

Shutesbury Planning Board Meeting Minutes  
July 13, 2020 Virtual Meeting Platform

Planning Board members present: Deacon Bonnar/Chair, Michael DeChiara, Linda Rotondi, Steve Bressler, Robert Raymond, Jeff Lacy

Planning Board members absent:

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Town Counsel Donna MacNicol, Ashleigh Pyecroft, Robert Seletsky, Bob Ritchie, Julie Rypysc, Janice Stone, Chris Karney/RLA, Rob Kibler, Miriam DeFant, Penny Jaques, Henry Geddes, and Evan Turner. The guest list is incomplete as not all guests identified themselves.

Bonnar calls the meeting to order at 7:02pm.

Statement relative to conducting virtual meetings following the Governor's restrictions on public meetings is read into the record by Bonnar.

Election of Planning Board Chair for FY21: DeChiara moves, with appreciation, to nominate Deacon Bonnar as Chair of the Planning Board; Bressler and Raymond second the motion. Bonnar accepts the nomination. Roll call vote: DeChiara: aye, Raymond: aye, Bressler: aye, Rotondi: aye, Lacy: aye, and Bonnar: aye; the motion carries.

Public Comment: None offered.

Preliminary Subdivision Plans:

1. Roaring Brook (Carver Road West/Lot ZD-37): Chris Karney/R. Lavesques Associates (RLA) civil engineer and land surveyor screen shares the preliminary subdivision plan for the Roaring Brook project for the applicant, Amp Energy (applicant listed on the "Preliminary Plan" dated 6.24.20; W.D. Cows is listed as the "Applicant & Owner" on the Preliminary Subdivision Application); the site comprises 252 acres of forested land located in the Rural Residential/Forest Conservation districts east of Montague Road. Karney continues: the proposal is for a 263 ft. cul-de-sac (Preliminary Plan sheet 1); Lot #1 (Preliminary Plan sheet 2) is 209 acres and Lot #2 (sheet 1) is 43 acres. Karney confirms for Bressler that both lots have adequate frontage off Montague Road. Karney: the turning radius of the cul de sac conforms; the terrain is highest along Montague Road and slopes down toward the cul de sac; stormwater runoff will sheet flow into two catch basins, at the low point, toward a detention basin sized relative to the amount of impervious surface. Karney reviews the "Waiver Request" (see Preliminary Subdivision Application) noting that the same waivers are being requested for all four Preliminary Subdivision Applications and notes that the purpose of the submission is to receive Planning Board feedback on what is need for a full application. DeChiara asks Karney if RLA conducted site visits. Karney states that he cannot answer DeChiara's question because he did not draft the submitted plans. Karney to DeChiara's question about the source of the abutter list: GIS was used to compile the list, though if required, RLA will seek a certified list. DeChiara: a certified list (provided by the Assessors' Office) is required. Karney to Lacy's question as to why Carver Road is not shown on the plan: there will be no proposed changes to Carver Road. Lacy: a buried transmission cable in

this area is not shown. Karney: this will be added to the plan. Karney to DeChiara's question about additional detail and scale: this is a preliminary plan; this scale is the best way to show proposed improvements designed per the Subdivision Regulations; 40-scale for the whole site is a choice the Board has, however, RLA will request the waiver because with 40-scale or 200-scale, there will be no changes to other areas of parcel; the plan will show the statutory changes. DeChiara: in Shutesbury, 250 feet of frontage is required and both lots have frontage in excess of this amount so why has a preliminary subdivision plan been submitted? Karney: the applicant requested subdivision plans with a cul de sac. DeChiara to Town Counsel Donna MacNicol's question: Lot #1 has 308 plus feet of frontage and Lot #2 has 237 + 198 feet of frontage. Lacy suggests the Board move into the deliberation and continues: this plan does not meet the definition of a subdivision. Lacy reads a portion of the subdivision definition (per MGL Chapter 41 Section 81L.) into the record: "however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on a public way" and states that both lots have adequate frontage on a way. Janice Stone asks if the wetland delineations shown on the plans are the same as those shown on the corresponding ANRAD (before the Conservation Commission) and whether these have been finalized. Karney: RLA received copy of the ANRAD. Scott confirms that the four Conservation Commission ANRAD public hearings remain open. Lacy: what has been submitted is not a subdivision plan; it resembles an ANR (Approval Not Required) application as both lots have adequate frontage; the wish for a cul de sac is immaterial because it is not needed for frontage. Lacy recommends the plan be rejected by the Planning Board. DeChiara: in addition to not meeting the definition in Section 81L., there are other deficiencies (per definition of "Preliminary Plan" Section 81L.): (c) the abutter list must be per the tax list however was derived from GIS; (g) requires names and locations of streets and this plan does not show Carver Road; Roaring Brook is not labeled (e); on a statutory level, these are three areas the plan is not in compliance. Lacy: the scale is not correct; the buried transmission line is not shown and lines of easement are required (d); the fact that State requirements are not met requires the plan to be rejected; if basics are not met, a plan has not been submitted. Lacy continues: the plan does not include an Open Space Design plan (as per *Shutesbury Zoning Bylaw* Article V. Section 5.1-2) and does not meet Shutesbury's ("Regulations Governing the Subdivision of Land") requirements for submission therefore is disapproved. MacNicol: it is required that the plan be directly submitted to the Planning Board and the Board of Health with notice to the Town Clerk; the process by which it came before the Board needs to be noted; per Statute, the application must be hand delivered or sent by registered mail to the Planning Board. DeChiara: the plans were not received electronically; Board members received the plans at different times. MacNicol: what is the submission date? Scott: the application is stamped June 26, 2020 per the Town Clerk. MacNicol: that is not adequate; per statute, the plan must be submitted to the Planning Board and the Board of Health. Karney, via screenshare, shows evidence that the application was sent to the Town Clerk and Board of Health and wants to ensure the full plan is submitted accurately. MacNicol: the full applications were not submitted to the Planning Board by certified mail or by hand. MacNicol to Karney: the Planning Board's mailing address is easily found. MacNicol: at some point, the plans were received by the Planning Board and that would

be the submittal date; the submittal date is the issue. Bonnar reports receiving an email letter from Sofia Bitzas/RLA, on 6.24.20 or 6.25.20, noting that the Town Clerk did not want to accept the plans until 6.30.20 because the Clerk was too busy preparing for the 6.27.20 annual town meeting. At this time, Bonnar advised the Town Clerk that the plans needed to be accepted and could not be delayed. Bonnar was not sure about the process for submittal and the plans were submitted by Bitzas to the Town Clerk 6.26.20. Bonnar received a copy of the applications on 6.26.20 and emailed Board members requesting they make plans to pick up a set of applications. MacNicol is aware of these facts and notes that they do not deal with submittal to the Planning Board; it is the applicant's responsibility, not the town's, to ensure submittal to the Planning Board. Bressler: based on the deficiencies, he does not see how the Planning Board can approve this plan. Lacy moves the Planning Board both reject and disapprove the application; reject because it does not meet the definition of a subdivision and does not meet the requirements for a preliminary plan per Chapter 41 Section 81L. for these reasons: scale, required abutters list, not identifying Carver Road and the transmission line cutting through the site as prominent features and not showing or labeling Roaring Brook, a prominent water course and that it deviated from submittal per Section 81O.; then, as per, Shutesbury's requirements, the information for which waivers are being sought on what is needed: scale, no reference to Article V, omission of major features; Lacy further moves that he render a decision for both State and Shutesbury regulations to bring back to the Board for consideration in the near future. DeChiara seconds the motion. MacNicol: the application did not meet the definition for submission and did not meet other requirements. It is clarified that the application is being rejected per Chapter 41 and disapproved per Shutesbury's Regulations. Roll call vote: DeChiara: aye, Lacy: aye, Raymond: aye, Rotondi: aye, Bonnar: aye and Bressler: aye; the motion carries.

2. Dean Brook (Pratt Corner Road Lot ZG-2): Karney confirms that the Planning Board will reject this application per Chapter 41 Section 81L and 81O and disapprove it per Shutesbury's Regulations and asks about the process for waiver requests. DeChiara: per Shutesbury's Regulations, it is strongly suggested the applicant meet with the Planning Board to ask questions. Karney screenshares the "Preliminary Plan/Parcel ID: ZG-2" for the Dean Brook application: the site comprises 756 acres off Pratt Corner in the Rural Residential and Forest Conservation districts; sheet 1 shows the proposed ~250-foot cul de sac that goes uphill; storm water will drain into a manhole at the entrance and discharge into a catch basin that will require an easement. Karney reviews the requested waivers (Section 4 of the application). Bressler notes that, per statute, the frontage for the two lots could be an ANR. Karney suggests the Board review the ANR regulations, i.e. property lines can be shifted and one lot can be a subdivision. DeChiara: there are two lots, both with more than 250 feet of frontage (chart on plan and survey totals differ). Karney: RLA took clues from applicant who requested cul de sacs. Karney states a willingness to revise the abutter list in response to DeChiara's question about the use of GIS versus the tax list to compile the abutter list. Lacy recommends this plan be rejected for same reasons that the Roaring Brook plan was rejected - the division into two lots, each with approximately the same frontage (chart on plan and survey totals differ) that could be configured into ANR lots; as drawn, this is not a preliminary subdivision plan; it could have been drawn as a preliminary plan with frontage drawn off the cul de sac. Per

Lacy: the plan is not to scale per State and local requirements; the abutter list is not correct; Reed Road, a major feature that forms one of the boundaries of this parcel, is not cited; there a number of old ways on this site and none of which are depicted on the plan as per State law. DeChiara: in addition to not meeting the statutory definition, other requirements are not met: Dean Brook, an existing waterway is not shown (e); the existing large scale solar electric installation on the site is not noted; and the well documented wetlands right off the road at Lot # 2 are not shown; (g) requires the width of ways be identified – the width of Pratt Corner Road at the solar access, 22 feet plus the right of way, is not shown and the width on the plan for the intersection of Sand Hill is not accurate. DeChiara continues: unmet Shutesbury requirements include not representing the large-scale solar installation, a major feature; the utility easement is not shown and there is no reference to the Open Space Design plan; the application does not meet some State and local requirements. Penny Jaques notes that Karney identified Amp Energy as the applicant however the application identifies WD Cows, Inc. as the owner and applicant. Karney: Cows is the property owner and Amp Energy is the applicant. DeChiara cites this as a deficiency. Karney states RLA's willingness to resubmit based on the Planning Board's comments. Lacy moves the Planning Board reject the Dean Brook Preliminary Subdivision plan because it does not meet the definition of a subdivision as both lots have adequate frontage; also, failure to meet Chapter 41 Section 81L. due to incorrect scale, lack of a current abutter list, not noting Reed Road and failing to note internal ways on the property. DeChiara adds failure to meet (e) by not showing Dean Brook and the omission of the wetland on Lot #2 as existing drainage, and (g) the stated width of ways is not accurate. Lacy: regarding Section 81O., improper submittal could be a basis for rejection; regarding Shutesbury Regulations, no reference to the Open Space Design plan and missing information for which waivers were sought. Raymond seconds the motion noting that DeChiara participated in stating the motion. DeChiara adds lack of features, i.e. not representing the large-scale solar installation. Raymond seconds the amendment. Bressler notes that Karney is willing to make amendments to the application based on the Planning Board's response however, this plan does not meet State and local regulations. Lacy: if this were a preliminary subdivision plan, and the Planning Board found fault, the applicant could cure the deficiency; you cannot not cure a plan that is not a subdivision plan. DeChiara: plus, other requirements for a preliminary subdivision plan are not met. Roll call vote: DeChiara: aye, Lacy: aye, Raymond: aye, Bressler: aye, Rotondi: aye, and Bonnar: aye; the motion carries.

3. Nurse Brook (Pratt Corner Road/Lot ZW-6): Karney restates Amp Energy as the applicant and notes that the Nurse Brook Subdivision, located in the Rural Residential and Forest Conservation districts, has a 220-foot cul de sac and two lots, Lot # 1 is 197 acres and Lot #2 is 192 acres; the cul de sac slopes down and will have one catch basin draining into a manhole with discharge to a subsurface basin to the northwest. Karney reviews the same four waiver requests (Section 4). Karney notes that Pratt Corner Road is three rods in width based on a survey of the existing boundary line; the measurement is not based on the width of the pavement. DeChiara: this section of Pratt Corner Road is not paved. DeChiara continues: this application does not meet the definition of a subdivision because the chart on Sheet 1 (Preliminary Plan ZW-6) shows an excess of

frontage and Sheet 2 indicates that Lot #2 has 400+ feet of frontage and Lot #1 has 800+ feet of frontage; the abutter list was derived from GIS not the current tax list and the “unknown abutter” is actually the Town of Amherst which is the result of not having up to date information; Nurse Brook and Dean Brook are not shown on the plan (e) neither are the two easements, the electric substation and the transmission line (d); there is another set of easements on the corner of Pratt Corner and Sand Hill Roads (d) that are not shown. Karney respectfully requests to revise the plans. DeChiara adds that there are two deficiencies relative to Shutesbury’s Regulations – the cemetery, a public space and major feature, is not labelled and there is no reference to the Open Space Design plan. Karney repeats RLA’s willingness to revise the plans to include Open Space Design. Bressler: these do not qualify as subdivision plans per State statute. Karney states he understands the Planning Board’s position however does not agree with it. Lacy moves the Planning Board reject the Nurse Brook preliminary subdivision plan because it does not meet the definition of a subdivision as both lots have more than adequate frontage on a road; as well, the plan does not meet other Section 81L. requirements, i.e. scale and an outdated and wrong source for the abutter list. DeChiara adds: there is a deficiency in (e) because the existing waterways, Dean and Nurse Brooks are not depicted and (d) the easements on Pratt Corner Road and Pratt Corner/Sandhill are not shown. Lacy: not meeting Section 81O. submission requirements may be grounds for rejection; per Shutesbury’s Regulations, Article V (Open Space Design) is not referenced and other required information is missing. DeChiara seconds the motion. Roll call vote: DeChiara: aye, Lacy: aye, Raymond: aye, Bressler: aye, Rotondi: aye, and Bonnar: aye; the motion carries.

4. Baker Brook (West Pelham Road/Lot ZQ-6 & Q-70): As abutters, Lacy and Raymond recuse themselves from the Baker Brook discussion. Per MacNicol’s recommendation, Lacy and Raymond turn off their cameras (making them unseen in the online Zoom meeting). Bonnar confirms that the remaining four members present maintain quorum. Karney identifies Amp Energy as the applicant and notes that the ~234-acre parcel is located in the Forest Conservation and Rural Residential districts. Karney continues: the plan submitted to the Planning Board has a 334-foot cul de sac with two lots; the cul de sac goes up hill so there will be two catch basins and a manhole; the stormwater basin will need an easement. Karney reviews the same waivers (Section 4 of the Baker Brook Preliminary Subdivision application) and notes that RLA would want to limit the high-level survey to the altered area. Karney apologizes for not meeting the plan requirements and notes that RLA wanted a back and forth with the Board regarding requirements and affirms their willingness to revise. DeChiara thanks Karney for his time and notes that this preliminary subdivision meets the definition per Section 81L. however has other deficiencies, i.e. use of GIS for the abutter list with inaccurate listings that have implications; Baker and Dean Brooks along with three ponds not shown (e) and the width for Schoolhouse Road is not shown (g); Baker Road at Schoolhouse is 15 feet wide, dirt to dirt, and 21 feet at another location; also, the scale requirement is not met and, per Shutesbury Regulations, the Open Space Plan is not referenced and information regarding culverts on Baker Road is not provided. Karney states RLA’s willingness to revise these points. MacNicol recommends that because this plan meets the definition of a subdivision, the fact that submittal to the full Planning Board is as of 7.13.20 be added to

the motion. Karney to Jaques' question: RLA was hoping to get feedback on priorities for Open Space Design. DeChiara moves the Planning Board reject the Baker Brook Preliminary Subdivision application because it does not meet requirements per Section 81L., i.e. the source of the abutter list is not from the most recent tax list (c), per (e) does not display Dean and Baker Brooks and the year round ponds, and the width of Schoolhouse is not shown (g); also, regarding Section 81O., the application was submitted out of turn, the date of submission being 7.13.20; also, per Section 81L. and Shutesbury Regulations, the plan is not to scale; and that the Planning Board consider disapproving the plan as it does not provide information for which waivers are being requested, lack of scale, features not cited and no reference to Open Space Design. Bressler seconds the motion. Roll call vote: DeChiara: aye, Bressler: aye, Rotondi: aye, and Bonnar: aye; the motion carries.

Bonnar requests the Board consider next steps and decisions. DeChiara moves the Planning Board approve for Lacy to write the decisions for the Roaring Brook, Dean Brook and Nurse Brook Preliminary Subdivision applications. Bressler seconds the motion. Roll call vote: DeChiara: aye, Bressler: aye, Lacy: aye, Raymond: aye, Rotondi: aye, and Bonnar: aye; the motion carries. Bonnar moves the Planning Board approve for DeChiara to write the Baker Brook Preliminary Subdivision decision. DeChiara seconds the motion. Roll call vote: DeChiara: aye, Bressler: aye, Rotondi: aye, and Bonnar: aye; Raymond and Lacy are recused from this vote; the motion carries.

Bonnar: if 6.26.20 is day one, 45 days is 8.11.20 therefore suggests a next meeting date of 8.3.20. MacNicol affirms that the first time the members see the plans, as a Board, is 7.13.20. Bressler moves and DeChiara seconds a motion to schedule the next meeting for 8.3.20. If quorum is not met, a new date will be set. Roll call vote: DeChiara: aye, Lacy: aye, Bressler: aye, Raymond: aye, Rotondi: aye and Bonnar: aye; the motion carries.

MacNicol will review the draft decisions and attend the 8.3.20 meeting. DeChiara moves and Lacy seconds a motion for the Planning Board to determine 7.13.20 as the date the Board received the preliminary subdivision plans for Roaring Brook, Dean Brook, Nurse Brook, and Baker Brook. Roll call vote: DeChiara: aye, Lacy: aye, Bressler: aye, Raymond: aye, Rotondi: aye and Bonnar: aye; Raymond and Lacy are recused from the vote on the Baker Brook plan; the motion carries.

Members of the Board thank Karney for his presentations. Karney thanks the Planning Board for advocating on behalf of their positions.

Consideration of the 6.22.20 and 6.26.20 meeting minutes will be carried over to the 8.3.20 meeting.

#### Unanticipated Topics:

1. Bonnar reports that Jim Aaron, who has served for between 45-50 years, is resigning from the Planning Board. Bressler: Aaron needs to be acknowledged for his long service. MacNicol: within 30 days, the Planning Board needs to report the vacancy to the Select Board then the Planning Board and Select Board meet to choose a candidate to complete the term of the elected member. All agree for DeChiara to write a vacancy statement to be sent to Bonnar for review; interested parties are to contact Bonnar. The statement will be posted on the Planning Board webpage; Scott will send it out as a Town Announce.

2. Bonnar reports that Scott has resigned from the Land Use Clerk position effective 8.4.20. Board members and MacNicol appreciate Scott's work. The Board affirms their need for a clerk.

Review Annual Town Meeting: DeChiara observes that annual town meeting went really well and notes that the *Zoning Bylaw* definitions relative to signs did not get changed.

New FY21 Topics:

DeChiara recommends the Board talk about what the members can consider, capacity wise, i.e. the potential for four solar special permit applications.

At 8:10pm, DeChiara moves and Lacy seconds a motion to adjourn the meeting. Roll call vote: DeChiara: aye, Raymond: aye, Bressler: aye, Rotondi: aye, Lacy: aye, and Bonnar: aye; the motion carries.

Documents and Other Items Used at the Meeting:

1. Preliminary Subdivision Applications:
  - a. Roaring Brook Subdivision/Carver Road West/Lot ZD-37
  - b. Dean Brook Subdivision/Pratt Corner Road/Lot ZG-2
  - c. Nurse Brook Subdivision/Pratt Corner Road/Lot ZW-6
  - d. Baker Brook Subdivision/West Pelham Road/Lots ZQ-6 & Q-70
2. Regulations Governing the Subdivision of Land (Amended April 23, 2008)

Respectfully submitted,  
Linda Avis Scott  
Land Use Clerk