

Shutesbury Planning Board Meeting Minutes  
August 13, 2018 Shutesbury Town Hall

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

Planning Board members absent: James Aaron

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Mark Olszewski/Lot D18 Locks Pond Road, Emily Boss/Franklin Land Trust, and Jeff Macel/Lodestar

Bonnar calls the meeting to order at 7:34pm.

Public Comment: None offered.

Lot D18 Locks Pond Road Open Space Design: Olszewski presents the final plan for Lot D18 titled “Plan of Land Prepared for Mark Olszewski in Shutesbury MA” by Edmond J. Boucher/PLS dated 7.12.18. Lacy: the request is to not treat this plan as an “Approval not Required” (ANR) however have it incorporated into the Site Plan Review (SPR) decision. Lacy explains that he conferred with the Building Inspector and Attorney Donna MacNicol/Town Counsel and explained to the Building Inspector that the parcel includes a building envelope and a Conservation Restriction (CR) approved during SPR and that the building envelope is a subset of the parcel; the Building Inspector understands the situation. Lacy suggests the Planning Board accept the plan and add it into the SPR approval for the project. Emily Boss/Franklin Land Trust: this is the final official plan. Lacy: yes, this is the plan with the most information on it. Bressler moves the Planning Board accept the “Plan of Land Prepared for Mark T. Olszewski in Shutesbury MA” by Edmond J. Boucher dated 7.12.18; Rotondi seconds the motion. Bressler asks whether the building envelope has a right of way for public access. Olszewski: there will be no public access. Boss: Franklin Land Trust will have access for the required annual CR monitoring visit. Lacy: the owner can allow public access. Motion passes unanimously.

Lot ZG2 Pratt Corner Road Wheelock Solar Site: Jeff Macel/Lodestar refers to the 8.8.19 letter to the Planning Board from Attorney Thomas Reidy/Bacon and Wilson representing “LSDP 12, LLC a subsidiary of Lodestar Energy LLC operators of the Wheelock Solar Project” regarding removal of detention basin #3 from the plan as it was “deemed excessive and unnecessary”, installation of gravel pads for battery storage and the addition of reconfigured panels. Macel: per Reidy, these items are in conformance with the “As-Built” plan; Town Counsel MacNicol also received a copy of the letter. Lacy: feedback from MacNicol regarding the content of the letter is pending. Macel: Reidy is waiting for MacNicol’s comments; once received, they will formally submit an “As Built” plan for formal acceptance; if substantially similar to the original plan, Reidy concludes it is in conformance; the envelope has not changed from the original plan. Macel refers to Special Permit sheet 4.0 and compares it to the 7.30.18 plan. Macel does not have a full size 7.30.18 plan for the Board to review. Lacy and Bonnar/Planning Board and Penny Jaques/ConCom toured the site on 8.10.18. Lacy states that he has no concerns about the removal of detention basin #3 from the plan as the site is stable in this area. Lacy asks about the total number of panels. Macel: without an extension, there are 5.630 megawatts; extending into

the area near the proposed site for basin #3 would bring the total to 6 megawatts; we are using higher efficiency panels than what was originally proposed. Macel continues: what we are proposing does not require any earth moving or grading; about 1,000 individual panels are needed. Bonnar: how much disturbance will new posts create? Macel: virtually none as a ground screw will be used; for rocky spots, a pilot drill will be used. Lacy: terracing does not appear to have been done; will rock diversion berms in area #3 be done? Macel: yes. Lacy: the plan needs to be updated to reflect how the detention basins actually are. Lacy continues: Jaques and I agree that the site is stable and rain water flow is being contained even with the recent storms; there appears to be no movement of any material; the drainage changes are okay and will work even better as the site becomes more vegetated. Lacy confirms with Macel that the three gravel pads near the inverters are for later battery storage. Macel: yes, Lodestar will come to the Board for approval of the batteries at a later date; the energy storage portion of the SMART program is pending; there are a number of hurdles before approval. Raymond: would it be helpful if the Planning Board stated our support for battery storage on this site? Lacy asks if the battery storage will require additional access to the site? Macel: access would be through the panels; no new ingress or egress or additional disturbance is needed; the pads will be located near the inverters. Lacy notes that the Board needs to know MacNicol's feedback on Reidy's letter therefore asks for the Board's approval for him to confer with MacNicol. Lacy reads Section 9.3-3 Amendment (*Section 9.4-3 in the 5.8.18 version*) into the record: "The terms and conditions of any Special Permit or Site Plan approval may be amended in the same manner as required for the original approval. Any enlargement, alteration, or construction of accessory structures not previously approved shall require an amendment." Lacy: in order for you not to need an amendment to change drainage, move panels and put down gravel pads, the Planning Board and MacNicol need to agree that these are de minimis changes with no expansion of the project; Lacy's sense is that these are sensible proposals however we need to ensure an amendment is not needed. Macel agrees that conferring with MacNicol is the logical next step. Lacy: Reidy did not direct his response to Section 9.3-3 (*current version, 9.4-3*) and the definition of amendment. Macel reads last paragraph of Reidy's 8.8.18 letter into the record and notes the use of the term de minimis in the second paragraph of the letter: "Notably, none of the above items impacts the footprint, or result in an increase to its permitted entrance, clearing limits, slope protection limits, soil disruption limits or hours of operation". Raymond moves the Planning Board instruct Lacy to confer with Town Counsel MacNicol to ensure the changes noted as de minimis in Reidy's 8.8.18 letter are de minimis and comport with section 9.3-3 (*current version, 9.4-3*) of the Town of Shutesbury Zoning Bylaw; Rotondi seconds the motion. DeChiara requests that Town Counsel's response be in writing. Bressler: we need to know from MacNicol that we are on solid ground. Lacy to Macel: the "As Built" needs to show drainage changes, the new panel configuration and the gravel pads as well as the new BMPs (best management practices) that will be on the east side. Lacy to the other members of the Board: if he receives an affirmative answer from MacNicol, may he inform the applicant and, who, at their own risk, may prepare an "As Built" plan – this would not be a Board decision. Lacy to Macel: you can wait until the Board votes before preparing an "As Built" plan. Macel: we will appreciate the input and understand that there is nothing binding on the Planning Board. DeChiara suggests Lacy report on MacNicol's feedback during an open meeting allowing the Board to have an information exchange. Bonnar to Macel: if Reidy and MacNicol confer and MacNicol is okay with the changes, is that enough for you to go ahead with the "As-Built"? Macel: if they agree that the legal standard matches with the facts, we would feel comfortable doing the plan. Bonnar: the

Planning Board would have the final approval of the “As-Built”. Macel agrees and states “this feels like a fair path forward”. Bonnar, Lacy, Bressler, Rotondi and Raymond approve the motion; DeChiara abstains; motion carries. Macel states that he will ensure Reidy confers with MacNicol.

Cannabis Bylaw: Bonnar suggests the Board review the FRCOG draft bylaw in order to consider what the Planning Board is able to regulate. DeChiara: perhaps a small group might review the draft and bring a report back to the Board. Bonnar: the Board needs to identify what we think is important; we will also want feedback from Sanford Lewis and the Committee. Lacy: the Cannabis Control Commission regulations are restrictive, i.e. lighting, fencing and surveilling; this causes him to think more about Rural Residential and Forest Conservation districts for growing. DeChiara: in addition to growing, there are also retail facilities. Bressler: where do we have discretion? DeChiara: there is discretion in some areas; we need to know what we do and do not have latitude on. Rotondi: can there be a small-scale grower that does not have to light, fence and surveil? DeChiara: that is something Lewis is researching. Bressler: are any other towns working on bylaws? Bonnar refers Board members to the Cannabis Control Commission’s “Guidance for Municipalities”. DeChiara volunteers to review the FRCOG draft prior to the next Planning Board meeting. Bonnar: the highlighted areas in the FRCOG document seem to be areas where there is discretion. DeChiara: differentiating the different types of establishments may be a worthy activity. Lacy: could retail be a home occupation? Bressler moves the Planning Board accept DeChiara’s offer to go through the FRCOG draft bylaws and determine where the Planning Board has discretion and report back during the next meeting. Raymond seconds the motion that is unanimously approved.

DeChiara moves the Board approve the 7.9.18 meeting minutes; Lacy seconds the motion. Bonnar, Lacy, Bressler, Rotondi and DeChiara approve the 7.9.18 minutes as presented; Raymond abstains; motion carries.

Recusal: DeChiara reports on his consultation with Attorney Donna MacNicol/Town Counsel regarding his status as an abutter to Lot ZG2/the Wheelock Tract and membership on the Planning Board; per MacNicol, DeChiara cannot attend site visits nor participate in discussions relative to the Wheelock Tract Solar Project as there is no difference between approval and monitoring; he does not have to leave the room during relative discussions.

2019 Bylaw Proposals: DeChiara notes that the driveway width amendment needs to be revisited and Fire Chief Walter Tibbetts’ objections considered; suggests a more robust sign bylaw and notes that he has a change to the solar bylaw that he will bring forth for consideration. Bonnar: the Board did take up DeChiara’s sign bylaw proposal and decided not to go forward. Bressler: there were some severe aspects to the proposal; he would need to review the document to be more specific. DeChiara states that he would like the opportunity to discuss the sign bylaw. Lacy agrees with the need to revisit the proposed driveway width change; maybe the Board needs to talk about what could be troubling about signage in Shutesbury. Lacy also notes that he would have wanted the Olszewski plan signed and recorded at the Registry of Deeds in order to create an official record. Bressler: is there an action the Board can take on that topic? Lacy: a change could be made in the language of Article V Open Space Design regarding non-subdivision proposals, i.e. the culmination is either a perimeter or an ANR plan signed by the Planning Board

and recorded at the Franklin County Registry of Deed. Bressler explains that in preparation for the May 2018 annual town meeting, the Board agreed to put forward only those bylaw amendments the whole Board agreed with. Next steps: consider amendment proposals during future meetings. All agree to review the list of proposals considered for the 2018 annual town meeting.

At 9:05pm, Raymond moves and Bressler seconds a motion to adjourn the meeting; motion passes unanimously.

Documents and Other Items Used at the Meeting:

1. “Plan of Land Prepared for Mark T. Olszewski in Shutesbury MA” by Edmond J. Boucher dated 7.12.18
2. 8.8.18 letter from Attorney Thomas Reidy regarding “Case Number: PB-SP-6.5.15”
3. 7.30.18 Sanford Lewis letter to the Cannabis Control Commission: “Comments on Draft Host Community Agreements Guidance”
4. 3.20.18 FRCOG draft recreational marijuana bylaws
5. Cannabis Control Commission “Guidance for Municipalities”

Respectfully submitted,  
Linda Avis Scott  
Land Use Clerk