

Shutesbury Planning Board Meeting Minutes
March 13, 2017 Shutesbury Town Hall

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

Staff present: Linda Avis Scott/Administrative Secretary

Guests: Mare Fox, Emily Boss/Franklin Land Trust, Mark Olszewski, Penny Jaques/Shutesbury Conservation Commission, Attorney Donna MacNicol/Town Counsel, Marnin Lebovits and Zachary Schulman/Lake Street Development Partners, Kevin McCaffery/New England Environmental, April Stein, Alan Kurtz, Mary Lou Conca, Miriam DeFant, Genny Beemyn, Becky Torres/Town Administrator, Andrea Cummings, Jade Alicandro, Lucy Gertz, Robert Kibler, Sarah Kohler, Elaine Puleo, Rolf Cachat, Henry Geddes, Michael DeChiara, Leslie Cerier, Attorney Roger Lipton/representing Lake Street, and Police Chief Tom Harding.

Informal non-quorum portion of the meeting:

1. Mare Fox/18 Haskins Way: the Shutesbury Zoning Bylaw needs to be revised relative to building height in the Lake Wyola District. Bonnar explains the Planning Board meeting agenda and that unanticipated business will be attended to after previously scheduled appointments.
2. Lot D18 Locks Pond Road/Olszewski Open Space Design Plan: Mark Olszewski explains "Site Plan for Lot D-18" dated 3.13.17. Emily Boss/Franklin Land Trust (FLT): house lot will be an envelope within the parcel and will not be surveyed out; the whole parcel will be seen as one. Lacy: the Board will have to consider this aspect of the proposal. Olszewski anticipates installing wetland-crossing number two in early April. Jaques recommends the Conservation Restriction (CR) parcels be contiguous. Boss: per FLT, given that the house lot is an envelope, the impact on wildlife will be minimal. Lacy notes that the abutting property is undeveloped therefore wildlife concerns are not an issue. Boss: the value of the CR is its larger woodland context; the CR will give access rights to the back lot; offers to share samples of similar CRs. MacNicol: the whole parcel is a building lot with a CR within it. Boss: the building lot lines will not be surveyed because it will not be severed, however, the building lot will be marked on site and the GPS points listed; the whole parcel has already been surveyed. Olszewski's Site Plan Review application is accepted and timeline reviewed.

Bonnar calls the meeting to order at 7:05pm and notes that the session is being audio and video recorded.

Wheelock Solar Project: Lacy: the Planning Board sent a letter to Lake Street after the 2.13.17 Board meeting (dated 2.17.17); a follow up letter was received from Lake Street (dated 3.1.17) with revised site and engineering plans. Kevin McCaffery/NEE: the Conti construction manager requested the site plans to be revised in preparation for submission

of the building permit application; notes areas identified on the site plan that will have a 15' setback without debate about what constitutes these areas. McCaffery, for the record, identifies himself as a civil engineer, and states his understanding that the mound areas have the potential to be significant. Lacy: there are six areas per the archeological report. Lebovits/Lake Street confirms this. McCaffery states he was instructed by the Conti construction manager to revise the plans and to stay within the same footprint; there are three main areas of constraint: the potential mound areas, the slope protection area, and the need to stay at least 120' from any delineated wetland. McCaffery: this plan is very similar to the approved plan; there is a slight reduction in the total array area – an increase in panel technology allows more output per acre. Lebovits: there is no change in the physical size of the panels. McCaffery: the original array area was 21.6 acres; it is now at 19.9 acres; the large multi-mound area on north end will have no tree-cutting; the other five areas will have selective large tree cutting for shade management with no disturbance to ground cover; prior to cutting, protected areas will be surveyed by a licensed surveyor and protected with high visibility construction fencing. McCaffery: the entrance location has not changed, the driveway curve has been adjusted to accommodate the mound on the north, and the retention area location has shifted slightly with no change in volume or footprint. McCaffery: the diversion swale has been eliminated – this is an improvement as will now allow for sheet flow; detention areas will be established before areas are cleared; slope polygons (on plan) indicate the set aside for higher slopes. Lacy: if the relocated retention basin outlets, it will do so farther from the wetland. McCaffery: there is no change to capacity and there is a 3:1 grade ratio on the upslope side; on the west and east sides, the plan remains essentially unchanged; due to steep slopes on the south and the mound protection areas, there is a small runoff area that will be un-detained however due to vegetation this is not a concern. McCaffery: maximum slope on road: 12%. Lacy: the approved special permit road width is 12'; will the construction width be at 20' then reduced to a final width of 12'? McCaffery: the final width is 12', however, for construction, a 20' width is needed to allow for the size of vehicles needing access; at demobilization, the road will be re-graveled and the crown re-shaped; 3-4" of top soil and native vegetation will be added on each side that will penetrate the gravel area; at final condition, the width will be 12' - the roadside ditches will be left in place (referring to road description sheet); high visibility construction fence will be used to ensure protected areas are clearly off limits. Lebovits: at the preconstruction meeting, each mound will be connected to a description and a surveyed location. McCaffery: they will be staked out by the surveyor and checked to ensure the locations are correct. Lebovits: the term mound is being used for any type of feature needing protection. Lacy shows a photo of 4-5 protruding stones that will be protected; confirms there will a 15' setback from the farthest out stones in this area that is 30-40' across. Lebovits notes there is a new fallen tree; the protected sites will be observed during the pre-construction meeting. Lacy: the Planning Board did not require the applicant to fence off these areas; if the fencing is to be done, the Board needs to ensure the methodology will be carried out. Lebovits: we are doing so to be extra cautious in recognition of those with concerns. Bonnar: does the 19.9 acres include the interior protected sites? McCaffery: it is the fence lines minus inside protected areas. Bressler requests to see the approved site plan before the allowances (protected areas) were added. Referring to Sheet 4.0 of the 2.26.16 plans, McCaffery reviews the changes: the slope

protection zone is essentially the same; swale on south corner is gone; plans at north end are backed up onto more level land; road has been brought over a little to the left – there are fewer array rows where the road meets array; north end swale went away. Lacy: the basin moves and the outlet weir is also moved – the relocation is farther from the wetland and has a longer upland course before it meets the wetland. Lebovits: by not clearing in the area of the large mound, the view of the project from Reed Road will be more buffered. McCaffery: the access road will also be visually less open. At this point, the Board has no further questions.

Public comment:

Miriam DeFant/74 Pratt Corner Road, referring to her 3.13.17 email “Follow up to last Planning Board meeting”: the 20’ access road width was not discussed during the public hearing process – this is a change; questions if the reference to an 18’ width on the plan is an error – this is a concern about how carefully the plans are being vetted; Eric Johnson/UMass Archeological Services recommended a data sheet and detailed survey – understood the Planning Board was going to ask for this and Lake Street, in their letter, stated there were no unresolved issues; concerned about changes in stormwater system and that these changes should be vetted by third party reviewer before approval. Michael DeChiara/56 Pratt Corner Roads states he is representing only himself: Lacy stated there are only six mounds; at the last Planning Board meeting, Johnson stated that the only people that can verify the number of mounds are tribal experts; the Board does not know potentially how many significant area there are and have failed to recognize the tribal concerns; notes Kibler’s recommendation that the developers provide overlays to see where the changes are - the Board has not followed up on this; there is a need for a stormwater professional to review changes; cites Johnson’s review and his stating that the SWCA report needed more documentation; the Board needs to do the “old business” of the last meeting before going forward. DeChiara reviews/reads into the record the other pre-construction conditions, excepting #6, approved by the Board, specifically noting that a traditional cultural properties survey has not been done, and notes that other pre-construction conditions have yet to be met and need to be met before the pre-construction meeting takes place. Lacy: the Board is still on pre-construction condition #1. Lebovits acknowledges that the other pre-conditions have yet to be met; per Johnson’s recommendations, the data sheet and table will be done prior to construction and all the other pre-conditions will be met before the start of work; the plans, as per pre-construction condition #1, the plans have been revised to stay 15’ away from the mounds therefore no further study needs to be done. Lacy: there is already a map locating all the points. Lebovits: the surveyor will delineate each site and each site point coordinate will be connected. McCaffery: the real boundaries with the 15’ buffer will be established on the ground. Rolf Cachat/229 Leverett Road: the recorded number of mounds in SWCA reports do not correlate to the number of mounds noted by those who initially walked the site; the condition requires a TCP review and no one qualified to perform such a review has been allowed to access the site – without doing so, how will we know what needs to be protected and how will graves without above ground evidence be protected? DeFant states she has yet to see the map with all the points noted and that such a map should be available to the public. Lebovits: the map is found on page 6 of the original SWCA report; the Planning Board and their peer reviewer walked the site and agreed with SWCA’s delineations. DeFant states she understood the data table would be available for

this meeting; in the interest of transparency, does not understand why this would not be made available to the public; this is not up to Lake Street, it is up to what the Planning Board requests. Lacy: the Board does not have to follow all of Johnson's recommendations; as for himself, does not see the value of a data table describing the mounds – sees the value of pinpoint documentation that facilitates identifying the features on the ground. DeFant: those who have looked, say there are many more mounds. Lacy: Lake Street has voluntarily elected to protect these areas; believes these mounds are natural in origin – the evidence is overwhelming that the topology is tree throw. Lacy asks the other Board members if the fenced areas need to be enlarged. Bressler: Johnson's recommendations are being quoted; when asked directly by the Board for his professional estimate, Johnson stated the areas are pit and mound; when he (Bressler) walks in the woods, he is either seeing burial mounds or, based on his experience, is seeing pit and mound tree throw; is having difficulty reconciling what is being said about this site and his experienced observations. Jade Alicandro/163 Leverett Road states she does not understand why a THPO has not been allowed to do a survey for potential burial sites. Lacy: the applicant and landowner have not allowed this and the Planning Board, operating under special permit conditions, does not have the authority to require third parties access to the site. Alicandro: no one with expertise has been on site. McCaffery: Section 106 is not triggered unless there is a federal or state undertaking of tribal lands. Lacy: this pre-condition language could be interpreted to imply that a similar review is required; the applicant has done the minimum of what is required and has not interpreted the condition more broadly. Lebovits: nothing triggers a Section 106; this project has been analyzed by the concerned citizens; we have done more than needed - we did not have to stay 15' away – we decided to do so, for those who are concerned; there is no need or requirement for a THPO to go on site. Leslie Cerier/58 Schoolhouse Road: does not know where the power will go; town meeting voted that we will never have a project this large again; this project needs to be fully researched; I want to hear "I know" – have the latest plans been researched; our town can say we want a THPO to go on site; this phony green project will reek havoc on the wildlife and water systems; the permit should be "I need proof" – "do better"; I did walk this land with an expert about a year ago and I did see things – there has to be a reason they do not want a THPO on site. Lacy: the power goes to subsidized affordable housing although it will produce the amount of electricity used by the entire town of Shutesbury; this would be a potentially permitted project under the new solar bylaw. Cerier wants "proof" this project will truly benefit our town; notes other concerns and states let's put Shutesbury first. DeChiara makes four points: the affordable housing has yet to be identified; asks Lacy, in particular, to avoid saying "I think" – we need expertise – the Board is guessing; reads pre-construction condition #2 into the record – because the public is not allowed on site, asks the Planning Board to commit to a public meeting to go over what is covered at the pre-construction meeting; and, at the last meeting, no one representing the developer was present – the Board is doing guesswork – does not understand why the developer cannot respect the needs of another culture. Lacy: in the end, the Planning Board members' opinions matter; it is the elected Planning Board, from our different backgrounds, that gather the necessary information and decide; we could have learned from THPOs even if they did not go on the site. Lacy reports making ten visits to the site. DeChiara wants Lacy to say he does not have the necessary expertise. Lebovits: the peer reviewer believes the areas are tree

throw. Lacy: Johnson, even with his recommendations, concluded that his opinion did not change – he agreed with SWCA’s conclusions; the Board’s and applicants’ archeologists came to the same conclusions. Cachat: Doug Harris did not decline to do a THPO review for \$500 – he stated it would be impossible to conduct the review without going on site; cites that he is an experienced scientific reviewer and notes that beliefs have no place in scientific review; none of the people brought on site, including Johnson, are qualified to review ethnographically; at the prior meeting, Johnson stated that he did not know where all the people who were killed in the genocide in this very area are buried. Cachat references the Shutesbury Master Plan in which it is noted that the Mass Historical Commission records represent “but a small fraction of the actual number of sites that are known to vocational archeologists and collectors.” (Section 6-7) Cachat: per Johnson, Donta, Harris, and others regarding the standard for surface survey, we do not have any kind of scientific understanding of what is underground in this state. Cachat states that he has an understanding as has been trained and has 30 years research experience and has done a statistical study of materials, location, and distribution and the correlation of ethnographic interests both Euro and Native American; testing only for tree throw is considered a failure; no tests have been performed that are positive or negative for human remains; the map only shows twenty-five GPS markers – he went on site with three archeologists and three other Native Americans and counted over 40 mounds of cultural significance within and just beyond the marked area; this conflicting number needs to be resolved; the special permit calls for a TCP review – what part of the report constitutes a TCP review. Rob Kibler/74 Pratt Corner Road: as a taxpayer, he requests a second peer review of the stormwater changes. Kibler asks if any Planning Board member has had communication with any state or federal agency since the last meeting that has not been made part of the public record. Bressler, Rotondi, Aaron, Armstrong, and Bonnar state that they have not had communication with a state/federal agency. Lacy has no recollection of doing so, however, has received emails where others are communicating about EPA issues. Kibler to Lake Street: are you responsible for Cowls banning several Shutesbury citizens and others from accessing Cowls property? Zachary Schulman/Lake Street will not answer Kibler’s inquiry stating it is not relevant to the discussion. DeFant asks about the Cowls staging area across from Reed Road that was not permitted as part of the special permit and requests Lake Street to stipulate that they will not use this area as a staging area. Lebovits: we know nothing about this and have nothing to do with it; it is not part of this project. Lucy Gertz/56 Pratt Corner Road: how will those with “no trespass orders” be allowed to participate in the pre-construction meeting on site? MacNicol: the pre-construction meeting is not a public meeting. Public comment period is closed.

Lacy appreciates some of the features on the revised plan, i.e. the driveway entrance will present a woods view, the weir on the first basin, the north mound setback diminishes project view from Reed Road, the change at south corner is an improvement – taking out the swale and grading area; the drainage system is overdesigned as if the paneled area is impervious; is this comparable to the approved drainage plan? McCaffery: yes; the plan was pulled out of wetland jurisdiction however the general drainage design was kept in place; Jean Christie/Tighe & Bond issued a letter stating that even though the plan is out of wetland jurisdiction, the stormwater design provides adequate treatment; we have removed concentrated features and spread them out –we have improved the situation; we

are still willing to do the test pit that was previously inaccessible; we have a detailed plan for the sequencing phase for getting conveyances in place prior to tree cutting; concern would be conditions during the last month when the ground is partially frozen with snow pack followed by rain and there is no infiltration – there would be snowmelt with rain – the system was designed for a hundred year storm with no vegetation; aware that if there is release into the buffer, the Conservation Commission will be triggered and we do not want that to occur – system is designed to prevent those issues. Bressler: test pit to be done? Lebovits: yes, as per pre-construction criteria. Bressler suggest a Tighe & Bond review to confirm the stormwater plan. MacNicol: if the drainage plans change, it is within the Board’s authority to send the plan back to their consultants for review to determine it has the same protections as the approved plan. Lacy: the plan decreases the array area by 2 acres therefore there will be less runoff. Armstrong agrees with Bressler: a review by Tighe & Bond to complete the process. Rotondi: is there any reason not to do the review; will the review delay the project? MacNicol: the review can be done such that it does not delay the project. Lacy asks the Board to entertain a motion to agree that pre-construction condition #1 has been met subject to Tighe & Bond’s agreement that the changed drainage plan is adequate to the original one; does not want to delay the project any further. Bressler: will the road need to be re-expanded for decommissioning? Schulman: it is hard to say; there are not many arrays that have reached the decommissioning phase. McCaffery: does not see that to be an issue, as the large equipment, i.e. chip trucks, will not be needed for decommissioning. McCaffery agrees with a Tighe & Bond review, however, the process of licensing an engineer is to place the liability on the licensed civil engineer. MacNicol: the purpose is to have a peer reviewed report. Attorney Roger Lipton/representing Lake Street: has seen a movement by boards to use peer review, however, basically, the decision rests with the board. McCaffery: the stamped drawings have been issued and submitted with the building permit application. Lacy: have you run stormwater numbers on the revised plan? McCaffery: no, as there have not been significant changes. Lacy: the revised plan will work better as it relies more on natural drainage and overland forest floor infiltration rather than concentrated flow. Lacy moves that pre-construction condition #1 based on the plans, submittals, and representations made by the applicant be deemed met by the Board provided that the new drainage plans be sent to and approved by Tighe & Bond. Armstrong seconds the motion. Lacy to McCaffery, if Tighe & Bond runs the stormwater calculations, will they be met? McCaffery: yes and is willing to update the calculations if needed by Tighe & Bond. Lebovits agrees to provide the funds to cover the cost of Tighe & Bond’s review. No further discussion by the Board. DeChiara asks and is given an opportunity to comment. DeChiara confirms that the Board is moving to approve pre-construction condition #1 and, to Bressler, you are conflicted; the Board has not done the TCP assessment as per #1 and Lacy’s motion says that by doing a review by Tighe & Bond no review for TCPs is needed – to Bressler, if you are conflicted, you are voting away the need for a TCP review and it cannot be revisited. Bressler states that he does not agree with DeChiara’s framework. Bonnar asks whether any Planning Board member wants to speak further to the motion. All Board members decline the opportunity for further comment. Motion passes unanimously. Lacy confirms and McCaffery agrees to submit the plans to Tighe & Bond and provide calculations if needed.

Unanticipated Business:

Mare Fox states her concern that building teardowns with larger rebuilds have found a loophole to avoid the special permit process therefore is proposing a zoning bylaw revision that any building height change in the Lake Wyola District require a special permit. MacNicol, for the record, notes that she has a home on Lake Drive. Fox: four home owners on Lake Drive have increased their height without a special permit and another is going to do the same; the loophole is that an 1800 sq. ft. teardown and rebuild does not require a special permit; the overall character of the lake is changing. Per Fox, Section 6.1-3, B.1 should state that the new roofline should not be higher than the existing roofline. Aaron confirms that Fox is not referring to new construction. Fox recommends the bylaw be changed to “Any height change will require a special permit and abutter notification”. Fox asks the Planning Board to hold a public hearing; has sent the text of her proposal to the Planning Board via email. The Board did not receive Fox’s email prior to the meeting. MacNicol: Chapter 40A Section 5 explains the process for proposing a zoning bylaw change; a laymen’s petition is submitted to the Select Board who has 14 days to deliver the petition to the Planning Board; the Planning Board then has a certain number of days to hold a public hearing; a two-week public notice of the public hearing is required; either annual meeting or special town meeting requires a 2/3 vote. The date of the next Planning Board meeting is 4.10.17. MacNicol to Fox: to start the process, a petition article signed by ten voters is submitted to the Select Board for the warrant; the proposed language has to go exactly as written and the only way for wording changes to be made is from the town meeting floor. Lacy: there is the option of working with the Planning Board on language for zoning change. Fox wishes to move forward with a citizen’s petition for annual town meeting.

Board members agree to table consideration of meeting minutes to the next meeting. At 9:35pm, Armstrong moves to adjourn the meeting; motion is seconded by Bressler and passed unanimously.

Documents and Other Items Used at the Meeting:

1. 2.17.17 Planning Board letter to Lake Street
2. 3.1.17 Lake Street response letter
3. NEE/SWCA 2.11.17 Construction Drawings
4. Conti 10.4.16 Shutesbury Ground Mount Plans
5. NEE 2.26.16 Wheelock Track Solar Development Plans
6. Planning Board Special Permit PB-SP-6/5/15 issued 6.7.16
7. 3.13.17 email from M. DeFant: “Follow up to last Planning Board meeting”
8. SWCA 7.13.16 Phase 1A Archeological Pedestrian Survey
9. Shutesbury Master Plan June 2004

Respectfully submitted,
Linda Avis Scott
Administrative Secretary