

Shutesbury Planning Board Minutes
 DRAFT Minutes – 02.07.2022
 (Approved-04.11.2022)
Virtual Meeting

Meeting Start: 7:02pm

Members Present: Deacon Bonnar, Michael DeChiara, , Jeff Lacy, Nathan Murphy, , Linda Rotondi, Steven Bressler.

Associate Members: Ashleigh Pyecroft

Members Absent: Robert Raymond, Jake Messier (Associate)

Other Present: Joseph Salvador(applicant), Mary David, Katie Cerow, Betsy Smith, Mark Rivers, Charlene Galenski, Bob Douglas, Matt Borowiec, Paul Leclerc, Cheryl Holmes, Frank McGinn, Meghan Mikolajczuk, Fran Merrigan and all other unidentified individuals.

Chair's Call to Order at 7:02pm

Meeting is being recorded

The Zoning Board of Appeals (ZBA) was unable to post the meeting on time so they meeting was not legally noticed and ZBA will not be attending this meeting. Bonnar: we should not discuss ZBA matters until further notice and suggests dates for next meeting with ZBA, tentatively suggests the next meeting to be on the 16th of February; if that does not work then it is agreed that the 23rd would be the back-up date.

Composition of ZBA: A citizen petition was signed and emailed to the town clerk to document and distribute to Planning Board (PB) members. An error occurred when the document was emailed to the clerk; the document was missing certain pages that are needed. Bonnar I believe that the PB generally agrees that the ZBA should have new members. DeChiara; the decision to go back to town hall to fix the document issue is up to the individuals who submitted the citizen petition but since both boards are generally in agreement about the increase in ZBA members, it's not needed. Salvador; will go to town hall to find out what is needed to fix this issue. This matter will be continued.

PB Member Terms: Bonnar: the terms of Linda, Robert and Lacy are expiring and nomination papers should be submitted for those seeking reelection. Bonnar noticed that the terms were not on the right schedule; for 2022 and 2023 there are three vacancies each; for 2024 only vacancy. Bonnar suggested this get fixed to even out the availability per year, we should talk to Donna. Lacy; that is a good question for the counsel.

Wheelock Report: Bonnar: after I had made the agenda for this meeting,I received the Wheelock report from Tim Garcia.Since it's not on the agenda we won't be able to talk about it tonight DeChiara suggested it should be added to the next agenda. Lacy; I looked it over and I

was interested in evidence on working on the road, they do have pictures of them leveling out the road before the snow.

Possible legislative regarding associate members: DeChiara and Lacy reported that they went to the Select Board and told them PB was looking into a legislative fix to address the limits placed on the Town Meeting passed Associate Member amendment by the Attorney General. According to Lacy, two attorneys agreed with the PB that the AG made the wrong decision based on an incorrect interpretation of statute and Donna McNichol recommended that the Select Board would be the appropriate town body to ask the legislators to submit , they agreed.

Lacy; we were advised by lawyers, that if legislation is proposed that the associate member section of statute be taken out of Ch. 40A, section 9 and put into chapter 41.81.A, where both the planning board and ZBA board language occurs. The issue is that the way the current statute reads lead to the incorrect decision made by the AG; it sounds like we can only have associates when reviewing special permits. Section 1 would strike this and take this paragraph out and then you would insert a paragraph that is similar into chapter 41.81.A which would set up proper parameters for a planning board. In-between paragraph 1 and 2 there is a nice space where we could put this paragraph which has two important sentences. One stating ‘Zoning ordinances or by-laws may provide for associate members of a planning board.’, this does not say when they are active in special permits. The second sentence states ‘..for the purpose of acting on any matter under its jurisdiction including but not limited to this chapter 41, chapter 40A, or under its home rule power’. Chapter 41 contains master planning and other functions of the planning board, as well as the subdivision control law which is another big thing we do. Chapter 40A is the zoning act (special permits) and in home rule powers that covers site plan review. By doing this and putting it where it should be it eliminates confusion. DeChiara; I would like to add that it is a simple language instead of a striking language. It's not a rewrite, it's two changes and moving it. Lacy ran this by Bob Ritchie and he believes that the MMLA will get behind it, endorse it and also Mass Chapter of American Planning association, Mass Associate Planning Directors, Mass Associate Consulting Planners will also back up. DeChiara; I believe if we vote and pass this to the select board to send to legislators if approved. **Motion- DeChiara moves to approve suggested changes to associate member language in Massachusetts General Laws for submission to Shutesbury's legislators via the select board, Lacy seconds. Vote- Bressler- Aye, DeChiara-Aye, Lacy- Aye, Rotondi-Aye, Murphy-Aye, Bonnar-Aye.**

Energy storage: Murphy; indicated that he would need to recuse himself from this discussion based on a possible conflict of interest. DeChiara;. The rationale for this bylaw is for two reasons. First being that any large-scale solar project that gets SMART subsidies must include energy storage as of last year, we should consider batteries as a use associated with these projects. The other is that the Pioneer Valley Planning Commission (PVPC) best practices guide for solar installation addresses the issue related to batteries and energy storage. It is worth remembering that the operators of the Wheelock tract came to the planning board for a subsequent special permit to add energy storage on site. In doing research on this, it came to my attention that the state has a whole initiative to roll out energy storage across the Commonwealth either through energy generation or independence. Last week I mentioned that there was a 5 acre battery installation in Carver that's stand-alone, meaning not connected to any onsite energy

generation. Ashfield, Wendell, and other towns have been approached about building standalone energy storage already.

If we think just about batteries those are complicated because a bunch of lithium batteries together can be a fire hazard. After doing research it makes sense to expand the definition from batteries to energy storage because there is different ways of storing energy - there is mechanical, chemical, thermal, electrical chemical, so we don't know how they will approach use exactly. However, when one is storing energy the idea for us to address is stand alone or in conjunction with energy generation. Bressler; need clarification on what stand-alone means in this context, independent from any solar or wind generation.. Lacy; Are they going to be along a power line? DeChiara; I believe the energy storage is a way of collecting energy generated elsewhere for us at a later time. . Bressler; so, it can be disassociated from any energy installation. DeChiara; yes. The purpose of this bylaw is to provide standards for approval, placement, design, construction. This could be similar to what we had for solar by-law. In the applicability section you will see it can be used as an accessory use, for energy generation or it could be primary use and just for energy storage. Bressler; is it a state statute that if an energy storage facility is not associated with a solar or wind project that we still have to accommodate that use? DeChiara; Not required but the state is pushing it. There is a state initiative that hasn't gotten traction yet but it is on their state webpage, DODR. Lacy; The Amicus brief discusses this which we will get to later. It's arguable if the batteries would be covered under the solar exemption just batteries out there by the connection to some transition line probably would not be covered under that exemption right now, there is a movement to change this. Bressler; What is puzzling me is that I understand battery storage with wind or solar but to be an isolated block of storage batteries along a transmission line doesn't make sense. Bonnar; I would assume that the logic is that during the day time you can produce electricity cheaper than the night time- Bonnar; the storage facility can take energy from the grid from the source and then return at a more useful time. Lacy; it's like Northfield Mountain exempt not with pump storage but with batteries. DeChiara points out a graph that shows how the storage energy plays a role in maintaining energy demands during peak times. Bressler asks why the actual storage unit has to be so far away from the actual wind/solar project? DeChiara; I don't know but what caught my attention was that Ashfield and Whentle had been asked about it and the fact that there is an energy storage initiative with the state where they're putting in money. I sense it's increasingly going to happen. I don't have all of the answers but I thought we should get ahead of this because at a minimum with accessory use that if any solar projects out there if they become special permits they will have batteries attached to them. Lacy; But if you have a lot of energy flowing through the system from renewable sources. So, during the day you have a lot of energy from the sun and during windy days you get energy from the wind. When energy is being produced it's not being made when there is a demand but it picks up the extra energy so it doesn't go to waste. Bressler; Energy storage is lost in long distance so I understand the accessory use but to put the energy storage so many miles away just doesn't make sense. DeChiara; I think it may be due to space concerns. Bonnar; one thing that sticks out to me is that this proposal is that it created competition between companies on who can return the greatest percentage of power that has been stored.

Lacy suggests waiting to continue further discussion about this subject, and add it to the agenda for the February 16th meeting. DeChiara agrees but asks to go over general outline out it. DeChiara; some things to think: in a situation where their storage is an accessory, meaning there

is another generation storage, two things should be that ‘the battery should be sized to accommodate only energy generated on site’ and ‘it should be adjacent to the energy generation installation. Those are a few things we can discuss. If it’s a primary use I started with a limit of 3 acres. These are all just starting points. For the required documents, I took concepts from the solar bylaws in terms of wetlands and primary habitat, and local National Historic Districts. We should also require a materials report that ‘includes but not limited to the use of cleaning products, paints or coatings, hydro-seeding, fertilizers, and soil additives’. I would like to discuss this section titled Safety and Environmental Standards. PVPC emphasizes the risks of forest fires. So, making sure we included the need for a plan if one occurs and having the company pay for training for the town’s firefighters, police and emergency management so we didn’t have to bear that cost. The last part detailing chemical use because recently in the news PFAS have been studied in fire retardants so that is something we can discuss if we want to limit use. Also, to note, the land clearing and we can also look at dimensions. Lacy; just one comment, I think as it exists, the battery storage as a primary use is not protected by anything in the zoning act so we can prohibit it if we want to. If it’s an accessory use, then it might be an exemption. Bressler; I appreciate that clarification but can we check this with Donna? One of my questions was does that fall under that state's statute of unreasonably regulating solar applications? DeChiara; I believe it's a gray area. Lacy; we can decide if as the town Shutesbury we are going to write something and attach to solar for regulations on batteries but not permit them in general. I’ll be happy to ask Donna about this and the member terms. Torres has asked us to inform her when we approach the select board so it doesn’t come as a surprise to her.

Punctuation of 8.10-7C: DeChiara was informed by Beth Willson of punctuation issues; there should be semicolons or commas in-between certain sentences in the solar by-law 8.10-7 section C. Bonnar notes that he would use commas instead of semicolons but he is weary of the Oxford comma. Lacy notes that the Oxford comma is standard practice in drafting practices. Bonnar; the way this reads bothers me too; it seems like it runs all together. Are you saying the punctuation is good as they are? Lacy; No, I actually looked back on my notes when I helped drafting this and my version has punctuation in it. DeChiara notes it got lost somewhere, and points out that he is hesitant to fix this punctuation because it requires holding a town meeting vote on it plus have the AG approve it. This is also our bylaw and it seems that if we are only missing punctuation, we can state the intent. DeChiara; If and when we get a special permit for a solar project in the next year or two to be able, we should be able to say that there are three different habitats affected.. Bonnar states his concerns for its potential for lawsuit if not corrected and Lacy agrees. Bressler; I think we should turn this into also a subsistent change like Michael is suggesting. DeChiara adds that they should wait on this for a year or two. Lacy adds that without the comma included between the chapter listed and Primary Habitat it doesn’t work because the chapter does not involve Primary Habitat. Going back to the Oxford comma, Bressler adds that in the past few years they have been doing away with the Oxford comma, a new common practice. DeChiara and Bonnar agree this subject should and will be revisited later.

Public Comment: Bonnar asks if anyone attending has any comments, questions or concerns they may have, no response is made.

Approval of January 10, 2022 Minutes: Motion: DeChiara moves to approve the minutes of Jan. 10, 2022, Bressler seconds. Vote- Bressler- Aye, DeChiara-Aye, Lacy- Aye, Rotondi-Aye, Murphy-Aye, Bonner-Aye.

Update on Solar Amicus brief: DeChiara summaries that organizations had been approached about the amicus brief such as Mass municipal Lawyers Association, Mass Municipal Associations, and Clark Law School – all decided not to submit a brief representing communities. DeChiara; Megan Sheenan, an environmental lawyer, ended up writing a version in consultation with the Clark Law school on behalf of community groups and interested municipal boards. . The Wendell Select Board has agreed to sign on and different towns are being asked such as Ashfield, Buckland, and possibly Conway.

DeChiara shares the SJC Amicus Brief Draft 1. DeChiara; the question is the whole ‘prohibit or unreasonably regulate the installation of solar energy systems’. That means basically in the law where it says that ‘allowing solar energy facilities in certain municipalities but prohibiting them in other areas is permissible or whether it constitutes unreasonable regulation in contravention of the statute’. For example, in our case we have the 9 zones, one can say the 9 zones are a municipality saying it can be certain areas or not. Lacy; I read about half of it, the first half talks about whether this exemption pertains to large scale solar and she makes the argument that they didn’t have large scale solar when the original statute was written but she doesn’t come right out say that it didn’t exist, so it is possible it could have. The second, even if you admit it does allow towns to regulate where it can go and Shutesbury could come out good on that. Bressler; let’s imagine that an amicus brief was done by people hired by the solar industry so I would assume that would counter this one and if it is then where does that leave us? DeChiara; I think that’s why it is important to have this version of an amicus brief because without it then the argument gets framed only by companies saying it’s unreasonable. Lacy; it doesn’t hurt our cause by signing on this thing. DeChiara and Bressler agree but Bressler is interested in seeing the other side’s amicus brief. We could do one of two things: we could vote on this now and I’ll finish the final draft and give it to everyone or we would wait until the 16th. **Motion: Bressler moves to plans to approve of this draft acknowledging there will be minor changes to it later and to sign on, Lacy seconds. Vote- Bressler- Aye, DeChiara-Aye, Lacy- Aye, Rotondi-Aye, Bonner-Aye.**

Next Planning Board Meeting: February 16, 2022 with the ZBA board

Meeting Adjourned: Motion: DeChiara moves to adjourn, Bressler seconds. Vote- Bressler-Aye, DeChiara-Aye, Lacy- Aye, Rotondi-Aye, Murphy-Aye, Bonner-Aye.

Meeting Close: 8:34pm