

Shutesbury Planning Board Meeting Minutes
August 28, 2017 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Jeff Lacy, Jim Aaron, Robert Raymond, and Steve Bressler

Planning Board member present via remote participation: Miriam DeFant

Planning Board member absent: Linda Rotondi

Staff present: Linda Avis Scott/Administrative Secretary

Guests: Attorney Donna MacNicol/Town Counsel, Shane Bajnoci/W. D. Cows, Mary C. Serreze/*Republican-MassLive*, Beth Adams/Leverett, Sarah Kohler/Wendell, Robin Griffin/Virginia, Becky Torres/Town Administrator, and Shutesbury residents: Elaine Puleo, April Stein, Al Springer, Karen Traub, Michael DeChiara, C. A. Ezzell, Mary Lou Conca, Jade Alicandro, Sasha Rivera, Leslie Cerier, James Schilling-Cachat, Mike Vinskey, and Rolf Cachat.

Bonnar calls the meeting to order at 7:12pm.

1. Election of Planning Board Chair: Raymond nominates Deacon Bonnar to be the Planning Board Chair; Bressler seconds the motion. Bonnar is unanimously elected as the Planning Board Chair.
2. Conflict of Interest: Bonnar reports that all current Board members have completed their “conflict of interest law training”. Bonnar acknowledges Planning Board receipt of Miriam DeFant’s 8.28.17 statement regarding her conflict of interest as a “near-abutter of the Wheelock Tract Solar Project”. Attorney Donna MacNicol/Town Council: Mass General Law indicates that a member of a planning board who is a direct abutter of a project before the board does have a conflict of interest; DeFant has submitted a letter to the Planning Board explaining her conflict and will be recused whenever the Wheelock Tract Solar Project is on the agenda. DeFant states her wish to be clear about her conflict of interest as a near-abutter of the Wheelock Tract Solar Project and her plan to recuse herself.
3. 7.24.17 Letter from Mary Lou Conca: Conca states her concern about the solar project and the number of trees that will be taken down. Conca reads her 7.24.17 letter to the Planning Board into the record (see attached). Lacy reads a draft Planning Board response to Conca’s 7.24.17 letter into the record. James Schilling-Cachat asks if Lacy’s draft response has been shared with any Planning Board member prior to the 8.28.17 meeting. It is clarified that the Board could not deliberate on the draft prior to the meeting. MacNicol agrees with the first paragraph of the draft response. Bressler acknowledges that the second paragraph of the draft is a consistent statement. Bonnar, referring to “The Planning Board would not have objected, but has no authority to require the landowner to admit a tribal historic preservation officer (THPO) onto the property” recommends “would have preferred” versus “would not have objected”. Bressler and Lacy

agree with Bonnar's recommendation. Bressler emphasizes that the Planning Board "has no authority to require the landowner to admit a tribal historic preservation officer". Sarah Kohler/Wendell, regarding the second paragraph: prior to the trespass order, three lettered archeologists walked the property and stated before the Board that burial grounds exist on the site; the Planning Board does not have the credentials nor the authority to determine the presence of burial grounds. There are no comments offered relative to the third paragraph of the response. Lacy: the Board gained the conclusions stated in the fourth paragraph from the consultants and fieldwork. Bressler, referring to the fifth paragraph, recommends adding that the town cannot unreasonably regulate solar projects. MacNicol: Chapter 40A Section 3 requires that solar projects not be unreasonably regulated or conditioned. MacNicol, referring to the sixth paragraph, would add that some of the special permit criteria speak about benefits to the town and community. Bressler: the Planning Board never noted the financial benefits of the project to the town; the benefits of the "payment in lieu of taxes" (PILOT) were not considered relative to the Planning Board special permit. Conca asks Lacy if, as a Department of Conservation and Recreation (DCR) logger, he has a conflict of interest. Lacy states that he is not a DCR logger. Conca: has the survey by a THPO been conducted? Lacy: the Planning Board voted that preconstruction condition #1 had been met. Conca: was that decision arrived at in the same way this letter just got read? Conca to Lacy: what are your special interests? Lacy explains that Conca's letter was received by the Planning Board and that the Board is presently deciding how to respond to the letter and that preconstruction condition #1 was considered over several open meetings and deliberated upon prior to a decision being made. Conca asks Lacy about his relationship with Cinda Jones/Cowls. Lacy: in his roles as a DCR land use planner and a member of the Planning Board, he has known Jones, owner of a large amount of land, for approximately twelve years. Edits to the draft response are reviewed; no other suggestions/changes are offered. Raymond moves to approve the response letter as edited; Bressler seconds the motion that passes unanimously.

4. Letters from Bettina Washington/Tribal Historic Preservation Officer/Wampanoag Tribe of Gay Head (Aquinnah): Bonnar explains Bettina Washington's request for her letters, including dates, to be included in the record for the 8.28.17 meeting and that the issues noted in her letters have been addressed. Bonnar acknowledges that differences have been voiced and that the Planning Board's processes have been found inadequate by those voices. Lacy reads the 7.7.17 Washington letter into the record (see attached) and notes that Washington's request for a copy of the special permit has been met. Lacy: Washington requested that her letters be reintroduced into the record, which they have been. Leslie Cerier stated that she has attended many Planning Board meetings and that Eric Johnson, the Planning Board's archeology consultant, stated that a real tribal expert would know better than he. Per Cerier, we need a real expert; Doug Harris/Deputy THPO was willing to help however could not do so because he could not go on the land; this is not a sustainable project. Lacy to Bonnar/Chair: the public is bringing up matters that have been previously

addressed. Ezzell: it is shameful that the Board not address the matter of a THPO. Lacy notes that Washington's letters have been re-introduced into the record and moves the Planning Board move to the next agenda item; the motion is seconded by Bressler and passes unanimously.

5. Court's Order of Dismissal/Civil Action No. 16-30144MGM: Bonnar notes that the memorandum and the Court's Order of Dismissal is included in the 8.28.17 Planning Board packet and encourages members to read the document.
6. Cowls/DCR Inholdings: Shane Bajnoci/Vice-President Forest Operations, Cowls, Inc.: Cowls is considering donating properties located in the northeast corner of Shutesbury to DCR; Cowls is interested in understanding the aggregate value of the land and relative zoning bylaws; the land in question is an 11 acre parcel located on the east side of New Boston Road and a 50 acre parcel on the west side of New Boston Road. Lacy explains that as a DCR employee, he had email communication about these Cowls' "inholding" parcels located within DCR land; per Jim French/DCR Land Acquisition Coordinator, DCR is interested in these parcels. MacNicol: Lacy has no conflict of interest as would have no financial gain related to the transition; if there is an appearance of conflict, the relationship needs to be explained as Lacy has done. DeFant: would it be a conflict if Lacy worked for a private company that could benefit from sale? MacNicol: it would depend upon the size of the company and other specifics. Bressler confirms that Lacy referred the inquiry to the Land Acquisition staff; subsequently, Lacy advised relative to Shutesbury zoning as to the transfer of development rights for land locked parcels; for example, if Cowls had an open space design project somewhere else in town, the development rights from these landlocked parcels could be transferred to that project. MacNicol: in this case, this land would be donated to DCR and Cowls wants to know the development value for tax purposes/a donation deduction. Bajnoci: his calculations resulted in an aggregate of three building units. Lacy: as per the Bylaw, a transfer can be made from multiple parcels; the question is whether it has to be done by parcel or in the aggregate. Bajnoci: we are using an old recorded land deed; the parcels have not been surveyed. Bressler: slopes over a certain percentage and wetlands are taken out of the calculations. DeFant: do the calculations need to include town bylaw jurisdictional wetlands? Bajnoci: this is a preliminary inquiry before further expense, i.e. wetland delineation or survey. Bonnar: surveying may make a difference. Lacy: a survey would be required for a land transfer to DCR; three development rights are possible. Bajnoci: is it possible to aggregate? Bressler: is the Bylaw clear on aggregation? MacNicol: the Bylaw is not clear on aggregation; refers to Section 5.3-4 of the Bylaw, "Density transfers may only be permitted from sending parcels in the FC district to receiving parcels in either the FC, RR, or TC districts"; it does not include guidance on combining parcels; recommends Board members review the Bylaw and consider the matter at a future meeting keeping in mind the precedent that may be set. DeFant affirms consideration of the precedent. Bressler to Bajnoci: the next step is a survey. Lacy to MacNicol: would the Board vote on an interpretation of the bylaw? MacNicol: yes, the

concern is not larger parcels; the concern may be for aggregation of several small parcels. Lacy: a transfer of density rights is considered under a special permit; however, in this case, there would not be a special permit. MacNicol: this section of the Bylaw could be amended for clarity. Bonnar suggests adding this item to the list of “possible zoning amendments”. Cerier confirms that Shutesbury receives tax income on land from Cowls. Bajnoci confirms that this land in Chapter 61. Lacy, as a DCR employee, explains that DCR pays PILOT to the town of Shutesbury. Bajnoci understands that the Board will consider their Zoning Bylaw and that Cowls will consider surveying the parcels. Michael DeChiara states that he is representing only himself and in regard to conversations about generating income for the town: in this case, Cowls gets a tax break on land in Chapter 61 and for donating the land and DCR receives the land - the Planning Board needs to consider the financial benefit to the town. MacNicol: the only question before the Board is whether aggregation is possible; if it were a special permit process, there could be a condition about aggregation. Bressler: there are definitely two units; an aggregate could give Cowls three units. Bonnar confirms for DeFant that there is a rounding clause in the Bylaw. Conca: it appears that Lacy is advising a private party. Conca asks Bajnoci if the trespass order can be lifted. Bonnar informs Conca that her inquiry is not relevant to the topic. Lacy explains that part of the Planning Board’s role is to provide guidance to inquiring parties. MacNicol explains to an inquiring member of the public present, who does not identify himself, what a direct or indirect conflict of interest may be.

7. Planning Board 6.12.17 Minutes: Lacy moves to approve the 6.12.17 meeting minutes as presented; Bressler seconds the motion that is approved by Bonnar, Lacy, Aaron, and Bressler. Raymond and DeFant were not members of the Planning Board on 6.12.17.

At 8:29pm, James Schilling-Cachat informs the Planning Board that he had been video recording the meeting up to this point.

8. Master Plan Working Group Update: Lacy reports that the group is continuing to meet and plans to report to Planning Board in early October 2017; there are three areas of focus: Lot O32, a financial sustainability study, and “low hanging fruit”/ short term attainable projects.
9. Possible Zoning Amendments: Lacy: there are four possible zoning amendments that could be considered during a potential fall special town meeting: 1. Make clear that common drives are by Planning Board special permit. 2. Re-evaluate the terms under which non-subdivision Open Space Designs are permitted. DeFant asks about extending Town Center (TC) area and frontage requirements. Lacy: doing so may make some parcels more developable; this item is not on the non-controversial list. Bonnar: this proposed change was controversial when previously considered. 3. Increasing the square footage of accessory apartments. 4. Updating Planning Board fees is a regulation to be voted upon by the Board and does not require a Bylaw change. Bressler recommends adding language

specific to aggregation. DeChiara: language regarding roadside signage is about size not location therefore he would like the Board to consider clarifying the language about location. Lacy: changes to language in the signage section of the bylaw could be for annual town meeting. Bressler: currently, the language does not distinguish between temporary and permanent signs.

10. Unanticipated Business: none offered.

At 8:39pm, Raymond moves to adjourn the meeting; Bressler seconds the motion that passes unanimously.

Documents and Other Items Used at the Meeting:

1. 8.28.17 DeFant email: "Statement for 8.28.17 Planning Board meeting"
2. 7.24.17 Conca email: "MGL Chapter 114 Section 17"
3. 8.22.17 Washington email: "Wheelock Solar Project"
4. 7.7.17 Washington email: "Re: Wheelock Solar Project"
5. 5.2.16 Washington letter
6. 8.15.16 Washington letter
7. 8.15.17 Lawless/Robinson & Donovan letter with "Memorandum and Order Regarding Pending Motions"/Civil Action No. 16-301144-MGM
8. Flyer and press release for the 8.28.17 Peaceful Vigil to be held on the Shutesbury Town Green.
9. Letter from Emily Bayard and Greg Caulton delivered by Leslie Cerier and received for the record by Bonnar at the beginning of the 8.28.17 meeting.

Respectfully submitted,
Linda Avis Scott
Administrative Secretary