

Planning Board Meeting Minutes
August 17, 2016 Shutesbury Elementary School

Planning Board members present: Deacon Bonnar/Chair, Jeff Lacy, Jim Aaron, Linda Rotundi, and Ralph Armstrong

Planning Board members absent: Stephen Bressler

Staff present: Becky Torres/Town Administrator, recording

Guests:

Kathy Carey, Town Center, Joanne Hayes, Historical Commission, Paul L. Cameron, Beverly, Zachary Schulman, Lake Street Development, Mike Vinskey, Shutesbury, Karen Traub, Shutesbury, Frank Citino, Broadband Committee, Leslie Luchonuk, Michael Suter, Abutter, Miriam Defant, Shutesbury, Penny Jaques, Libbi Kohen, Deb Tyler, Wendell, Ralf Kohler, Nancy Dill, Doug Harris, Narragansett Tribal Historic Preservation Office, Jaime Donta, 204 Montague Rd., Christopher Donta, 204 Montague Rd., Jeff Lacy, 29 Old Orchard Rd., Planning Board, Linda Rotundi, 4 Leverett Rd., Planning Board, Diane Adams, 151 Locks Pond Rd., Darryl Cupak, Lake View Rd., Paul Lyons, Old Orchard Rd., Al Springer, Pelham Hill Rd., Bill Wells, West Pelham Rd., Mary Lou Conca, Wendell Rd., Sarah Kohler, Neilson Rd., New Salem, Planning Board, Historical Commission, Jane Costello 160 Pratt Corner Rd., Genny Beemyn, West Pelham Rd., Susan Rice, 243 W. Pelham Rd., H.L. Rivard, 160 Pratt Corner, Rolf & Jim Cachat, 292 Leverett Rd., Eric Johnson, non-resident, UMass, Mary Forrege, Springfield Republican Newspaper, Masslive, Don Wakoluk, 215 Leverett Rd., Lucy Gertz, 56 Pratt Corner Rd., Michael DeChiara, 56 Pratt Corner Rd., Ralph Kohler, 74 Pratt Corner Rd., Lori Moon Dream, Wendell, Native American, Beth Adams, P.O. Box 502 Leverett, Mass. Forest Rescue.org, Leslie Bracebridge, Shutesbury Historical Commission, April Stein, Montague Road

Deacon Bonnar, Planning Board Chairman, opens the meeting at 7:42pm.

Welcome to tonight's Planning Board meeting. The purpose of tonight's meeting is to determine if the first precondition of the Wheelock Solar project special permit has been met by the Archaeological Survey of Wheelock Parcel/Lot ZG2 received from Lake Street Development.

Alliance spokespeople Miriam Defant and Michael DeChiara have asked to make a presentation at the start of the meeting. We are giving them the first half hour to present.

Miriam DeFant thanks the public for coming to talk about this important issue. She opens by reading a statement written by Bettina Washington/Waltham-Wampanoag Tribe of Gay Head. (Document is attached).

Miriam calls attention to the Citizens Response report, and two other handouts written by environmental scholars, Bridgewater State University Professor, Dr. Curtis Hoffman and Michael Roberts, R.P.A. (Documents attached).

We will email out the reports to you upon request.

The combined three reports are a scholarly analysis of how Lake Street Development has attempted to meet the requirement. All of the reports support us.

The Planning Board tied the permit to the Traditional Cultural Properties (TCP), historic properties and an assessment of cultural resources, Bulletin #38, NPS, [Guidelines for Evaluating and Documenting Traditional Cultural Properties](#). These are respected standards nationwide. No one will question these standards. Lake Street Development **is in non-compliance with pre-condition number one.**

Lake Street Development's archaeological consultant, SWCA, has no tribal experience. The 950 Code of Massachusetts Regulations 70, permitting was not obtained. The consultant should not have accepted the scope of work because of the condition forbidding the parties to consult with Native Americans. For ethical conduct, they should have not agreed or explain in their report why, they did not consult with Native Americans.

There is no substitution for direct contact with the Native Americans. The indigenous people report reviewed only one Ceremonial Stone Landscapes (CSL). Ceremonial Stone Landscapes (CSL) reported in Shutesbury were overlooked. The area directly to the north of the Shutesbury site was ignored. The consultant ignored the documented 2008 Department of the Interior, Turners Falls report. Any questionable site within a 16 miles radius of the Turners Falls site should be seriously considered. The site around the Turners Falls airport is a ceremonial site. This is an egregious error. The mounds were not all included in the report. If they did not fit the stump theory, the mounds were not included.

There is no scientific basis given in the consultant's report. The research is conflating tree throw, with no methodology. You have to have the scientific basis. But it is not there in the report. A boulder can be a cultural property and must be evaluated by the Native Americans. The question is was information cherry picked to support their conclusion?

The two experts both want tribal peoples involved.

The incompleteness of the report does not ensure that construction can proceed.

The report is not of reasonable good faith.

The Planning Board can reject and influence. The Selectboard can call in the Building Inspector to make sure the permit is being followed and is legal.

Miriam quoted Michael Robert, "the SWCA report seems more like an interoffice memo. I won't report others criticism, just support them."

SWCA is well established but they violated 950cmr (Code of Mass. Regulation) 7. There is no discussion of the absence or presence of, no reference of other resources, in letters, in historic sites, present in the report. The conclusion is more work needs to be done.

Miriam continues to reference Michael Roberts: Recommends, chemical analysis, and consultation with THPO, so they can evaluate.

All the archaeologists in the room would agree.

Dr. Hoffman is held in high esteem.

SWCA is clearly inexperienced, and did not perform due diligence.

Failed to consider the bounds of the site, the 16 mile diameter from the Turner's Falls site.

This is inappropriate.

During visits there, it was noted there were more than 29 mounds. The mapping was deficient. The soil analysis is incomplete.

The SWCA team failed to consult

Report focused on isolated weather phenomenon, and is anecdotal and impressionistic at best. The Dr. Johnson report said, soil all good, but the soil reports are only good to 1 acre, so it could be the soils were different.

Recommend PLANNING BOARD request a resurvey, and do a deeper investigation.

Miriam- I will read from Bettina Washington's letter. I have her written permission to read it. Mr. Doug Harris is present, and we will hear from him as well.

I submit this letter into the minutes. (Document is attached).

Full text of letter is read.

Incredulous that there has been no contact with tribes. Mr. Lacy asked if a property had Tribal Cultural Properties, could a THPO without being allowed access make a determination? Not possible for TCP determination without access. Only the tribe can do this. The peoples have the knowledge, the understanding to protect properties.

7/11/16 meeting, burials would bring in...

if it is suspected we consider it a burial.

All Tribal Cultural Properties (TCP) are not burials.

Two archaeologists have condemned the report. It is bad they did not include the 16 mile-ceremonial stone landscape. SWCA did not know, no research done.

Dept. of the Interior standards not met.

Alliance presentation ends at 8:00pm.

8/17/16, PLANNING BOARD. 8:00pm

Jeff Lacy:Do you have the locations of all the pictures (reference to photos on power point display)? They are not on the Wheelock tract. Are they all within 2 miles of the zone?

It would be helpful to know which are on the Wheelock tract?

Jeff asks Rolf to be quiet.

Jeff Lacy: What are the regulations of being in within the 16 mile radius of the Turner's Falls site?

Miriam hands over this question to Doug Harris.

Doug Harris, THPO: Anything automatically rises to higher level of significance than if not in that area. That tribal consultation must be applied, important.

What you and town and the citizens are taking responsibility for is the ancient relationship. You are the conscience of the town officials. They, the town officials, are being pressured by project proponents. Even though no federal agents are here now. The ceremonial stones are indicative of a ceremonial area, burial area or not, their remains may have been moved but their spirits are being honored by the ceremonial stones, when a great imbalance has occurred. If you honor that before you it will honor you.

A woman in the audience says thank you ---

Michael DeChiara, 56 Pratt corner Rd, speaking only for myself:
(5 minutes to record old minutes).

On 5/23- Armstrong agrees with the THPO,
Lacy, when survey is done they will work with the THPO.

MacNicol- They will receive. PLANNING BOARD will notice and can have anyone accompany them this will include the entire site.
If the applicant refuses the PLANNING BOARD can hire the Tribal Historic Preservation Officer, THPO.

Donta- Mass Historical Commission, tribal input can be standard.

On June 7, Donna MacNicol said nothing precludes the PLANNING BOARD from bringing in a Tribal Historic Preservation Officer (THPO).

Michael DeChiara:

Dynamic is white western versus traditional
Analogy to change

Archaeology report of SWCA is fundamentally flawed because forbidden Tribal Historic Preservation Officers (THPOs).

Analogy is, The Baltimore police report, a successful report that sites abuse of power.
Hundreds of people in neighborhood association provided valuable input.

Imagine if only white male consultant had been hired. Bringing in limited experience or if only white males were interviewed to assure data collected was correct.

People of Color, if the police, reacted like Lake Street, it would have been met with outraged.

So looking at Shutesbury, not allowing tribal review of the site is akin to having White males, review in Baltimore, blatantly inaccurate.

I ask the PLANNING BOARD to allow the THPOs to survey the site.

The PLANNING BOARD needs to consult with Donna MacNicol and Archaeologist.

There is a break for PLANNING BOARD to move to the stage.

Rolf Cachat addresses the audience: A Law Suit has been filed today in Springfield federal court.

Michael Pill: It has to be served locally, there is no such Law Suit on record.

Eric Johnson: Reports on what he sees, thinks of the SWCA report. He believes the Tribal Historic Preservation Officer (THPO) is important, critical. My understanding is the PLANNING BOARD does not have the authority to make the demand for the Tribal Historic Preservation Officer (THPO).

Eric Johnson: Historic context is described in Secretary for the Interior for planning Historic sites / foundation if context.

Historic contexts are absent in this report. Must have Native history burial practice in the vicinity and Euro American use in summary.

Not included in SWCA report. The archaeologist will review published reports.

And info from local residents, photos, aerial photos, illustrations of historic context, environment, context and history, soils, and climate all influence the suitability to the site.

To preserve these things in the area, the known and anticipated historic resources in the area are linked to the question of the origin and identity of the resources in the area. To compare to non-burial and tree throws, a map must be tied to the Shutesbury GIS quadrangle, including all engineering photos, 11 x17 in size, and readable. Relationship between maps must be made clear and their must be indication of all features with a key, listing all the surface features and all relevant information. These items make it a professional report. So an informed decision of how to proceed can be made.

Additional non-invasive procedures can be conducted. The mounds tested for phosphate of soils surrounding area and notification made to the State archaeology. The permit is not required but notification is recommended. This did not happen by SWCA.

They should have said we will do this. They must send a revised proposal about

a revised report. And send as well to PLANNING BOARD consultant, Prof Eric Johnson.

Prof Eric Johnson finishes report. He will send copies for circulation tomorrow.

Jeff Lacy:

Are you recommending that the field reconnaissance be done?

Prof Eric Johnson: The fieldwork has to be redone, to buff up the report.
And I am recommending that the non- invasive be done also.

Jeff Lacy: Are you recommending the property be re-walked? or the mounds, all 60?

Eric- Whatever is necessary to record.

Jeff Lacy: Back out in the field?

Prof Eric Johnson: Yes.

Michael DeChiara: Need for THPO, not recommended because not possible?

Donna MacNicol, Town Counsel – They, PLANNING BOARD, does not have the authority to order the private property owner to allow the THPO onto their private property.
We hoped at first THPO could go on the property. That does not change the fact that the town has no authority.

Michael DeChiara- The conditions of the permit are not met. The current report is insufficient without access by tribal THPOs.

Donna MacNicol, Town Counsel - There is no language to force THPOs.

Donna MacNicol, Town Counsel - You are asking this Planning Board to do something not within their jurisdiction.

Comment- If they – you believe, the PLANNING BOARD can not stop the private land owner, the tribes, the person may be able to say that.

Donna MacNicol, Town Counsel - It is a taking and the town cannot do it.

Michael DeChiara- We requested a bar of quality for the information, for the report.

Donna MacNicol, Town Counsel - The PLANNING BOARD can make that decision after the second report is in.

Donna MacNicol, Town Counsel - I understand Bettina Washington.
The bottom line is to grant a special permit on private property.

Michael DeChiara- A third party could say we want you to do a survey and stay 50' away from anything our peer reviewer says is a TCP. PLANNING BOARD cannot leave it to someone else to make the determination.

Donna MacNicol, Town Counsel - The frustration is that the PLANNING BOARD does not have the authority to grant access onto private property. The proper venue is federal courts- Mass Historical Commission, not the Shutesbury PLANNING BOARD.

To not respect the PLANNING BOARD working to resolve is not helpful.
They, the Planning Board, request the revised report.
And then they, the PLANNING BOARD, in consultation with Eric Johnson, make their decision.

Michael DeChiara- but the PLANNING BOARD...

Miriam Defant: My point of view is a survey must be done.
Standard one is to establish with a methodology sufficient to answer the question. You have to set up a methodology to answer that question. Lake Street is in a corner where they cannot meet standard one without a THPO.They have to consult. So the permit is written in an odd way, to meet both.Eric is being respectful of your limits of authority.

Donna MacNicol, Town Counsel – The PLANNING BOARD needs to decide.

Jeff Lacy:
You have to decide if you are accepting Eric’s recommendation.

Doug Harris: Outburst- 2 times

Michael DeChiara: The chair acknowledges white people before NATIVE AMERICANS, and women.

Comments from the crowd: Incredibly RUDE, Liars

Jeff Lacy: I am a member of the committee.

Donna MacNicol, Town Counsel: (brings calm) Allow the Board to do their work.

Jeff Lacy:
Applicant, Zachary Schulman,Lake Street Development: I believe we have complied with the program. I asked if we should be doing anything different at the end of our walk and was told we did not. This is the best we can do. We will build a good project for the town.

Leslie Cerier: Freedom of speech

Move to accept the recommendation of Dr Johnson.

Jeff Lacy: Ground penetrating radar will be a representative samples, not 60 mounds.
I think it is appropriate to locate all of them and orientation but all the other testing should be representative.

Donna MacNicol, Town Counsel - Adequate?

Prof. Eric Johnson: Yes, representative is in my recommendation.

Donna MacNicol, Town Counsel - If Lake St. accepts recommendation and Lake St. should send to Dr. Johnson to assure they are adequate, at design stage.
Test the right locations, before complying with recommendations.

Prof. Eric Johnson: I recommend, also submit plan to MHC.

Ralph: Recommend to go back onto the property, to clear up questions? At that point could we, recommend, to also allow a THPO at the same time? It might clear up a lot and improve the report.

Donna MacNicol, Town Counsel - I do not disagree, it would be helpful. Jeff has pursued that compromise, and I have pursued that compromise.

Linda Rotondi: We can recommend. We cannot require, and at the end we will see if the report can be done without one.

Donna MacNicol, Town Counsel - I am concerned PLANNING BOARD is making a federal law decision that is beyond them, but certainly you can ask.

Jeff Lacy: We have made clear we would pay with our own funds.
This Board is not opposed to working with tribal representatives.

Donna MacNicol, Town Counsel - I get that THPOs do not want to just read someone else's report.

Linda Rotondi: Can a THPO write a report without being on the site?

Doug Harris:

By what standard will Tribal Cultural Property be determined? If you bring in specialists, at the highest standard it will not be by THPO. By what prejudice are THPOs not being allowed on the property and why?

Why is it tribes are not allowed on the property?

And either your permit needs to answer that question or pose to the landowner and the developer.

And if you are not doing that then you will be liable.

You need the 2008 landscape, the alignment and what does that all indicate. What were the ancients doing in that place?

You have problems you are not addressing.

You have blinders on.

You may inherent that result from your actions.

Miriam Defant: If you pass a motion for an additional survey, Eric, what methodology do you recommend, if they pick all the slopes and pick all the mound tree throws, and pit, a null hypothesis that is disprovable? Does not give carte blanche.

Donna MacNicol, Town Counsel - That is why their sampling should be cleared first.

Prof. Eric Johnson: Given our recommendations are not demands, I would like to include a recommendation that a THPO survey be done as a recommendation, giving them a chance to respond in the affirmative.

Linda Rotondi: Recommend but not make happen?

Leslie Luchonock:
West Pelham Rd.

With 30 years of conservation planning I have been in lots of meetings like this where towns and PLANNING BOARD grapple with what their authority is that generally favors private developer.

You are putting a lot of pressure on Dr. Johnson.

Urge PLANNING BOARD in strong language you can develop and put to the developers.

Bob Keipler, Mrs Defant: PLANNING BOARD has the right to insist on the conditions of the permit. What changed from May?

Donna MacNicol, Town Counsel - We do not have the authority to tell the private property owner who goes on the property.

Bob Keipler: Wetland ?

Donna MacNicol, Town Counsel - Owner can refuse entry to THPO.

The Attorney General has asked for the extension in review of the Shutesbury Solar By-Law because of NATIVE AMERICAN language. We towns have only so much authority.

This board only has zoning authority and you think that we can tell owner who has to go on the property?

Jeff Lacy: We had two discussions on THPOs, but we had to get beyond the applicant take a THPO on the property, and then we moved to what is possible.

THPO option #2- no good, Jeff has emailed Doug Harris a number of times, it does not work.

Jeff's motion:

Move that the Planning Board wishes for the applicant to submit a revised survey report along the lines of (that reflects) Dr. Johnson recommendations. Such a survey

plan shall be submitted to Dr. Johnson for review in advance of final submission to the Board.

Ralph Armstrong: THPO- already in there.

Jim Aaron: Second-

All in favor?

How long for Lake Street take to respond to the request?

Reasonable time frame.

Donna MacNicol, town counsel: by 8/31 they will get back to you whether they agree to the recommendation?

Zach Schulman: Depends on when I get the recommendations. If I get from you tomorrow. Zach has to confirm with SWCA.

Miriam Defant: Let people make more comments.

Michael DeChiara: Unrecognized

Lori Moon Dream- I went to the site of the mounds. All uniform in length and size and height, I had a very spiritual feeling. It will be a bad spiritual feeling place if you do not do this. I am wearing my hair down in mourning.

Lucy Gertz: In the next 2 weeks Jeff has mentioned the testing in the mounds.
Doug Harris has spoken of the rock formations? Eric?

Donna MacNicol, town counsel: A much more thorough survey be done and identification on property.

Prof. Eric Johnson: The data is already collected I believe but not presented.

Deb Tyler: Wendell ,74 West St. I am in support of the NATIVE AMERICANS here. Important to give notice to spiritual land, that is private land. Please take seriously.
It is not okay for white people to abuse authority.

Nany Dill: 120 Cushman

I come tonight with thanks to the PLANNING BOARD for long hours, and those who have come out. I am here with a white cloth on my hair, 44 stitches in my head.
Thank you to every one who will help us find the answer.

Miriam Defant: Follow up to Donna MacNicol, PLANNING BOARD had the right to pick a consultant of their choosing. We have not heard from Lake Street Development, why

THPOs are not qualified. I want the PLANNING BOARD to make a motion to not approve of discrimination.

Michael DeChiara: I yield to Doug Harris.

Doug Harris, THPO: The issue of discretion has not been spoken of. I respect the experience, but they are not sensitive to the discretion.

Prof. Eric Johnson: The THPO should consult with consultant about what should be done with the land.

Deacon Bonnar: Thank you all for coming, we are trying.

The Planning Board moved to approve the minutes from the last four meetings. Jim Aaron 2nd, all in favor.

All minutes approved

Meeting Adjourned, 9:37pm

Minutes respectfully submitted by Becky Torres, Town Administrator

Move to accept the recommendation of Dr Johnson to