

Shutesbury Planning Board Meeting Minutes  
September 14, 2020 Virtual Meeting Platform

Planning Board members present: Deacon Bonnar/Chair, Jeff Lacy, Steve Bressler, Michael DeChiara and Linda Rotondi

Staff present: Linda Avis Scott/Land Use Clerk; Becky Torres/Town Administrator,

Guests: Attorney Paul Bobrowski/Bobrowski & Vickery, Jason and Nicole Zabko, Veronica Richter, Nathan Murphy, Allen Hanson, Henry Geddes; April Stein and Rita Farrell/Select Board

At 7:01pm, Bonnar calls the meeting to order and reads a statement relative to conducting virtual meetings following the Governor's restrictions on public meetings into the record.

Public Comment: None offered.

Lot F29 Montague Road/Jason Zabko: As an abutter to Lot F29, Bonnar recuses himself from this agenda item. In Bonnar's absence, Bressler will chair this portion of the meeting. Lacy: the request to make a case before the Board was initiated by Attorney Bobrowski on behalf of the Zabkos. Attorney Paul Bobrowski of Bobrowski & Vickery, attorney for the Zabkos, introduces himself and explains that the goal of the discussion is to get a read on where the Zabkos stand in respect to Lot F29 Montague Road and the camp structure located on the property; the Zabkos received cease and desist letter, dated 6.9.20, from FCCIP Building Commissioner James Hawkins. Bobrowski continues: there is a lack of frontage for a dwelling unit, however, the structure is a camp and does not meet the dwelling requirements of the State Building Code; the Open Space Design bylaw refers to dwelling units and the Zabkos have no intention of dividing their property; the camp is one room with a loft and does not have any sanitation; the Open Space Design process does not apply to this use and the 1,000 foot driveway does not apply as access to the camp is via a gated easement. Bobrowski suggests the camp be considered an accessory use as per the State Building Code for dwelling use and the *Town of Shutesbury Zoning Bylaw* Section 3.3-1: "In addition to the principal uses permitted in a district, accessory uses and structures which are subordinate and customarily incidental to such permitted use shall be allowed on the same terms as the principal use"; in this case, the structure is incidental to hunting as the principal use; hunting is allow by the State. Bobrowski recommends the Zabkos submit a Site Plan Review application to satisfy the Building Inspector who will permit the use of propane and a generator which the Zabkos are willing to bring to code if needed. All Planning Board members have reviewed the information, prepared by Bobrowski, about the structure on Lot F29. Jason Zabko appreciates the opportunity to talk with the Planning Board and explains that Attorney Bobrowski was consulted for advice before the camp was built; because there would be no well or septic, it was felt that it was okay to build. J. Zabko continues: there is a trail that folks walk; construction was observed by a Select Board member who walks on the trail and made no comment and others walked by the site with no negative feedback; John Puffer had a camp with multiple buildings on an abutting property. Per J. Zabko, he figured the structure would be taxed; it is a place to hunt from and warm up while snowmobiling. Nicole Zabko: construction has been ongoing for more than a year so they were surprised to be contacted by Hawkins with a cease and desist order and the need to work out the situation with the Town. Per N. Zabko, Hawkins was contacted by the Assessors' office; we had no idea we were doing

anything wrong; we have been residents of Shutesbury for 19 years and the camp is one mile away from their home; they want to make things right so the structure can be a place for camping and hunting. Bressler: the members need to determine if this situation is a Planning Board issue. Bobrowski refers to Section 3.3.-1, "shall be allowed principal use" which in this case is hunting and would allow Planning Board oversight. DeChiara: hunting is not a "use" per the "Use Table". Bobrowski: Section 3.2 "Prohibited Uses in All Districts" states "shall be prohibited, unless state or federal law provides otherwise"; state law allows hunting therefore this is an allowable use. Lacy refers to the "Use Table" for examples of principal use; something like hunting is not a principal use. DeChiara agrees: without a principal use, the definition of the camp as an accessory structure falls apart; as per page 72 of the *Zoning Bylaw*, accessory use is defined as "A use customarily incidental and subordinate to the principal use or building, and located on the same lot with such principal use or building". Bobrowski asks the Board how they square with the camp, built in 2003, on the adjacent property. Lacy: the statute of limitations on for that structure has run out. J. Zabko: the Town taxed that structure as an outbuilding even though it exceeds what our structure is. Bobrowski will take under consideration what the Planning Board says about hunting though asks if an Open Space Design Plan could be expedited as much of the process does not apply to this property. Lacy: Article V "Open Space Design" requires that 80% of the acreage be preserved in a conservation restriction with the remaining 20% available for a residential unit; if such an application is successful, one could build less than a residential unit; as per annual town meeting, a Special Permit is required for Open Space Design applications. DeChiara: this is a land locked parcel without frontage. Lacy: under Article V, one could propose a plan without frontage that has, however, deeded access from a public road; a Special Permit decision is a discretionary decision by the Planning Board so, theoretically, approval is possible. Bressler: a hunting cabin is less than a structure and Article V was intended for development. DeChiara reads the first line of Article V into the record: "The primary purpose of this Section is to preserve the open space resources of Shutesbury as identified in the Master Plan, especially large contiguous blocks of forested backland that must be maintained as large-acreage holdings..."; in this case, a structure was put into the middle of the forest. Lacy notes the need to avoid deliberation before an application is submitted. Bressler: at this time, this is the best guidance the Board can provide. Lacy reviews the options: an Article V application through the Planning Board; appeal the Building Inspector's decision through the Zoning Board of Appeals and argue that the structure falls below the definition of a dwelling unit; or apply for a Variance through the ZBA. J. Zabko confirms that there is no sanitation in the structure, the loft is for storage, the refrigerator stores food for the day.

Bobrowski will confer with the Zabkos about next steps. Lacy confirms for Bobrowski that the 7.27.20 version of Article V, which passed annual town meeting unedited, is pending approval by the Attorney General's office. DeChiara recognizes the difficulty of the Zabkos' situation. N. Zabko: they will do whatever they need to make it right because they would be devastated if the camp had to come down. J. Zabko confirms for DeChiara that the structure is located where the arrow is on the map prepared by Bobrowski. Per Bobrowski, the Puffer property uses the same deeded access; the Assessors' property card for the Puffer site no longer has photo and the structure on the Zabko property is now called a "ranch" on the property card. To Bressler's question, Bobrowski confirms that there are no sanitary facilities even though the property card assigns a half bath. The Zabkos confirm that the camp does not have a bath; the Puffer site has an outhouse.

Bressler: the Board sympathizes with the Zabkos' predicament; the next step is to see how the Zabkos and Attorney Bobrowski decide to proceed. Lacy: it is important to be mindful of any limitations to the access easement.

At 7:42 pm, Bonnar resumes chairing the meeting.

DeChiara moves and Raymond seconds a motion to approve the 8.3.20 meeting minutes. DeChiara explains the proposed edits for consistency so that each subdivision decision is explicit as to rejection and disapproval. Lacy prefers changes other than ministerial be made in the context of the meeting. DeChiara agrees to the need for review of changes in the meeting. Bonnar: the proposed edits have been clearly distinguished in the 8.3.20 minutes; the Board needs to be clear about what is being approved. Scott: italics indicate what was originally written; red text indicates the proposed edits. Bressler agrees with the proposed changes. Bonnar verifies that all members understand they are approving the minutes with proposed edits in red text. Roll call vote: DeChiara: aye, Lacy: aye, Raymond: aye, Bressler: aye, Rotondi: aye, and Bonnar: aye; the motion carries.

Responding to Board Email: DeChiara emailed Bonnar asking what the protocol is for responding to email, i.e. the Select Board Chair has a standard response indicating that the Select Board cannot respond to specifics outside an open meeting. DeChiara is concerned that inquiries may not be responded to. In practice, Bonnar responds to an entirely specific factual question, i.e. how much frontage is required; the question is how to respond to a question that does not have a factual answer. Lacy recently answered a question from a regional planning agency; when the ZBA receives inquiries, either Chair Chuck DiMare or Lacy respond with facts to questions that can be answered in between meetings; bylaw questions, such as those asked by Bobrowski earlier, can only take place in a meeting. Bonnar to DeChiara's question: yes, as Chair, he will respond, though because the Board has the benefit of a professional planner, Lacy will respond to some questions. DeChiara: the content of emails will not constitute deliberation; to limit the interpretation factor, inquirers can be referred to the Board's webpage. Bressler: if there is not a factual response, a form email can invite the inquirer to a meeting.

Planning Board Vacancy: Bonnar invites the individuals interested in serving on the Planning Board to speak in alphabetical order and notes that Mary David, who is unable to attend this evening, continues to be interested in serving. Henry Geddes states that he has a longstanding interest in policy on many levels including local government; change is inevitable however the question is how change occurs; it is a good time to become involved; he has an affiliation to reading law and applying policy based on evidence; he wishes to be involved locally to make a difference. To Lacy's question, Geddes explains that he currently serves on the Historical Commission and has experience serving on nongovernmental boards and doing academic committee work and currently teaches Tai Chi through a library program. Explaining that he will ask this question of all applicants, DeChiara asks Geddes how he would explain the role and scope of the Planning Board and what issues are important for Shutesbury to think about over the next ten years. Geddes: aside from the grand vision for the town, an important function of the Planning Board is implementing policies that would regulate sprawl, use of land, zoning, and processing the vision of the Town in relation to Mass General Law regarding zoning, land use, and local laws; he believes in the policy process to anticipate

change. Geddes imagines more people will move to the area; it is possible the town may grow; it is important to have a vision that is equitable in terms of reasoned resource use and zones of use. Raymond clarifies that this is for a vacancy term and, noting that Geddes has been active as an abutter to the Baker Road ANRAD (before the Conservation Commission), asks him if he would have a problem with recusing himself if a solar project on this site comes before the Planning Board. Geddes states he would not have a problem recusing himself and would want to see what it is like to serve on the Board before deciding whether to run.

Allen Hanson states that in a lot of ways he agrees with Geddes; population growth and climate change are pressures for the Town; as a result of the pandemic, small towns are more popular; how will climate change affect the area and how will climate change and growth play against each other. Hanson notes that he has long been involved in serving the town and wants to assist in guiding the town into the future. Bonnar notes that the 2008 revision of the Zoning Bylaw was motivated by population growth which then stalled. Hanson: things may change in ways we do not expect. Bonnar: yes, that is why bylaws can be reconsidered. Hanson notes that he served on the recent Master Plan Committee. Hanson to DeChiara's question: primarily, the Planning Board applies known principles to the Town, i.e., what laws are applicable to issues needing addressing. Stein asks Hanson to expand on specifics in the Master Plan that were not addressed. Hanson: in hindsight, how to address potential increases in population because, at the time, the school population was going down; how to maintain the Town's rural character, i.e. how and/or will growth be allowed.

Nathan Murphy, referring to his email statement, notes that he served six years in the Marine Corps Reserve, received his college education at UMass and is from New England. Murphy continues: in July, he and his family moved to Shutesbury; he grew up in Barre where his father served on the Planning Board. Murphy notes that he does not have experience in planning however his professional experience may assist with streamlining processes; his goal is to become involved with Town; he finds Planning Board work to be fascinating and a good avenue to serve the public good. DeChiara welcomes Murphy to Shutesbury, notes that if he is not chosen for the Planning Board there are other Town volunteer opportunities, and asks what Murphy understands about planning boards and how he would explain the Board's role and issues the town may be facing. Murphy learned from the Town website about the role of the Planning Board regarding updating the Master Plan and zoning bylaws and review of applications. Murphy acknowledges that he is new to Town so his understanding of issues is limited though notes that issues could be affected by the divisiveness taking place nationally and identifies the need to maintain a system of civility and the ideals of the Town related to open space, natural resources and conservation. Murphy observes that as time passes and folks move on from public service, others are needed to maintain public awareness, keep the vision going and ensure that it is not eroded by what may come in the future. Raymond appreciates Murphy's interest as a new person in town and asks if it is likely he would run for the elected position. Murphy would need some experience before making the decision; leans toward yes though needs to develop a knowledge base; if he is not a good fit, he will support another more qualified candidate; hopes that a fresh perspective and energy will assist in his endeavors.

Veronica Richter observes that she has lived in town a long time and bought an additional 104 acres to save a piece of forest from being developed. Richter has been involved in serving the Town for many years: as Town Clerk, the Space Needs Committee when the elementary was school built, Cultural Council, Municipal Vulnerability Preparedness (stakeholders' group), and the Open Space Committee which provided her with a good understanding of the land in Chapter

61 and conservancy. Richter notes that she has time to volunteer and explains that the Planning Board does make policy recommendations pertaining to zoning and land use. Richter recognizes the need to look at what may be changing and react to it, i.e. the school was built for 240 students and now has 135-140 students. Bressler asks Richter if there is one particular issue of concern. Richter: when the zoning bylaw was revised in 2008, growth stopped; the Board needs to watch and consider whether changes need to be made, to watch and anticipate growth. Bressler acknowledges the level of interest in the Board's vacancy. DeChiara notes that State law allows associate members however, to do so, would require a bylaw change. Bonnar emphasizes the need to maintain quorum. Geddes acknowledges that he was recently elected chair of the Historical Commission and may not be able to maintain both responsibilities. Regarding next steps, Bonnar notes that a 9.15.20 Planning Board meeting has been posted. Torres recommends, in Makepeace-O'Neil's absence, the Planning Board and Select Board vote on the new member during the Select Board's 9.15.20 meeting. Stein concurs with this recommendation. Lacy: the Select Board has not met Mary David who has not had an opportunity to answer the same questions. Bonnar will extend an email invite David to the 9.15.20 Select Board meeting.

DeChiara and Bonnar to Raymond's question: the nine individual Select Board and Planning Board members each vote; per Statute, the majority vote decides. Farrell confirms that the Planning Board met with Mary David during their 8.3.20 meeting. It is noted that the Town Clerk may be contacted to obtain a link to the recording for the 8.3.20 meeting. Bonnar: in retrospect, the Select Board could have attended the 8.3.20 meeting. Stein to Bonnar: in fairness, see if David can attend 9.15.20. By a consensus decision, Planning and Select Board members agree to a 9.15.20 meeting with a 6:30pm agenda item. Bonnar recommends that on 9.15.20, Planning and Select Board members educate each other about what is important about Planning Board membership. Bonnar thanks the Stein, Farrell, and the candidates for attending.

At 8:56pm, DeChiara moves and Lacy seconds a motion to adjourn the meeting. Roll call vote, Bressler: aye, Lacy: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

Documents and Other Items Used at the Meeting:

1. 6.9.20 letter from James Hawkins/Building Commissioner "Re: Parcel F-29, Shutesbury MA"
2. Packet of information regarding Lot F-29 prepared by Attorney Paul Bobrowski
3. Candidate statements from Mary David, Henry Geddes, Allen Hanson, Nathan Murphy, and Veronica Richter

Respectfully submitted,  
Linda Avis Scott  
Land Use Clerk