

Shutesbury Planning Board Minutes
DRAFT Minutes – 03.13.2023
(Approved-TBA)
Virtual Meeting

Meeting Start: 7:00pm

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

Members Absent: Steven Bressler, Robert Raymond

Associate Members Present: Ashleigh Pyecroft

Associate Members Absent: Jake Messier

Staff Members: Carey Marshall (LUC)

Other Present: Michael Lesser, Marina Neutra, Mark Wightman (Applicant), and all other unidentified individuals.

Chair's Call to Order at 7:03pm

Meeting is being recorded

Public comment

Michael Lesser, Chair of the Sherborn Energy and Sustainability Committee and Co-Chair of Sherborn Conservation Commission, is working with their Planning Board in drafting a solar bylaw; he has been reviewing the solar bylaw amendment passed in Shutesbury during the January 19th 2023 Special Town Meeting. During his read of the bylaw, he agreed with the written content specifically the background section, language that held greater protections against forest mitigations, more stringent on pesticides, and prohibitions on wetlands and important wildlife habitat. He is looking for further guidance and insight on how the PB drafted the solar bylaw; he is interested in hearing about any decision that Shutesbury may have received from the Attorney General's (AG) office or any feedback from development companies.

DeChiara explains that the recently passed solar bylaw was the fourth version/amendment drafted by PB since 2016. In the current bylaw and past versions, the AG supported the forest mitigation language in their approval letters. In all of the versions of the solar bylaw, forest mitigation was not prohibited but limited; if an applicant does not have the acreage then the applicant can scale back the design to comply with the 4:1 ratio required or request a waiver. The Tracer Lane case and decision was the motivation for the PB to consider updating the bylaw and establish clear rationale in the background section specifically; it was clear that it was important to connect the rationale with the policy in regards to protecting public health, safety, and welfare. DeChiara and Lacy, the main members developing the draft, spoke with Town Counsel, Donna MacNicol, multiple times to ensure that she agreed with the approach. After the public hearing on the proposed bylaw amendment, there was a three page Planning Board report to Town

Meeting that highlighted the connection to public health, welfare, and safety; once again providing more documentation of the PB's rationale and process. Lacy added that the AG office will be looking at solar bylaws more carefully now following the Tracer Lane decision; that case will inform the courts' decisions. This amendment of the solar bylaw puts the Town's rationale forward rather than waiting to be sued and then having to defend the rationale at a later point.

DeChiara informs Lesser that there is a second case, Kearsarge, that followed Tracer Lane. In the Trace Lane Case, the SJC determined that Waltham was not allowing enough percentage of acreage in the city to allow for solar development; in the Kearsarge case the court refined that further by creating a context for the Commonwealth's need for solar development. With climate change being a reality, the court stated that municipalities must provide enough land area for solar development. The Shutesbury PB created 9 areas where solar development can occur in the majority of town, therefore the town can have up to 9 solar developments.. Neutra describes Sherborn as densely forested with no commercial developments; if they were to establish a solar overlay district, each district would be mainly if not fully forested. They have been advised by their Town Counsel to tie in zoning to environmental protections whenever possible. DeChiara warns that including environmental protections within their bylaw unfortunately doesn't provide the town with enough protection; the state statute regarding solar requires zoning to protect public health, safety and welfare. He encourages them to include this in their bylaw.

Continuation of public hearing on Mark Wightman's Open Space Design plan for H-151 on Leverett Road

Since the last meeting of the special permit hearing, Wightman has contacted Kestrel Land Trust and Mount Grace about being the possible holder of the CR agreement; a requirement of the Open Space Design. Documents have been sent over to these organizations for review. He informed the board he has almost completed his ZBA application for the driveway and is waiting for the final hard copies to arrive from SVE. Lacy shares the draft special permit for Wightman's Open Space Design plan for H-151 on Leverett Road for PB to review. Lacy, with some help from DeChiara, has drafted the special permit using the information gathered from the public hearing. Lacy briefly reads through each section of the permit for PB to review and comment; edits are considered.

Wightman points out that in the draft permit under the request section, it states that the permit is proposing only a 'one building lot for one new dwelling unit and accessory structures'; he believes this is due to a mistake in his submission, one that he has addressed in a previous meeting. He states Lacy has specified the building lot could be a duplex, a single family dwelling, or single family dwelling with separate accessory unit (requires another special permit). Wightman would prefer that this be corrected to state the request is for a residential lot which allows himself or a future owner of this property the option, among those three, of what can be built. Lacy explains that he wrote the draft permit based on what was presented to the PB

in the first meeting of the hearing. Wightman corrects Lacy and explains he was not present during the first meeting due to being ill; Wightman's consultant (who now is no longer with the engineering company he is consulting with) who was representing him in his absence incorrectly presented the permit application as being for only a single family dwelling. Lacy reviewed the information from the last meeting when drafting the permit and he understood it as Wightman limiting himself to only a single family dwelling. Wightman doesn't agree that is what he stated in the last meeting as he doesn't plan to build on the property himself but plans to sell the property with the ability to choose what type of single structure would be build there; single family with or without accessory structure or a duplex. DeChiara is unsure about changing the request section of the permit to state the buildable lot is to be a residential lot because the public hearing is already closed and this would be considered a post hearing request. Wightman elaborates that at the last meeting this matter was discussed; he was not in attendance the first meeting only his consultant who mistakenly presented this a single family dwelling without him knowing. In the next hearing where Wightman was present, he explained that this has been a mistake and asked for clarity as to what was allow on the building lot under the bylaw; Lacy then listed the three options that would be permittable on the property if the permit were not for a common driveway and the presentation for a single family dwelling made to the PB.

DeChiara remembers that discussion but states that he heard Wightman say he wanted to change how it was presented which doesn't seem right to him since the hearing was already closed. However, if there is a consensus among the board that the request was for a single building, then having the permit allow for a duplex would be consistent with what the PB thought was requested. DeChiara doesn't want to change what the request was if that wasn't what it was at that time. Wightman understands and agrees; explains that this confusion has been due to losing two engineers within three months. The engineer that completed the work on this permit said that he wrote it as a single family dwelling because most towns don't have residential lots. After that conversation, he made sure to have that discussion at the previous hearing to ensure he corrected this mistake and make sure that the board understood what he was looking for.

Lacy remembers having the discussion about the single family dwelling with the possible of accessory structures or having a duplex but recalls Wightman repeatedly confirming that he was only interested in having a single family dwelling. Wightman disagrees with Lacy; he did not confirm wanting only a single family dwelling option. When Wightman contacted the engineer about the mistake, the engineer stated that it is not atypical to change this matter on the permit as long as permit specifies what the board is approving. Murphy clarifies that even with the way the request is written it can be stated in the findings that the lot is permitted to be used as a residential lot but would have to be deliberated by the board. Wightman agrees and if the permit is approved for only the single family home then he can return to the board requesting it be amended to be a residential lot. Lacy reviews the application submitted August 23, 2022 where it states the proposed project to be a single family development. Lacy still believes his impression

of the proposed project was for a single family dwelling as repeatedly confirmed by Wightman in the last hearing. Wightman is still in disagreement with Lacy's understanding; did not confirm that a single family dwelling was only preference articulated during the last hearing. The original engineer who completed the site plan using the three lot template that was denied previously because the board had changed their bylaws. When Wightman asked for these changes to be made the engineer had left the engineering company shortly after therefore could not be changed and was submitted as such. He called the engineer who stated it could be changed when the permit was written which is when presented and explain the mistake at the last public hearing. He agrees with Lacy in remembering the discussion about what was permissible on the lot with a common driveway but he doesn't agree that he confirmed only wanting a single family dwelling.

Lacy clarifies that the current Open Space Design requirements as outlined in the Zoning Bylaws state this is type of development is regulated as a special permit and allows the PB to evaluate the benefits versus detriments in allowing Open Space Development (Section V) versus by right development. Wightman understands Lacy's comment but also understands that it doesn't have to be limited to a single family dwelling because that was written in the application; it is up to the board to permit what is allowed; the PB can allow for the lot be residential. Bonnar adds that he was also under the same impression as Lacy; that Wightman only wanted the single family dwelling. Wightman states that if that is how Bonnar and other members of the board understood it to be then that is how the board should vote. Wightman asks if the meetings are recorded and if they are available for his viewing. Marshall confirms the meetings are recorded and they are posted for public viewing on YouTube; Town of Shutesbury YouTube account.

Lacy believes that the board and Wightman may need to review the recording. Lacy elaborates what can be allowed on the lot based on the acreage of the building lot but not taking into consideration the type of driveway could be either a single family dwelling, two single family dwellings, or a single duplex. Wightman states that based on that information and the possibility he may not correctly remember what he stated in the last hearing, to leave the drafted permit as is. It was not his intention to limit the building lot to a single family dwelling but if that is how the board understood it to be then he understands the board permitting it as such. He also wants to be respectful of the neighbor present during the last hearing and discussion; he did not have the impression that the neighbor was expecting the lot to be only one single family dwelling but if that was the neighbor's understanding then he doesn't wish to go against it. Murphy notes that he was under the same impression as Lacy and Bonnar; recalls the Wightman had indicated the possibility of himself living on the property. Wightman confirms that he did state the possibility of him living on the property but if he were to live there, he would want an accessory in-law dwelling that he understands would require a request made to the ZBA. Lacy confirms that is correct and that would require a site plan review application.

Lacy has revised the request to now state ‘.. one building lot up to one single-family dwelling..’. DeChiara agrees with the revision but requests the second paragraph reflect the same understanding; Lacy does so. Bonnar notes that Wightman’s name isn’t spelled correctly throughout the permit and needs to be corrected; Lacy does so.

Condition #3 is revised to state ‘..driveway shall be between 8 to 9 feet wide up to and through the narrow part of the existing cart path’ because Wightman plans to submit an ZBA application to allow for the driveway to be greater than 8 to 9 feet in width after the existing cart path.

DeChiara doesn’t agree with condition #5 because, as discussed in the hearing, a driveway that met the zoning bylaws would greatly impact the area which goes against the open space design that states its purpose as ‘..to preserve the open space resources of Shutesbury as identified in the Master Plan especially large, contiguous blocks forested back land..’. His understanding is this project couldn’t be done through an ANR because there isn’t enough frontage and therefore if it wasn’t an open space design then there would be no development. Based the discussion between the applicant and abutting landowner in the previous hearing, he is in agreement that the driveway should not comply with the wider requirements outlined in the zoning bylaw in order to address both the open space design purpose and the wishes of both the applicant and landowner has reached in that hearing. If the ZBA doesn’t approve of this request by Wightman for a narrower driveway, then building a 12ft driveway would have negative impact. Wightman asks if the ZBA denies his request then could PB permit an 8 to 9 foot driveway through the center of the property? Lacy answers it would still require a permit from the ZBA. **Motion: DeChiara moves to strike condition number 5, Murphy seconds.** Wightman asks what the purpose of the 12ft wide driveway required of his special permit if the board is now waving the requirement. DeChiara explains that it is case specific thus the 12 foot driveway is not desirable to this case. **Vote: Bonnar- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.**

PB adds condition # 6 which states the agreement made between the applicant and abutting landowner; that addition of a vegetated arborvitae barrier on the east side of the driveway to be completed prior to the issuance of a certificate of occupancy of the dwelling at the applicant’s expense.

Condition #9 is removed because it is not applicable since a Conservation Restriction agreement has not yet been drafted; PB agrees.

Marshall states the case number is 22.003.

Motion: DeChiara moves to approve the special permit for Mark Wightman's Open Space Design plan for H-151 on Leverett Road, Murphy seconds. Lacy notes that special permit

with a 7 member board takes 5 members to approve; there are only 5 members present. Since he is the Chair of the ZBA he would prefer to abstain. PB confirms that all present members have been in attendance to all public hearings. DeChiara suggests that Lacy votes to rule of necessity because if he were to vote abstain then PB would not be able to approve the special permit. He explains that if a board or body has to do business with just enough or not enough members to rule then the board can claim rule of necessity in order to do business for the town under these conditions. Bonnar wonders if he is allowed to invoke Pyecroft to vote on the special permit. Pyecroft informs the board she has not yet completed the paperwork for her recent reappointment as an associate member thus cannot participate. Murphy asks if the rule of necessity is valid since the board has 90 days to vote on the special permit. PB agrees that because of the 90 day period to vote on the permit the board can no longer invoke the rule of necessity. Murphy asks if Lacy has to abstain because he is the Chair of the ZBA. Lacy states he doesn't have to since he has already clarified he is the Chair of the ZBA. Lacy suggests waiting for the next PB meeting to vote to allow for all members to be present to review the permit and would also allow for him to abstain. DeChiara also suggests the board discuss this matter with Town Counsel, Donna MacNicol, to clarify if the two absent members can vote on the special permit having missed the deliberation of the permit. Bonnar suggests having a meeting next week to complete the permit since the process has been dragged out over a long period; Lacy notes that PB is within their appropriate time frame. Wightman understands Lacy's point of wanting to vote abstain thus he will leave it up to PB to decide if they want to vote during tonight's meeting or next meeting. **Motion: Lacy moves to defer the previous motion to the next meeting and in interim seek counsel from MacNicol on the matter of how to proceed with the vote, DeChiara seconds. Vote: Bonnar- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.**

This matter will be revisited at the April 10th, 2023 meeting at 7:30pm.

Minutes 1/11, 2/13

01/11/2023 – Motion: DeChiara moves to approve the 01/11/2023 minutes, Lacy seconds. Vote: Bonnar-Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye, and Weston- Aye. So moved.

02/13/2023 – Motion: DeChiara moves to approve the 02/13/2023 minutes, Murphy seconds. Lacy has proposed edits for these minutes; shares the edits for PB to review. Edits are considered. Edits will be sent to Marshall to correct for the final approved version. **Motion is revised to approve the 02/13/2023 minutes as recently amended. Vote: Bonnar-Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye, and Weston- Aye. So moved.**

Possible 2023 amendments (Municipal Vulnerability Preparedness, Hazard Mitigation, Handbook of Massachusetts Land Use, Planning Law)

Discussion Tabled

Wheelock Annual Report

Discussion Tabled

Lot O-32 report

Discussion Tabled

Unanticipated business

None

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

Meeting Close: 9:20pm

Next Meeting: April 10th at 7:00pm

Documents Used:

- Solar Bylaw Revision
- Wightman Special Permit
- 2023 Wheelock Annual Report