

# Shutesbury Planning Board Minutes

Minutes – 09/11/2023

(Approved – 11/13/2023)

*Virtual Meeting*

**Meeting Start:** 7:00pm

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

**Associate Members Present:** Ashleigh Pyecroft

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

**Other Present:** Miriam DeFant, Mary David, Matteo Pangallo, Clif Read, Lori Nichols, Keith Hastie, Mark Wightman, and all other unidentified individuals.

Chair's Call to Order at 7:00pm

Meeting is being recorded

## **Public Comment**

DeChiara, as a resident, asked the Select Board to make a Solar Legal Defense Fund. The request was approved, and he recently received word from the Town Accountant and Town Treasurer that the account was completed and can now accept donations. DeChiara asks the board if he may add information about the fund account on the PB webpage.

Lori Nichols asks if she is able to convert her barn into a living structure and if so, what could be done with the current living structure. The parcel is about 3.5 acres with 350ft of frontage and currently includes both the barn and current dwelling; about 100 yards apart. Murphy recommends that she look into the accessory apartment section(s) of the Shutesbury Zoning bylaw. DeChiara explains that if she split the property in half so that the barn and the current living structure were on different parcels. It would cause each property it would have insufficient frontage. Lacy agrees with DeChiara's explanation but states that there is a provision in the bylaw that allows for barns or other outings to have a dwelling unit in it; the 75ft restriction doesn't apply. The dwelling unit would be 800 sqft or less. If the barn was built before 2008 then this provision would be applicable. Nichols confirms the barn was built before 2008. Murphy states that if she has any further questions then she is welcome to email the PB or come to their next meeting.

## **Planning Board Representative for CPC**

The PB CPC representative position has been vacant and now has a new candidate, Clif Read. DeChiara was the PB CPC representative for 2 – 3 years but left the position; no current members were interested in taking his spot. Most recently, former PB Associate Member, Jake Messier, held this position. The CPC has recommended that Pb consider Read as the PB CPC representative. Read introduces himself to the PB as a 30+ year resident and is familiar with the community; at one point neighboring Bressler and Lacy. In the past, he served the School Committee with DeChiara. He was approached by the CPC asking if he would consider this

position. Although he has not been involved in any CPC activities, he is interested in the position and believes it is important for the community. He asks what PB expectations for him would be, including communications and meeting participation.

PB informs Cliff that as the PB CPC representative he would attend CPC meeting to hear about funding opportunities and eligible projects where his focus would be in matters of land use. In terms of communication, Read would attend PB meetings when needed to update the PB on land use specific matters and/or have discussion on how Cliff should vote one certain matter if needed. Matteo Pangallo, Chair of the CPC, adds that there are two keys votes that should be discussed between the CPC representative and the PB: determination of whether a project is eligible and recommendations for grant applications. When Read offered to be the CPC representative for PB at the CPC meeting, he was enthusiastically endorsed.

**Motion: DeChiara moves to appoint Cliff Read as the Planning Board Representative for CPC, Lacy second. Vote: Bonnar – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

#### **Appointment for Planning Board Vacancy**

*Bressler joins the meeting late*

Murphy summarizes that in a previous meeting, PB discussed appointing their associate member Ashleigh Pyecroft as a full member of the PB to fill the vacancy of Lacy's departure after tonight's meeting.

**Motion: Lacy moves to recommend Ashleigh Pyecroft as a Planning Board Member to the Select Board, DeChiara second.**

DeChiara thanks Pyecroft for her willingness to take the position. Pyecroft thanks PB for their votes of confidence as she continues to learn her role as a full member. Raymond shares appreciation for Lacy's time and knowledge he has shared with the PB; looks forward to working with Pyecroft.

**Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

#### **Appointments for Associate Planning Board Members**

Keith Hastie contacted PB via email expressing interest in becoming a PB Associate Member and shared a brief summary of his career. Hastie has been a 15+ year resident of Shutesbury and admires the members of the community who volunteer their time on town boards and committees. He has recently retired and now has time to invest in town government. He shares that through age and experience he has learned how to be objective and stay within the bounds of the regulatory authority at hand; tends to be unemotional during tough decisions. DeChiara asks what his position was when working for U.S Fish and Wildlife. Hastie explains that early on in his career he was a Contaminants Biologist which involved assessing contaminated sites where he would follow Natural Resource Damage Assessment Restoration legislation protocols. Later

his career took him to Hadley, Ma working as a Regional Energy Coordinator for 5 years. He ended his career working on Endangered Species status assessment.

*The discussion is paused to open the Public Hearing for Wightman*

Lacy shares that he doesn't know Hastie personally but supports having new members joining who are unexperienced in town government. By joining as an associate member, it allows for a learning period similarly to Pyecroft's experience which has shown to pay off as she is now being recommended as a full member. Murphy discloses that he contacted Hastie ask if he would consider the position. Weston shares support for Hastie taking the position stating he would value his expertise being added to the board. Based on his work background, DeChiara assumes that he is used to referring to regulations, statutes and case law state which is relevant work of the PB. He asks Hastie what specifically made him interested in joining PB and not a different committee. Hastie answers that land use has been his world for 30 or so years thus it is a comfort level. He agrees with DeChiara's statement about referring to regulations. He elaborates that individuals who choose for state or federal government agencies that handle natural recourse, such as National Fish and Wildlife, do so because they have a passion for it. Once working for these agencies, it is important to be able to separate personal beliefs from what the regulations and law state. Even though it may provide a challenge from time to time, he is aware of the importance of that separation.

**Motion: DeChiara moves to recommend Keith Hastie as a Planning Board Associate Member to the Select Board, Lacy second. Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

#### **Public Hearing for H-151 Leverett Rd Wightman Amended Special Permit**

Wightman received a special permit from the PB on April 10, 2023 (case number 22-003) and subsequently submitted a variance application to ZBA waive his 8 ½ ft driveway requirement in order to meet the permit condition that required a section of the driveway to be not greater than 9-91/2 ft. The ZBA approved his variance on July 20, 2023 with the condition that the driveway be at least 10ft wide, resulting in the need to request a modification of the special permit limiting portion of the driveway to 9 ½ ft. Wightman states that he has talked to the neighbor to the west side of the property who stated that she has no concerns with the driveway or project itself. He clarifies that he and the ZBA agreed that it would be best to push any necessary stone walls to the eastern side when extending the driveway to 10ft to avoid being any closer to neighboring west side property. DeChiara expressed support for the special permit as the requested amendment doesn't radically alter any matters of previous discussions and is reasonable. There is no public comment.

**Motion: Lacy moves to close Public Hearing for H-151 Leverett Rd Wightman Amended Special Permit, DeChiara seconds. Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

#### **Wightman Special Permit Deliberation and Vote as applicable**

Murphy shares the drafted amended special permit decision for H-151 Leverett Rd for PB to review via screenshare; edits considered. Marshall clarifies the case number should be 22-003 as

it was written in the legal ad. Murphy reads through the draft decisions with PB. Murphy shares the draft edit version of the amended special permit for H-151 Leverett Rd and the Variance Special Permit for H-151 Leverett Rd from the ZBA to indicate what was taken from the original permit and what was referenced for the amended special permit based on the variance special permit; Lacy assisted Murphy in editing the draft amended special permit.

**Motion: DeChiara moves to approve the Amended Special Permit for H-151 Leverett Rd Open Space Design, Lacy seconds.**

Murphy asks if any board members have any questions, comments, or concerns about the approach in writing the amended special permit decision. DeChiara states that since the amendment request was minor, the process Murphy did was sufficient. PB has no further comments.

**Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

#### **Draft Testimony for Homerule Petition Regarding Associate Members**

In 2021, the Revisited Associate Member bylaw was passed at Town Meeting. The A.G stated associate members are to only act on special permits when needed; PB and Town Counsel, Donna MacNicol, did not agree. Since a determination by the A. G's office cannot be appealed, they were advised to contact the legislature to submit a Home Rule Petition. At the Special Town Meeting on January 12<sup>th</sup>, 2023, the town voted to start the Home Rule Petition process. A copy of the approved minutes from Special Town Meeting were sent to the legislature as a bill (H4038) to be filed. DeChiara has been working with Sen. Comerford's office during this process; they recently suggested PB submit testimony in support of the Home Rule Petition. DeChiara drafted Testimony to the Joint Committee on Municipal and Regional Government and shares it via screenshare for PB to review. He states Lacy has provided him with small grammatical/spelling corrections and shared this draft with the Selectboard so they may vote to support the letter if they wish.

**Motion: Lacy moves to approve the Testimony for Homerule Petition as discussed and send it to the Selectboard for co-approval, Raymond seconds. Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

#### **Minutes 06/12, 06/20, 07/10, 08/14**

**06/12 – Motion: DeChiara moves to approve the 06/12 minutes, Lacy seconds. Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

**06/20 – Motion: DeChiara moves to approve the 06/20 minutes, Lacy seconds. Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Abstain, and Weston – Aye. *The motion carries.***

**07/10 – Motion: DeChiara moves to approve the 07/10 minutes, Bressler seconds. Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Abstain, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

**08/14 – Motion: DeChiara moves to approve the 08/14 minutes, Bressler seconds. Vote: Bonnar – Abstain, Bressler – Aye, DeChiara – Aye, Lacy – Abstain, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

### **ANR Fee Language**

During the last meeting, PB drafted new language for the ANR Fees that resulted in stating “Filing fee in the amount of \$70 per ANR application. An additional seventy dollars is due for each net additional buildable lot created”. During their discussion, PB agreed they aren’t changing the policy itself but rather clarifying it. The policy should clearly state that when submitting an ANR application, if none or one new building lots are created as a result, then it is a flat fee of \$70. If the ANR creates more than one lot then it is an additional \$70 per lot. DeChiara proposes the policy to state, “A filing fee in the amount of \$70 per ANR application. The fee covers the creation of one additional buildable lot. An additional seventy dollars is due for each net additional buildable lot created beyond the first new lot”. Hastie asks what the purpose of this fee. Deacon answers that is it the cost of doing business. Lacy adds that it is for the town’s assessors maps and that all towns have a filing fee most of which are more expensive. Lacy proposes the policy to state, “A filing fee in the amount of \$70 per ANR application, whether or not a new lot is created. The fee covers the creation of up the addition of up to one additional buildable lot. An additional seventy dollars is due for each net additional buildable lot created beyond the first new lot”. PB agrees with the ANR Fee language as revised and has no further comments.

**Motion: DeChiara moves to approve the ANR Fee language as discussed and adding it to the ANR application, Bonnar seconds. Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

### **Master Fee Schedule**

DeChiara shares that application fees for all permit applications are only stated on the applications themselves. He recommends that he and Carey Marshall, Land Use Clerk, work on creating a Master Fee Schedule that could be posted on the PB webpage and as a general document to guide both the PB and the public. PB agrees with DeChiara recommendation. Murphy adds it would be helpful to list the application form with the fee schedule so in future cases where PB decides to update the fee then the correct application can be updated as well. PB agrees.

### **Bylaw Discussion**

**Open Space Design** – DeChiara shares that during the Wightman Open Space Design Special Permit process, it was discussed that the Open Space Design for H – 151 could have not been done under an ANR because the property did not have enough frontage. He is recommending that PB consider amending this section of the bylaw to state that ‘Open Space Design shall not be permitted for the creation of one dwelling which would otherwise be prohibited by right’. Lacy shares that when they were drafting the current bylaw back in 2008, PB decided to make

Open Space Design projects more appealing to landowners through this principle; allowing landowners with land that doesn't have enough frontage to build one dwelling but the rest of the land remain open. He adds that there is a provision in the bylaw that allows PB to assess the benefits verse the detriments of a special permit project proposal. If the benefits outweigh the detriments then PB should move forward with the project where as if the detriments outweigh the benefits then PB could turn down the project. Due to this, Lacy would be against this change as proposed by DeChiara. Bressler and Bonnar agree with Lacy's comments. DeChiara understands and agrees with their comments. He suggests that the weighing of benefits and detriments language should be more clearly stated for applicants. Murphy understands both DeChiara main concern and Lacy's comment about the appeal of the Open Space Design. DeChiara recommends they include this topic in a future meeting(s) to have a more detailed discussion. Bressler is not convinced that Open Space Design section can be tweaked in order to cover all conditions that couldn't already be done in the conditioning power of the PB during a special permit.

*This matter will be further discussed in a future meeting*

**Amendments to Special Permits** – DeChiara summaries a that another realization made during the Wightman Open Space Design was that when Wightman was requesting an amendment the process of a special permit application had to be repeated because there isn't an allowance or process for making minor changes to special permits. He notes that PB could discuss drafting a policy for amending special permits that would include a preliminary meeting with PB and the applicant to determine whether the request is de minimis or not. It would require two votes by the PB: a vote to determine whether the change is de mimesis, and the second to consider approval of the proposed change. If the PB wanted to include this policy then they would need to discuss what the standards would be for a de mimesis or minimis request. PB would also need to consider if a public hearing would be required. Bonnar asks if this process exists in another town. Lacy is unaware. Miriam DeFant., Chair of the Conservation Commission, shares the commission's process for amended Orders of Conditions. The commission votes to determine whether the amendment is a minor change, then holds a public hearing. If the commission does not find the amendment to be minor, then a new permit is required. DeChiara understands this could be discussed in further detail in future meetings so he will plan to talk with MacNicol for more information. Lacy recommends looking into the guidebook for any mentions of the topic.

*This matter will be further discussed in a future meeting*

**Tiny Houses/Accessory Apartments** – DeChiara shares he has done some basic research and that he shared his resources with Raymond. He adds that in his research he has discovered that there is an overlap in Tiny Home and Accessory Dwelling regulations. Raymond shares that he learned that the state has passed special building code for tiny homes meaning that if PB were to pass a bylaw for tiny homes then the building inspector would have support in enforcing.

**Night Skies (light pollution issues)** – *Discussion Tabled*

### **Unanticipated Business**

*None*

**Motion to Adjourn: DeChiara moves to adjourn, Lacy seconds. Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.***

**Meeting Close: 9:25pm**

**Next Meeting: October 16<sup>th</sup>, 2023 @ 7pm**

**Documents Used**

- H-151 Leverett Rd Wightman Amended Special Permit Application
- H-151 Leverett Rd Wightman Special Permit April 10, 2023
- Draft/Approved Testimony for Homerule Petition Regarding Associate Members
- H-151 Leverett Rd Wightman Amended Variance Special July 20, 2023
- ANR Fee Language