

Shutesbury Planning Board Minutes  
Approved Minutes – 08/14/2023  
(Approved – 09.11.2023)  
*Virtual Meeting*

**Meeting Start:** 7:00pm

**Members Present:** Nathan Murphy, Deacon Bonnar, Steven Bressler, Michael DeChiara, Robert Raymond (had technical difficulty regarding participation), Jeff Weston

**Members Absent:** Jeff Lacy

**Associate Members Present:** Ashleigh Pyecroft

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

**Other Present:** Emily Bayard, Leslie Bracebridge, and all other unidentified individuals.

Chair's Call to Order at 7:00pm

Meeting is being recorded

**Public Comment**

*None*

**Land Owner Education and Guidance**

Raymond is experiencing technical difficulties. To resolve them, he is leaving and re-entering the meeting to resolve the issue.

Emily Bayard had emailed the PB about what is permissible when building an accessory apartment attached or adjacent to her home. Murphy asks if Bayard has visited the Town's website to review the Town Zoning Bylaw; she confirms so. Murphy explains that an accessory apartment is by right and the bylaw provides a use table and list of requirements. Bayard asks if Murphy could explain what exactly is permissible and what those requirements are since she had a hard time understanding the zoning bylaws. She understands there is a requirement to have an acre of land to build an accessory apartment which she does. Additionally, she is aware of the septic system in her room has a limit of three bedroom and already has a plan in mind to stay compliant with that requirement with the accessory apartment addition. She is seeking more information about the different options she may have for the accessory apartment.

Murphy states the first step is to decide whether an attached or detached accessory apartment would work best for the needs. Then, possibly work with a consult to create a preliminary plan. In regards to any questions about the septic system, that would be directed towards the Board of Health. DeChiara adds that accessory apartments can be up to 800 square feet with up to two bedrooms. The maximum distance the accessory apartment can be placed, if detached, is 75 ft from the main dwelling. Murphy adds that the setbacks for rural residential are 75ft from the road and 25ft from the lot line(s). Bayard asks if they were to build upwards on their current footprint of the home, would they require a special permit. Murphy explains she would need to determine what work was proposed falls under by right and/special permit or site plan reviewer

using the use table provided in the zoning bylaw. If it is an accessory apartment then it would be a site plan review application to the Zoning Board of Appeals (ZBA). Deacon adds that in terms of height, they can be got upwards on their current home that as long as they don't surpass the restriction for a single family home. DeChiara clarifies that single family home can be up to 35ft in height. If it were to be 35ft or lower than it would be considered by right and require a building permit and site plan review application to the ZBA. Bayard asks if once they decide what they they'd like to do, should she contact the ZBA. Murphy directs Bayard to the ZBA webpage of the Town website where she can access application forms to print and fill out. Since she would be working with a consultant they would be experienced in filling out these forms and provide her with further guidance. She understands but wants to be sure what the guidelines.

DeChiara recommends she speak directly with Jeff Lacy who is member of PB and chair of the ZBA but is absent from tonight's meeting. It would be better for her to reach out to Lacy explaining that she attended tonight's meeting and needs clarification. Since Lacy is the Chair of the ZBA he can respond in the role.

Deacon notes that the key part of this matter is the 800 square ft as it may be a concern to some. Bayard expressed that would not be an issue for them. She explains one option she is looking into is turning a section of her home that is a green house in a 1 ½ car garage and building upwards from there so the footprint would not change. If it were to be done on the other side (north side) of the home, then it would raise some other issues such as the possibility of a second driveway, and any well setbacks. Another aspect she is looking for is the timing around permits in terms of how long do they usually take to complete from beginning to end. She asks if these questions would best be answered by Lacy. Murphy agrees that most of the zoning question could be answered by Lacy but in terms of timing of the permit it could vary specific to the construction of the building which would be worked out the consultant. It will also vary if other permits from other boards are needed such as Board of health with the septic system and well or Conservation Commission if work is taking place near a wetland. DeChiara adds that in terms of a second driveway, that is discussed on page 11 of the bylaw where it states each lot is allowed only one curb cut therefore if a second one is desired then that would need to be permitted by the ZBA. ZBA typically only allows a second curb cut for public safety.

Bayard shares she has spoken with Jon Thompson who once was on the PB and is now Building Inspector in Amherst. He was able to give her some information but she still had more questions which lead her to tonight's meeting. She asks if Lacy would be amenable to speaking with her. Murphy states that would be up to Lacy and she should email the ZBA with her inquiry.

#### **Schedule Public Hearing for the special permit received from Mark Wightman**

Murphy acknowledges the Special Permit application from Wightman to amend his current Special Permit for an Open Space Design on Leverett Road. He asks Wightman if the public hearing could be held at the PB's next meeting on September 11<sup>th</sup>, 2023 at 7:30pm. Wightman confirms that date is acceptable as long as it is within the 65 days allotted. Marshall states the application was received on July 25<sup>th</sup>, 2023 therefore falls within the 65 days.

**DeChiara moves to have the public hearing for the Special Permit amendment received from Mark Wightman on Sept. 13, 2023 at 7:30pm. Bonnar seconds. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Murphy- Aye, and Weston- Aye. The motion carries.**

**Minutes 6/12/23, 6/20/23, and 7/10/23**

Marshall has received edits from DeChiara to review. She asks for clarity if Bonnar would like to continue help review drafts or if he would like to be relieved as he is no longer Chair. Bonnar agrees he would like to continue help review minutes with Marshall and DeChiara. Murphy will also help review when he is available. Marshall will reach out to schedule a time to meet and review minutes.

**Discuss language for ANR fees**

During the last meeting, PB had discussed the need for clarifying the language in the bylaw describing the fee for ANR applications. The current language states that for each new buildable lot the fee is \$75. This creates confusion as it does not discuss whether there is a general fee for submitting an application, does not address what classifies as a new buildable lot and if it applies to modifications of already existing building lots. Murphy believes at the last meeting they were discussing that it should be a flat fee of \$75 for an ANR application and if there is more than one new building lot created then it is an additional \$70. DeChiara clarifies that the flat fee is \$70 and points out that the additional fees should reflect the effort levels required to get the ANR process done. He asks Deacon, Lacy and Marshall about the process of an ANR application. Bonnar states there is very minimal effort needs to complete an ANR application. He recommends that the ANR fee should be one flat fee whether there is a change in the amount of buildable lots or not. DeChiara asks if that should be the case even if a lot were to be split up into 5 or more lots. Bonnar revises his suggestion to a flat fee of \$70 with an additional \$70 for each lot created greater than 1. This way two or more newly created lots would incur an additional charge of \$70 each.

DeChiara asks for confirmation that change to an existing parcel is always going to yield at least one additional lot. Bonnar disagrees as PB recently reviewed DiMare's ANR which didn't create any new lots but modified two existing buildable lots and merging them into one buildable lot. Murphy states that it sounds like PB is in agreement that it should be flat fee of \$70 and additional for each new buildable lot created. DeChiara agrees but the language should be changed to 'net gain' instead of 'new'. Deacon suggests that it should state 2 or more lots created would incur an additional charge. The flat fee would include the one lot that is either being created or modified.

DeChiara understands that the current language they are discussing is written in the ANR instructions but isn't sure if it is listed in the bylaw. Bonnar is also unsure but supports PB getting the process concept down and then address it where it needs to be. DeChiara is in support of Bonnar's suggested language and discuss the need for a motion. Bonnar recommends that PB should draft new language for this matter and review it at the next meeting to vote on. He also suggests Lacy should review this as well.

DeChiara screenshares the ANR instruction sheet from 2019 for PB to review. Murphy points out the issue that this language negates the fee if there is no new building lots created. DeChiara

creates a Word Doc to begin drafting new language. The new language is first drafted as ‘Filling fee in the amount of \$70 per lot, e.g., seventy dollars as a required base rate, plus \$70 for each net additional ANR created the number for new building lots.’ Murphy suggests editing it to ‘Filling fee in the amount of \$70 per ANR application with an additional seventy dollars for each net additional buildable lot created.’ DeChiara recommends additions editing to now state, ‘Filling fee in the amount of \$70 per ANR application. An additional seventy dollars is due for each net additional buildable lot created.’ Murphy agrees this edit makes the language simple and clear. DeChiara will email this new drafted language to all PB members for review and it will be revisited at the next meeting for any needed further discussion. Bonnar agrees and adds this issue has been confusing for a while and should be clarified as soon as possible.

*Discussion will be continued at their next meeting*

### **Discuss authorization of person(s) to sign documents on behalf of Board**

Murphy understands that Bonnar, when Chair, was granted permission to sign for PB on permits. Bonnar confirms and specifies that it was granted for ANRs and special permits only. Murphy adds that he understands Bonnar is looking to relinquish this responsibility to another board member or himself, as chair. Bonnar confirms this. He states that it’s been his practice that, the morning after a permit has been approved by the board, to print it, sign it and bring it to Town Hall. If it is an ANR, he does the same but also signs all copies of the ANR provided. DeChiara suggests considering giving multiple members the power of signature since Murphy is not in town as often as Bonnar. Bonnar is unsure if multiple members as allowed to hold signature power. He recommend PB look into state law regarding the ability to assign signature power as it is part of the same law that creating planning boards.

Murphy asks if this was also a part of the Pandemic Emergency Declarations. Bonnar explains it was not but it became of interest when the during the pandemic; if this procedure was allowed in the original state law providing for the creation of planning boards.

*Robert Raymond has resolved his technical issue and is now in attendance.*

Murphy shares his concern of taking over the power to sign as he wouldn’t be able to visit Town Hall until Thursday because his office days are on Tuesdays and Wednesdays. Marshall shares that she in the office on Thursday which would work with his schedule. She also suggests that she could always leave a blank copy of the permit for Murphy to sign in the PB mail slot when he is available outside her office hours. This may be difficult for ANR signature as multiple large scale plans would need to be signed. Marshall recommends asking Town Clerk, Grace Bannasch, for guidance of the power of signature as well. Bonnar shares he doesn’t mind reminding the power of signature while Murphy gets adjusted to being Chair. DeChiara adds that Marshall’s suggestion of leaving the permit to be signed in the mail slot is a common practice. Murphy decides it would be best for Bonnar to keep the power to sign for the time being until he has been more adjusted in his position as Chair.

### **Special permit application for windmills – seeking information**

Raymond shares that he is on the Board of Directors at Sirius Community and his concern about this issue arose during a meeting there. He learned that Sirius has a windmill that was permitted

in 2008 that possibly went through a planning board process. The foundation and electrical wiring was done in 2009 but the windmill installation was never completed. It is unclear whether the equipment that was purchased with the windmill, specifically the inverter, would still be legal. Another concern is that whatever event that occurred to generate the building permit, his understanding is that permit has now expired. The Sirius community is now considering resubmitting new applications to National Grid to see if the interconnection to the grid for energy generated by the windmill would still be acceptable. It seems to him that at a minimum, a new special permit application would be submitted to the Planning Board with the information provided by National Grid. If it is not approved by National Grid then the project by not happen. He is looking for any information or guidance regarding to this.

Weston shares that he recently installed solar panels on his family and he went through Eversource. He suggest that the Sirius review if National Grid or Eversource covers the community. He believes that since the inverter is from 2008 that it may need to be replaced. Raymond shares the same belief about the inverter and is confident that National Grid covers Sirius. DeChiara believes that, in terms of process, Raymond is correct that it would have been a permit from the planning board. The permit was active for two years and in that case they most than likely didn't ask for an extension and would be better off starting over. Bonnar doesn't recall a permit application. Sirius may have gone directly to the building inspector.

DeChiara recalls a town meeting that discusses windmills because the town was considering placing a windmill behind town hall. He asks Deacon if the bylaw was created before or after that. Deacon is unsure but assumes it was placed after 2008. DeChiara recommends that since the bylaw is now in place, once/if Sirius gets the okay from the utility, it should then plan a special permit.

#### **Discuss FY24 bylaw amendments to be considered for June 2024 TM**

DeChiara has two suggestions for amendments to consider. The first is the topic of tiny homes which was briefly discussed at the last meeting and during the past few years. Lacy commented that if they were to consider tiny homes then PB should also look at the sizing of accessory homes as a bundled amendment. Weston suggests PB discuss with Leverett PB since they have tiny homes in their bylaw for tiny homes. DeChiara agrees and suggests talking to Hadley PB as well. He suggests that some items that could be considered in this amendment might address sizing, materials, distance from the main dwelling, etc. PB could create this to be more family friendly and a solution to climate migration pressures. Bayard's matter that PB reviewed at the beginning of this meeting is a good example as to why PB should amend the bylaw discussing accessory apartment and including tiny homes.

Bressler asks DeChiara how the accessory apartment and tiny homes relate. DeChiara explains that conceptually they are similar therefore when PB is researching about tiny home bylaw language, PB may discover new information that may also want to include in the accessory apartment bylaw section(s). Bressler expresses concern that this new variable of tiny homes could make applications more complex such as open space design. DeChiara agrees and mentions that Open Space Design could be another bylaw that could be considered to amend. During the Wightman Open Space Design case, DeChiara was interested in the fact that the property didn't have enough frontage to develop the parcel by right. In an ANR process,

Wightman wouldn't have been able to have a buildable lot but through the Open Space Design application, he was able to have a single family dwelling. Deacon adds that if a tiny home policy were to be created, then it should also address the economic issues surrounding them as they would still need septic and water systems. DeChiara agrees and notes that composting septic systems could be an option but doesn't know enough about the water system options. A large issue today is with unaffordable housing which is another reason for PB to look into tiny homes. It is his understand that there is an expectation for every municipality have 10 percent of its housing stock be affordable and DeChiara understands that a vast majority of municipalities don't come close to reaching that; Shutesbury included. This would allow the Town to address the issue of affordability. Deacon agrees but wants to highlight those important aspects of it. Murphy agrees and PB would need to understand the regulations in place with the Board of Health and how they apply to tiny homes. DeChiara believes that if PB researches the idea of tiny homes it will also determine whether this would be a good policy to have for the town. During their research PB may discover tiny homes may or may not be suited for the town.

DeChiara shares that they second amendment he had in mind is to develop a lighting or dark shy policy. It was first discussed after receiving some feedback from a resident who was having issues with a neighbor. There was a subsequent discussion last year about whether this policy would be a zoning bylaw or a regular town bylaw and what the implications of each type would were. He understands there are mixed opinions on whether PB should execute a policy as such but wanted to mention it.

*Discussion will be continued at their next meeting*

### **Update on AG/solar bylaw**

DeChiara summarizes that there are overlapping parts to this matter and he wants to discuss the bylaw that was approved January 2023. This past April, the PB sent a letter to the attorney General's (A.G.) office making an argument for why PB believes the solar bylaw is constitutional and that the A.G should approve it. The A.G subsequently sent a notice saying they were expending their review period of the bylaw by three months. Town Counsel, Donna MacNicol, has been in contact with DeChiara and Lacy. McNicol recently shared that the A.G.'s office informed her that W.D Cowls lawyer, Tom Reidy, sent a letter in the same time frame expressing how his client believed the bylaw was unconstitutional. The A.G office was supposed to inform McNicol of this letter promptly but didn't until months later. DeChiara, Lacy and McNicol have been working together to write a response back to the A.G. regarding the Reidy letter. Many of the points Reidy argued in his letter were similar to those many in the complaint. The response letter was sent out within the last week or two. PB and McNicol hasn't heard back regarding their letter or the A.G's decision about the solar bylaw. Lacy shared with DeChiara today that Reidy also included a letter as to why Pelham's solar bylaw, which is modeled on Shutesbury's, is unconstitutional, as well. Deacon asks if there was consequences for the A.G's office not properly informing the town regarding Reidy's letter? DeChiara asked the same question and McNichol has indicated the town does not have much recourse. He understands that the Town was allocated additional time to reply to the letter because of the A.G.'s oversight

DeChiara provides an update about the Solar District map that was approved at the 2020 Annual Town meeting. It was specifically mentioned in the solar bylaw under the Mitigation Section for

Forest Segmentation and once TM approved in 2020 it was part of the bylaw. In 2021, TM approved a small amendment to the solar bylaw but didn't change anything related to the map or the relevant section. In January 2023 however the Town Meeting warrant language was not to amend the existing bylaw but to delete the existing the current bylaw and replace it with the new version. Upon approval, this created an issue pointed out by the A.G.. The A.G said that Town Meeting should have voted to approve the map separately from the text of the bylaw. Since the map was not approved separately, it may not be considered part of the bylaw even though the language in the Forest Mitigation section still refers to the map. This has been problematic and is currently being discussed between McNicol and the A.G office as to whether it can be included. This could create issues if a special permit for a solar project were to come forward. Bressler asks if the map was presented at the 2023 Annual Town Meeting alongside the solar bylaw. DeChiara confirms it was but that is not documented nor was it voted on separately. He adds that in 2020 the map wasn't approved separately either. The Solar District map has also listed on the PB's webpage for months prior to the 2023 Town Meeting.

### **Unanticipated Business**

*None*

Murphy reminds Raymond that since he is on the Board of Directors and could have business before the board that he would need to steer clear of a conflict of interest. Raymond thanks Murphy for the reminder and states in those cases he would recuse himself.

***PB will be going into executive session regarding a matter the Chair, Nathan Murphy, will be recusing himself from and not attending, he designates Michael DeChiara as temporary Chair.***

Motion: Raymond makes the motion to temporarily appoint Michael DeChiara as Chair for the remainder of the meeting, Bonnar seconds. Vote: **Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Murphy- Aye, and Weston- Aye. The motion carries.**

*Murphy leaves the meeting*

**Motion: DeChiara moves to transition into Executive Session for an update on the Pure Sky/W.D. Cows Complaint for Reason #3: To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body), and to not return to public section, Raymond seconds. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Raymond- Aye, and Weston- Aye. The motion carries.**

*Meeting is no longer being recorded*

**Meeting Close:** 8:32pm

**Next Meeting:** September 11<sup>th</sup> at 7:00pm

**Documents Used:** DiMare ANR