

# Shutesbury Planning Board Minutes

DRAFT Minutes – 07.11.2022

(Approved – 10.17.22)

*Virtual Meeting*

**Meeting Start:** 7:00pm

**Members Present:** Deacon Bonnar, Michael DeChiara, Jeff Lacy, Nathan Murphy, Steven Bressler, Jeff Weston

**Members Absent:** Robert Raymond

**Associate Members:** Ashleigh Pyecroft

**Associate Members Absent:** Jake Messier

**Staff Members:** Carey Marshall (LUC)

**Other Present:** Carlos Fontes, Mike Lipinski, Miriam DeFant, Jenny Kallick, Mary Lou Conca, Elizabeth Fernandez O'Brien, Renee Moss, and all other unidentified individuals.

Chair's Call to Order at 7:05pm

Meeting is being recorded

Bonnar welcomes Jeff Weston to the Planning Board

## **Election of Chair**

**DeChiara nominates Deacon Bonnar, current Chair, for reappointment as Chair of Planning Board, Lacy seconds. Vote: Lacy- Aye, DeChiara- Aye, Murphy- Aye, Bressler- Aye, Weston- Aye and Bonnar- abstain. So moved.**

## **Public Comment**

Ryan Zaveruha (378 Locks Pond Rd) – he owes property next to the dam on Lake Wyola and wanted to discuss how access to the dam is being controlled. A survey was recently done and showed the current entry point is on his property – asks which meeting is best to discuss this at. Lacy: he suggests the Lake Wyola Advisory Committee, LWAC, that meets regularly and reports to the Select Board about lake affairs. Also suggests speaking with the Town Administrator, Rebecca Torres. DeFant- she recommends speaking with the police if people are trespassing on his property. There has been discussion about keeping people off the dam due to it being dangerous. Zaveruha: he wants to give people notice if he blocks access and thinks the public can go around his property to access the dam.

## **Cowls ANR - Leverett Road, ZH12**

Bonnar: he met with Torres about Parcel Lot 1 that is to be traded by W.D Cowls to the inhabitants of the town for a small set of parcels at Lake Wyola that the town has taken for taxes. The town has wanted this parcel for a long time because it is seen as a piece that could be used to site a well to take care of the other well that had been contaminated by salt from the Highway Department, HWD (property on the west side of the land owned by HWD). It was reported that

Al Warner thought this site was good for a well because it is high ground, and not likely to be impacted by the HWD. After 12 years of negotiation, the town found another solution – they have run a pipe to water across the street but want to get this parcel as a backup in case a well is ever needed.

The only thing this plan does is create the right-of-way that goes through it so W.D Cows can move timber out after the parcel is sold to the town. Lacy: the section labeled as ‘remaining area’ staying with W.D Cows? Bonnar: no, the town gets the whole parcel. DeChiara: not the back land. Lacy: the right-of-way starts at the end of the remaining area. Bonnar: you’re right, the remaining area is staying with W.D Cows. DeChiara: he is confused about the easement part of the plan – he believes the town would own this and its right-of-way to Leverett Road. Bonnar: the town wants to build a well just right of what is labeled ‘Holzberg Trust’ and below the right-of-way. Lacy: they don’t have to do that anymore because they have well water across the road right? Bonnar: yes. Lacy: what the town is now doing is taking a chunk of their ‘highway garage’ land so its constructing this right-of-way just right of the salt shed for W.D Cows to get through then the town will get the land.

DeChiara: the issue is, if he remembers this correctly, Town Meeting may have voted on this.

DeFant: there was a Request for Determination of Applicability, RDA, with the HWD last summer with Conservation Commission. It was a permit to do some paving of the parking at the department building. That area that acts as an access road is a Bordering Vegetated Wetland (BVW). She is curious what improvements were being done to the access road and whether they would require a permit from the Shutesbury Conservation Commission, SCC.

DeChiara: he suggests that PB should meet again and have Torres present the project. Lacy: if this is an ANR that was submitted and fee paid for then we once have 21 days before it is approved – it appears this map is dated December of 2021. Bonnar: we are past the 21 days – from his understanding it was given to PB in May. Bressler: based on what Lacy is saying, is this already approved? Lacy: yes it is approved if they go to the Town Clerk, Grace Bannasch, and inform her that the plan was submitted in May and PB had no response to them in over 21 days. Bressler: so, there is nothing we can do but understand the project correct? Lacy: considering this is an old plan then it is probably approved already – they have to go to Bannasch for her to verify the 21 days elapsing and then they can go to the Registry of Deeds. DeChiara: he talked to Bannasch this morning when looking for this plan and she seemed she had not seen it before either but may know of it in a different context. Lacy: it appears that this is a land-locked piece of property that includes the remaining area and Lot 1 was connected to the road by the town grafting the small rectangle section on top of Lot 1 – connecting Leverette Road to this right-of-way. What this does is create a parcel that doesn’t have adequate frontage. DeChiara: it wouldn’t be a buildable lot. Lacy: it would most likely have to be stated some place. Bressler: but it has enough frontage for the right-of-way, correct? Lacy: yes because the town doesn’t have a frontage requirement – the zoning allows them to waive the frontage so this would be a buildable piece for the town. That’s the conundrum of this decision because that’s what we are supposed to base our decision on. Bressler: DeFant could you point out where the wetland is roughly on this? DeFant: yes, based on her recollection, the wetland is located about 35 ft from the salt shed towards where the proposed easement is located. She is concerned if they did not consider submitting a Notice of Intent, (NOI), to the SCC. Bressler: PB missed the deadline but it would

still have to go through SCC? Lacy: yes and the Zoning Board of Appeals, (ZBA), due to the zoning requirements. DeChiara: we should have Bonnar check with Bannasch to see if W.D Cowl's has inquired about not receiving a response. Lacy: have they submitted a Form A with a payment? Bonnar: yes. DeChiara suggests PB should discuss the matter at the next meeting once more information about the project's status is given. Carlos Fontes (359 Montague Rd): This is to be offered to the Town for the payment of taxes that was not collected? Bonnar: no that is not correct. From his understanding, the property was negotiated for a long time with the town and W.D Cowl's to be traded for small parcels of land on Lake Wyola that were taken for taxes. Fontes: they town has taken some parcels from W.D Cowl's at Lake Wyola- Bonnar: no, they were taken from other residents who owed taxes to the town. Fontes: he understands the correction and withdraws his question. Land Use Clerk, Carey Marshall, emailed a scanned copy of a Letter from W.D Cowl's attorney informing the PB about the delay in response of this project. Bonnar: he emailed the Attorney Reidy stating that he saw no problems with the plan and that if any concerns arose from their discussion he would contact him again. Lacy: normally when someone tries to connect landlocked land to the road without adequate frontage then PB could approve it but would have to label it as non-buildable lot – clear that W.D Cowl's has access but not the ability to build.

**Motion: Bressler moves to cease further discussion and further investigate this Parcel Proposal with Town Administrator, Rebecca Torres or any Select Board member, DeChiara seconds. Vote: Weston- Aye, Lacy- Aye, Murphy- Aye, DeChiara- Aye, Bressler- Aye and Bonnar- Aye.**

### **Minutes 11/8, 5/9, 5/18, 6/13**

05.09.2022 and 05.18.2022 – these sets of minutes have been approved but Marshall needs to add in the corrections/edits provided by DeChiara as discussed – once corrected she will send them to Bannasch.

06.13.2022 – Marshall has completed draft but Bonnar hasn't read through them to edit – matter will be revisited at a later meeting.

### **Wheelock Site Visit**

Lacy: Wheelock work had been delayed and work was going to start after 07.06.2022. He has not heard from them – asks if anyone has seen any movement in the area. DeFant notes she has not seen any activity in the area. Lacy: the way it was left is that the operator's representative, Joel Walker, was going to call Jeff after it was done and then PB would do a site visit. If too much time passes without hearing from Walker, he will reach out to him. He will have an update or dates to plan the site visit by the August 8<sup>th</sup> meeting.

### **CPC Representative**

DeChiara: Jake Messier said he would be the Community Preservation Committee's PB Representative – CPC chair was notified.

### **Tracer Lane Decision and Solar Bylaw/Energy Storage**

DeChiara: We discussed the SJC decision during last meeting and seemed PB wanted to reopen the Solar Bylaw and update to reflect the concerns PB had in response to the Tracer Lane decision made by the SJC – make it more defensible. DeChiara shares tan updated Solar Bylaw

Revision with PB. DeChiara: he and Lacy had a 2 hour phone discussion with Town Counsel, Donna MacNicol, on Friday July 8, 2022 – revision reflects discussion and explains the color coded key. MacNicol gave a ‘thumbs up’ to the way the packet is laid out but needs to be refined and clarifications need to be made. Lacy: MacNicol also agreed to the placement of the Energy Storage Bylaw placement in this revised version of the bylaw and supported the removed of the residential and non-principal uses from that bylaw to solve the issue that was raised by residents at Town Meeting – residences are exempted. They then added clarifications to make the Solar Bylaw stronger relative to the SJC Tracer Lane decision.

DeChiara and Lacy review the solar bylaw revision with PB - Lacy notes he will withhold his small edits until his and DeChiara’s next discussion. DeFant: she believes that the bulletin point for Shutesbury’s historical preservation under the Background section should be largely extended to cite its importance to the town and how many of the towns bylaws are based around historical preservation – strengthens the agreement of protecting community welfare, community identity, community preservation and preservation of Indigenous Culture. DeChiara: he doesn’t believe it should be long because the point is to bullet these. MacNicol had said that bylaw doesn’t only have only protect public welfare, safety and health – it can do other things but because of the SJC decision, that is the defensible part. He will add another sentence or two to expand upon historical relevance. If DeFant can provide suggestions he will add them when he is editing in Lacy’s comments for the second revision to review on the August 8<sup>th</sup> meeting. Bressler agrees with DeFant’s comment. Lacy asks if PB requires applicant to hire a creditable professional to survey the project area for Historical or Indigenous preservation areas and provide a written assessment, who/what professional would be the needed? DeFant: more than likely it would be an archeologist, or other related specialist works for a Cultural Resources Management consulting firm. Some Tribal Historical Preservation Offices (THPO) offices now contract with applicants to provide cultural resource management – AMP has done this. DeChiara: the applicant would submit the assessment and site plans to be reviewed and commented on by parties who have knowledge on this such as Shutesbury’s Historical Commission or THPO. DeFant: DeChiara sent this version of the bylaw to her today to review the language used in the section for the Historical and Indigenous Cultural Assessment – she is focusing on recommending changes that clarify what the PB is looking for in the notification that would be sent out. She doesn’t think it is appropriate to have a list of specified tribes that would be required for this notification – overly narrow and constrictive because it is not in the wheelhouse for the PB, Shutesbury’s Historical Commission (SHC), or Shutesbury in general to decide which tribes have cultural or historical affiliation to the land (it could leave the town open to complaints of being not completely inclusive). Lacy: there has to be an end to this though because the applicant needs to know what to do when applying. DeFant and Lacy disagree – Lacy is concerned about it being too vague and open. Bressler suggests making the THPO consultant a requirement for the written assessment to ensure inclusiveness. DeFant: doesn’t believe it shouldn’t be left to one consultant and that listing only federal recognized indigenous tribes could be considered cherry picking. Many large projects have used Cultural Resource Management (CRM) Plans that use data based to screen what tribes should be noticed. In her revision suggestions, she suggested that tribes should be noticed based on Algonquian language which culturally tied Indigenous peoples to Western Massachusetts - those are the tribes that pre dated European settlement in the region. DeChiara shares the revision suggestion DeFant gave to him for the PB to review. DeChiara: to clarify, the issue is finding a balance between not making

the section for the Historical and Indigenous Cultural Assessment too broad and it being specific enough to allow proper Indigenous presentation. DeFant: what if tribes change their name in 5 years after the revision passes? Or if two tribes organized into one larger tribe and not included in the list because their name has now changed? She is concerned it may be narrow and concrete – can't evolve over time. Lacy: you can say 'successors in name' but this is only for Shutesbury so he believes a definitive list can be made, even if it is extensive, that way an applicant knows where they are sending these notices to. DeChiara plans to work on wording for this section with Lacy, DeFant, other members of the SHC and anyone else who would like to be involved before next meeting, August 11<sup>th</sup>, and will present edits that reflect their conversation – will review those edits with MacNicol before that meeting.

Bressler: for Section 8. Mitigation of Noise, do you know that if in the applicable State and Local Noise Regulations it is well defined as far as decibel level and etc.? DeChiara: yes it is defined. Bonnar: should we add language to this section in regards to allowing work needed for an emergency outside of the days and times listed? DeChiara: yes that is something that should be added. Section 8.10-4 is a section of interest to Lacy and MacNicol. PB has 9 districts that were created a few years ago with the idea that each district could site one Large Ground-Mounted Solar Facility. How PB looked at it was before the Tracer Lane Decision, PB decided that one solar facility could be built anywhere within each of the outlined districts. Post Tracer Lane Decision there is now increased sensitivity that PB is allowing only 9 places for possible solar development – PB could be accused of limiting where it goes. DeChiara shares his draft of the alternative language for this section (8.10-4) for PB to review. DeChiara has developed a concept that there cannot be more than one installation on a single parcel and if the parcel is newly sub divided then it must be recorded for 10 years before a Large Ground-Mounted Solar Facility could be considered, access roads for Large Ground-Mounted Solar Facility shall not be within 1,500ft from another abutting access road and the carbon sequestration buffer area not overlap with another – no less than 2,500ft. Lacy: you're talking about a way to get more than one on the same block? DeChiara: yes to address the concern you had about the limitation of one per block. Lacy: he was concerned because in the Tracer Lane case, the Court kept referring to the fact that the town only had 1.5 -2% of their land was available for solar and that was only in their industrial zone. DeChiara: are you saying PB should keep the 9 districts? Lacy: he was discussing the perspective an opposing attorney might try to say that Shutesbury only has 120 acres available on paper but on the other hand, Shutesbury has 120 acres that are completely open – the equivalent to 4 more Wheelock sized projects. Having 5 total Wheelock sized projects, they would be creating 5 times the amount of (clean) energy needed by the state – trying to find different arguments to justify what PB has established. He is not ready to get rid of the districts yet. DeChiara: our main justification is ecological integrity but PB will need more. Lacy: PB didn't want to leave this open ended – PB wanted to put a cap on how much could be developed. Wheelock alone generates what Shutesbury needs for energy but we have the capacity for four more Wheelock sized projects.

DeFant: in section 8.10-5, the language she recommended was organized differently and she had suggested that the applicant provide a Cultural Resource Survey (CRS), which would include everything already listed in this section but would also provide a narrative – believes having the applicant only submit a map is not sufficient. When the applicant sends notification of their project submission to the Shutesbury Historical Commission (SHC), the Massachusetts State

Historical Commission (MSHC), and the various tribal entities, PB should clearly state what should be sent out to them – Project Identification with narrative, any cultural or historical resources that the applicant is aware of, a list of who received a notification and any responses they received back. DeChiara: this section already states that PB would receive the responses the applicant would get back but we can expand on that. DeFant notes that when she wrote the recommended language, she was using the project notification forms that would be used by federal agencies for section 106.

Lacy: he believes the prohibited categories for BioMap 2 needed to be reviewed to determine whether PB has a prohibition – in relation to the Tracer Lane Case where it was continually faulted that the town had such little land available for the development of solar production. The Critical Natural Landscape takes up a large amount (82%) of the town and especially the 8 remaining districts available for solar development. On its face a solar project is prohibited even though we have a waiver – but the applicant would need a special permit for the project itself and then seek a waiver. He believes that revision to the map should be to remove the Critical Natural Landscape category, but keep the Core Habitat, to relieve some of the sensitivity from the Tracer Lane decision – in addition to the revision of the solar bylaw. Bressler: doesn't both of these categories fit with the subject of ecological integrity and welfare that is being argued in the revision of the Solar bylaw? Lacy: yes. DeChiara: he agrees and he has discussed this with MacNicol who pushed back with that solar is also an interest of the Commonwealth so it's a matter of two competing interests. Pyecroft: is there any way to regulate development solar projects within the Critical Natural Landscape differently from development within the Core habitat? DeChiara takes note of Pyecroft's comment. DeFant: since the passing of the solar bylaw, there have been large portions of land in Shutesbury that have gone under the irreversible state of preservation, would a judge look at that as a reduction in the total possible land for development? Lacy: he believes that the response would be that since so much has been preserved then Shutesbury shouldn't mind a bit of development. DeChiara: given all that PB has presented about the importance of protecting forests and acknowledging PB has to allow a decent percentage for solar development, that there must be particular places within the Critical Natural Landscape where the state would allow protection from development – he is unsure where those particular places would be at this moment.

Bonnar: is the 500 ft border around the roadways necessary? Lacy: that was place to avoid development close to the road and residential housing. Bonnar: are there circumstances where we wouldn't want the 500 ft border? By being closer to the road it would open up more space and be further away from sensitive areas we are trying to protect. Lacy: the waiver currently in place would allow an applicant to develop within those areas once PB has reviewed the waiver – want to keep it away from residential homes.

Weston: he believes that all towns shouldn't be treated with the same requirements – Shutesbury has a unique situation with large tracts of land that can't be replaced such as land for animal migration. Shutesbury is not obligated to follow the same requirements. DeChiara: he agrees and a lot of what Weston is saying has been laid out within the new revision of the solar bylaw but the struggle is be as responsive and defensive to the decision of the Tracer Lane case. Lacy: he believes the Hydrology Assessment is excessive and that hydrogeologist are not licensed in Massachusetts. Bressler: could we say qualified instead? DeChiara agrees. DeChiara: to be clear

Lacy, it isn't an issue of having the data but the issue of piling on too many requirements? Lacy: yes unless it was near a recharge area for an aquifer or anything related to drinking water then he would feel differently – but because he is mainly focused on forested areas far away from residential housing he believes it would be too much. DeChiara: Due to how late it is, if any of members has any more comments to please email him their comments so that he may take them into consideration for the next edits that would be presented at the next meeting on August 11<sup>th</sup>.

**Motion to Adjourn: DeChiara moves to adjourn, Bressler seconds. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye, and Weston- Aye.**

**Meeting Close: 9:38pm**

**Documents Used:**

- Solar Bylaw Revision-v 7-8-22.docx
- Historical and Indigenous Cultural Assessment Edits by Miriam DeFant
- Replacement 8.10-4 C10 text.docx
- BioMap 2