed. Lacy recommends the draft decision be reviewed and considerations suggested; the Planning Board could approve the permit as amended, then authorize Bonnar to sign the final special permit and submit it to the Town Clerk within ten days after signing. Lacy: the list of Board members present to vote was amended because Bressler was absent on 3.14.16 and Rotondi is absent this evening. Lacy notes that four findings have been listed and reads the conditions on page 2 into the record. DiMare, regarding the conditions: we have no objections; will probably name the common driveway Sumner Mountain Way. Bonnar suggest DiMare speak with Fire Chief Tibbetts about the numbering of future houses. Lacy: per Attorney Donna MacNicol/Town Counsel, the driveway must always remain passable and any material change from what has been proposed would entail a Planning Board review. DiMare agrees to advise the Board of any change. Lacy: a special permit will lapse if not used within two years there. DiMare: site plan review decision language may keep this permit from lapsing. Lacy: language is relative to site plan review. Pill suggests DiMare demonstrate activity by doing some construction. DiMare: within two years, we could begin to rough out the road; we are in active discussion with a buyer for Lot #3. Pill: a structure does not have to be built; DiMare only needs to have some substantial work in progress. DiMare: we could rough in the driveway to Lot #3 and run the utility lines. Lacy: the Board can state that you will do one of these two things or receive an "approval not required" (ANR) within two years. Lacy reviews: the driveway must remain passable, any material change is to be reported to the Planning Board, and there is a two year time limit to the permit unless it is utilized which may include rough-in of the driveway, running utilities, or receiving an ANR. Lacy: the two-year time period begins after the 20-day appeal period elapses. Armstrong motions the Planning Board approve the DiMare common driveway special permit as amended; Aaron seconds the motion.

Bonnar will sign the permit as amended. Motion is passed unanimously by voting members: Armstrong, Aaron, Thompson, Lacy, and Bonnar.

DeFant states that she and others presented a letter ("Re: Public Hearing Process for the Wheelock Tract Solar Project" dated 3.27.16) they were hoping to discuss prior to deliberation and, if possible, she also has a statement to make. Bonnar: unsure if letter would be considered new information. DeFant: new information has come to light and has not been subject to public hearing process; we cannot discuss it.

At 7:35pm, Gordon Kimball arrives. Kimball states that he wishes to install a small windmill on the top of his hill to assist with electricity generation; the windmill will have a permanent magnet generator and will not have to be very high. Kimball states that he has read the rules relative to windmill; 40' is the highest the windmill could be with the setbacks plus 10'. Bonnar: a special permit with the Planning Board is required; a site plan is to be included in the application. Lacy explains the special permit application process and reviews requirements for waivers. Bonnar: to gain additional height, an agreement from Kimball's abutter could allow the fall zone to go onto the abutter's property. Lacy asks Kimball if he can meet all the dimensional requirements. Kibler asks for the definition of "fall zone". Thompson: height to the tip of the blade plus 10'. Kimball: it is a good site for wind and the technology is improving. Lacy guides Kimball to pay attention to Section 8.8 Small Wind Energy Systems and Section 9.2 Special Permits of the *Town of Shutesbury Zoning Bylaw* and, in particular, the site plan requirements (8.8-2 B.) Kimball: the generator produces 1600 watts and weighs ~17#. Lacy: you may ask to waive anything that is not relevant to your site. At 7:45pm, Kimball leaves the meeting.

Wheelock Solar Deliberation:

Lacy states that he has read the letters asking for the public hearing to be reopened and notes that the Planning Board does not have the ability to reopen the public hearing unless the applicant agrees to do so. DeFant: speaking only to her letter, understands it has to be a joint concern; there are others willing to sign on to her letter and who feel the hearing was closed incorrectly because it was asked if federal dollars are being used which may indicate the need for research. DeFant continues: subsequently, Native American sites have been identified and there has been no opportunity for this matter to be considered in a properly noticed public hearing; this could cause an appeal. DeFant is requesting the public hearing be reopened; to do so would be in everyone's best interest. Pill: the applicant does not want to reopen the public hearing and sees no grounds for an appeal. Lacy: Sarah Kohler/New Salem came to the 3.7.16 Planning Board meeting and asked if Planning Board had asked this question (re: use of federal funds) and gave her contact information; his assignment has been to develop a special permit for the Planning Board; he has followed up on Kohler's information in an attempt to develop findings; he visited the project site and found the three places that have apparently been mapped; two are out of the project area, the third, a mound, is just inside or may be outside the project; he spoke with folks knowledgeable in this area and asked if they have a condition for this situation. Lacy states that he spoke with Attorney Donna MacNicol/Town Counsel earlier today (3.28.16): per MacNicol, there is a standard condition that requires abiding by

Federal and State law and the Planning Board could condition specifically to Native American sites; it is not the Planning Board's responsibility to be accountable to these laws; the Board can require the applicant to be accountable. DeFant: without vetting this information, we have a right to submit conditions however the deadline for suggesting conditions has passed. DeFant: MGL Chapter 114 talks about town oversight; an application should have been submitted to the Mass Historical Commission (MHC). Bonnar: it was not assumed that no additional conditions could be submitted after 3.21.16. Lacy suggests that conditions could still be offered; recommends DeFant seek guidance from Doug Harris/Narragansett Tribe Deputy Tribal Historic Preservation Officer. DeFant: if there is a condition such that the applicant complies with all laws, what is the mechanism for compliance? Lacy: the Planning Board develops consequences for noncompliance. DeFant: it is of concern that one of the sites is a burial mound and the only way to evaluate this is by using ground-penetrating radar; this site could be destroyed. Lacy suggests there be a condition to prevent that from happening. Marcus: there are no federal funds associated with this project; there are certain triggers for a review by state agencies and this project did not have any triggers; there is some possible permit language that has been used. DeChiara, referring to MGL Chapter 114, if there is a suspected burial land you cannot disturb it; it is not a condition, you are not allowed to do it; it is on the town to figure this out. Lacy: it is on the applicant, we can condition with a consequence. DeFant: we could ask for the site to be reconfigured; how can you condition without verifying if there are sites; we have suspected sites and there may be more; it is hard to avoid artifacts while you are bulldozing; not sure you have to be a fifty-acre project to apply to the Mass Historical Commission; unsure about federal funds/credits allowed. Tom Williams joins the meeting. DeFant: federal grants can ensure oversight. Lacy to DeFant: you need to address the applicant; we are the Planning Board, not a state or federal agency. Pill requests that emails from those concerned about this subject be sent to himself; he will forward them to Lebovits and Marcus. DeFant refers to special permit review criteria (Section 9.2-2 B.2): the Planning Board has a mandate to determine if the project has any impact on historic resources. Bonnar: this material must be expressed in conditions. Lacy: per MacNicol, it appears the Planning Board can ask the applicant to assist with the cost of monitoring during construction; the language of the statute (53G) says "to hire a consultant"; suggests reasonable site access by the Planning Board also be allowed. Bonnar: other conditions can be talked about. Marcus: Franklin Regional Council of Governments (FRCOG) does the inspection and the contractor pays the construction permit fees; suggests the Planning Board consult FRCOG to learn what their inspection will entail. Lacy: the Planning Board will be seeking to ensure the site plan is exactly what happens on the ground. Cummings asks if the phasing plan is part of the conditions. Lacy: the Board will evaluate prose relative to phasing and will bolster with a condition if needed; the first condition will be that the applicant will do what is required. Cummings: 5 acres is a large phasing area, suggests 2.5 acre phasing. Lacy: additional conditions will be considered. DeFant: will there be any discussion about the conditions submitted thus far? Bonnar: Lacy was assigned to write a decision, this is pending; once a draft is submitted, it will be reviewed. Kibler suggests that as a condition, the applicant post "safe hunting" signs around the perimeter of the array. DeChiara: members of the Planning Board could make suggestions about conditions. Lacy: once a draft is created, there will be an opportunity for Planning Board review and

suggestions. DeFant: can the public have a copy of the draft in advance? Lacy agrees send the draft in advance to interested parties. Bressler: the Board will consider suggested conditions.

Solar Bylaw Draft:

Lacy explains that he used the second citizen petition solar bylaw as a template; removed wording that is addressed elsewhere in the zoning bylaw was removed. Bressler asks for clarification about the use table. Lacy: the size explanation was removed; any project greater than one-acre is large-scale; a waiver provision has been added; there are other limits, i.e. nothing on slopes of 15% or greater. Cummings: if there is not an upper limit, could there be another 30-acre project? Lacy: if all other conditions can be met, yes there could be. DeFant: could logging be permitted on sequestered land? Lacy: sequestered land would not be permanently protected; it is reserved for sequestration during the life of the array; he would like to do some research on the optimum forest for sequestration. DeFant: where did you come up with the "four times"? Lacy: the "four times" is linked to the open space plan ratio. Williams: regarding the definition of large and small on page 14, does "occupies" refer to the whole project or just the solar panels? Lacy, refers to the beginning of the definitions, they are progressive therefore it is the whole project. Armstrong: "no upper limit" may be good where there is no watershed; would the Board want to make a condition such that there will be a cap for a project in a watershed? DeFant: would there be a different standard for wells versus watershed? Lacy: the question is whether solar projects have an effect on watersheds. At 8:30pm, Armstrong leaves the meeting. Lacy: solar arrays are elevated structures with pervious area underneath; the Planning Board could require an upper limit. Bressler: the Board could put in an upper limit or rely on other criteria to limit a project. Pill: the town itself may have two excellent solar sites - behind town hall and behind the fire station; recommends keeping frontage to a minimum as solar could be a benefit for the town. Lacy: an exemption for the Town Center (TC) district has been provided so that it will be treated the same as the Forest Conservation (FC) district. Kibler: one acre may not be reasonable. Lacy refers to Section 8.9-2 of the draft bylaw and reads into the record: "The Planning Board may waive or reduce any requirement of this section upon findings of: (1) special circumstances of the site or proposal; and (2) that such a waiver or reduction will not derogate from the purposes of this section." Kibler: further definition is needed. DeChiara: in the current town bylaw, solar is allowed by right; not having an upper limit does a disservice to the town; developers want to have a clear road map; not having an upper limit creates a gray area. Lacy refers to the waiver in the second paragraph on page 3. DeChiara: it is not a good policy for the Planning Board to have this waiver. Lacy: if there is a ceiling with no waiver, a project is not allowed. DeChiara: this waiver is way too big; it is not policy and does not give guidance to the developers. Pill, responding as as a resident: zoning is not black and white; first, there is the building permit application, then there is site plan review, the special permit is a gray area because the Planning Board is allowed to permit on a case by case basis; the variance application is for projects that are prohibited; the zoning bylaw protects the interests of the town which is an argument for discretion. Williams: the ability to waive is a common thing. Kibler: there ought to be consistency for waivers; feels Town Counsel's voice is important on this matter; does not know who will be on the Planning Board in the future. DeFant: in order

to make the process very clear, many towns are passing solar bylaws; vagueness allows a developer to come up with variations; we need to clearly define how we want solar to be developed in Shutesbury; the purpose of the bylaw is to take the vagueness out of the process. Lacy: refers to Kimball's proposal for a wind turbine; the waiver provision allows a homeowner to do a project in his yard; the waiver is for certain circumstances. DeFant: a waiver is not appropriate for a large-scale project. Lacy: without a waiver, numbers have to be hard and fast because a variance is not going to be possible. DeFant: maybe the definition of small-scale needs to be revised. Cummings: we have some good bylaws in place; without an upper limit, the rural quality of the town will not be preserved. Lacy: one acre is a football field; there could be many one-acre sites or one or two sites with larger arrays. DeChiara: referring to the first version of the citizen bylaw, Rotondi noted the need to not limit homeowners; this is the only industrial project in our small town; it makes sense to have a waiver for small scale; it is important to differentiate between large and small. Bressler: on the one hand, he likes a limit for large-scale projects; however, for example, if there are multiple ten-acre sites, without a waiver we could not suggest a re-arrangement. DeChiara suggests a focused waiver. Pill refers to Chapter 40A Section 3 prohibiting unreasonable regulation of solar energy systems and forewarns the Planning Board about limits. Pill to Lacy: what you have written is a defensible bylaw from a policy and legal perspective. DeFant: it is also a concern that if you have too much gray area, you open the door to litigation. Thompson: this is the role of the Planning Board. DeFant: so far, there is no case law throwing these bylaws out. Bonnar recommends moving on from waivers. Lacy refers to page 8: setbacks have been adjusted – there is a 500' front setback for large-scale ground mounted installations in TC or FC and a property line setback of 100'; setbacks for small-scale systems are less, they can be in any district and are available by the stricter special permit rather than site plan review. Kibler: what if setbacks are also shade control areas? Lacy: we need to figure out what is being setback and whether the shade reduction area is included. Lacy to Kibler: you are saying it makes sense to include the shade area in the setback for small-scale. DeChiara: lots of other towns require insurance (8.9-5.1.f). Lacy: the state model did not include an insurance requirement. DeChiara refers to 8.9-5.1.g: the key is for the town to have access to these funds to cover costs; this needs to be explicit; in the current situation, the town does not have access to escrow. Lacy: is the applicant to be beholden to the town and landowner? Lebovits: we supply escrow to the landowner; generally, it is a stepped process, the applicant does removal; if the applicant does not, the landowner does; if they do not, the town could. Lebovits; there is one pot of money; the town would have access if Cowls does not do the decommissioning. DeChiara: this would have to be in writing. Pill: 8.9-12.2 clearly states the process for decommissioning by the town. DeFant: there could be an abandonment situation; this does not clearly state that the town has access to financial surety. DeChiara refers to 8.9-9.2.3 "Noise": several towns have noise included in their bylaws; as this is an industrial system, seems like noise is worth calling out. Lacy: has visited systems and heard no noise; Shutesbury does have a general noise bylaw. DeFant: in October, she provided documentation about noise from inverters; suggests keeping it in as side setbacks have been reduced and a project could be near someone's home. Bressler: it is not a lot of language. Kibler: one person talked about hearing transformer hum. Williams: inverters have a higher frequency hum; suggests keeping language. Lebovits: the inverters are spaced out; it is a very quiet process; after a

certain number of feet away, the noise dissipates. Bonnar recommends further review of the draft for a future meeting. DeChiara: what is the 4:1 carbon sequestration ratio tied to? Lacy: it is tied to Article 5 "Open Space Design" and gives 20% of the land to development and 80% for preservation; sequestration is for the life of the project; notes need for research on the optimum forest for sequestration.

Bonnar: the Planning Board solar bylaw needs to be ready for the Select Board town meeting warrant by 4.18.16; the public hearing for this bylaw could be held after it is turned in for the warrant however it needs to be at least two weeks before town meeting. Board plans to meet on 4.7.16 at 7:00pm to review the solar bylaw and solar project special permit conditions.

A motion is made and seconded to approve the Planning Board 3.7.16 and 3.14.16 minutes as presented; motion passes unanimously.

A motion is made, seconded, and unanimously passed to adjourn the meeting at 9:24pm.

List of Documents and Other Items Used at the Meeting:

1. 3.27.16 letter "Re: Public Process for the Wheelock Tract Solar Project"
2. Planning Board's 3.28.16 Solar Electric Bylaw Warrant Article
3. Town of Shutesbury Zoning Bylaw

Respectfully submitted,
Linda Avis Scott
Administrative Secretary