

Shutesbury Planning Board Meeting Minutes
September 10, 2018 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Robert Raymond, Jeff Lacy, Michael DeChiara, Steve Bressler, Jim Aaron and Linda Rotondi
Staff present: Linda Avis Scott/Land Use Clerk

Guests: Attorney Donna MacNicol/Town Counsel; Chuck DiMare and Tom Williams/Zoning Board of Appeals; Becky Torres/Town Administrator; Sanford Lewis, Mary Lou Conca and Don Wakoluk; Patrick Rondeau/Valley Solar; Kevin Sullivan and Jeff Macel/Lodestar

Bonnar calls the meeting to order at 7:30pm.

Public Comment: None offered.

ZBA Case 18-006 Site Plan Review Lot X25 Round Hills Road/Lovley: It is noted that a quorum of the ZBA is present. Chuck DiMare/ZBA Chair: the ZBA has a Site Plan Review (SPR) application for a residential ground-mount solar array; this case is different because the building lot is separate from the proposed location for the array; when considering “accessory use”, the use is accessory to the main home and they are on the same lot or the lots are merged; in this case, the lots are separated by Round Hills Road; given this, the ZBA is requesting the Planning Board’s guidance. DeChiara: it seems the definition being sought is that of “accessory”. DiMare: the array will be connected to a pole on the non-residential lot; the owner’s electricity benefit will come via net-metering. Lacy: the definition for “accessory” is clear. Williams reads the definition of “accessory use” into the record: “A use customarily incidental and subordinate to the principal use or building, and located on the same lot with such principal use or building (page 70 *Town of Shutesbury Zoning Bylaw*). Lacy, referring to page 52: 8.10-2 D. “The Planning Board may waive or reduce any requirement of this Section upon findings of 1. Special circumstances of the site of proposal, or that the objectives of this Section may be met in an alternative manner; and 2. That such a waiver or reduction will not derogate from the purposes or intent of this Zoning Bylaw” - does the Planning Board have the ability to waive “accessory” in this case? Attorney Donna MacNicol/Town Counsel: this portion of the Bylaw refers to large-scale solar array projects. DiMare: the ZBA requested Patrick Rondeau/Valley Solar/applicant’s representative to attend in order to request a waiver. MacNicol questions giving a waiver for non-residential use; it could be one lot with a road separating it. Lacy: it could be a conjoined ANR (approval not required) lot. DiMare: once merged, the ZBA will not have an issue with the SPR application. Tom Williams/ZBA: Lot X25 has plenty of frontage; the question is the size of the lot. Per information on the Assessors property card, the X25 is 2.24 acres. Lacy: it could be a building lot. Williams: the subdivision plan needs to be consulted; it would be in the Planning Board’s records and at the Registry of Deeds. MacNicol: if merged, the owner could be giving up a building lot. Lacy: it could be re-subdivided in the future. MacNicol: yes, as long as zoning does not change. Patrick Rondeau/Valley Solar joins the meeting and refers to 8.10-2 A: the question is whether one could say accessory to non-residential can be used for residential; can terms be mixed and matched? DiMare agrees with MacNicol that accessory use needs to be on the same lot. Lacy explains that the ZBA and Planning Board are referring to definitions; “same lot” occurs in both the definition for “Accessory Structure” and “Accessory Use”. DiMare:

merging may result in giving up a building lot; the subdivision plan needs to be researched. Rondeau: in looking at the subdivision plan for Round Hills Road (Plan of Land prepared by Harold L. Eaton and Associates, dated 10.6.1992), in the top right corner it states that Lot 1A (X25) and 1B (9 Round Hills Road) are to be in “common ownership and never divided into separate ownership”; in the deed there are two parcels in common ownership. DiMare and MacNicol review the deed and note the reference to two parcels. Lacy: the house is on an undersized lot; the house lot is not viable without the other lot. MacNicol: during their meeting, the ZBA needs to review the site plan and deed to ensure the meets and bounds are identical; 1A and 1B need to be clarified and, if yes, they are the same lot and 1A is a non-conforming lot, they cannot be separated as long as the descriptions match. Lacy: the Planning Board does not have any regulatory responsibility in this case; there needs to be confirmation that there is only one lot. DiMare requests Rondeau bring sufficient copies of the relative documents to the 9.12.18 ZBA meeting. Williams, referring to 8.10-2 A: “small scale...which generate electricity principally used by such residential or non-residential use...”: this language is unclear, or interpretable, what does “principal use” mean – due to the net-metering process, use could only be a portion of the energy generated; what was the Planning Board’s intention re: “principal use”? Lacy: “at least 50%” for whatever use is on the property. DeChiara: what you are describing is apportionable. Williams: in fact, most people are not home when the majority of solar electricity is generated; in this case, there will be two meters. Rondeau expects the array to generate 11,000 kilowatts; the home is currently using 10,500 kilowatts. MacNicol: the query is such that is the system designed to meet the use of the residence; the goal is to avoid the construction of an overlarge system. Williams recommends changing the language to “in aggregate”. DiMare thanks the members of the Planning Board and MacNicol for their time and guidance.

Wheelock Solar Site: Jeff Macel/Lodestar refers to a full-sized plan showing the addition of about 5% more solar panels to be located in an approved, cleared area that is more than 100’ away from wetlands. Macel requests this addition be considered in substantial conformity with the original plan; these new panels will be on the eastern side of the array where detention basin #3 would have been. Lacy: the proposal is for ~1,000 more individual panels than originally approved. MacNicol confirms that the batteries are not part of this discussion. Bonnar: the proposal is for the elimination of detention basin #3 in the east and the additional panels. Kevin Sullivan: the demonstrated changes and final configuration of detention basin #2 are on the plan including the plunge pools and the 6” cross pipes. Lacy: the plan needs detail for the outlet and outlet structures. Sullivan: those can be added to the actual “as built” plan. Lacy: there is no problem with how detention basin #2 is working; the changes need to be on the plan. Lacy: there are changes in the three different locations. MacNicol: the changes to drainage basins #1 and #2 are okay for the current special permit; the eastern changes need a special permit amendment; all the changes need to be put on the plan. MacNicol refers to the 6.7.16 Special Permit General Condition #1: “in conformance with the final approved Site Plans with final revisions dated February 26, 2016”...Deviations from said plans, representations made upon the plans, or letters, unless approved by the Planning Board, shall be considered zoning violations”; it does not say material or substantial therefore the arguments need to be made and the final plan approved; the concrete pads can be included in the modified plans; come back and discuss the batteries in the future; an additional 1,000 panels is not de minimis, it is an increase of 5%; Lodestar needs to follow the same Special Permit process as the original. Lacy confirms with MacNicol: the

applicant needs to fill out the special permit form and follow the check list. Bressler asks MacNicol if the language needs to be changed to include “material”. MacNicol: towns are moving toward more specific language because of discussions about what is “material”. Macel: we are waiting for the SMART program to open before submitting the battery design; the plans can be prepared for the next Planning Board meeting and will include the additional panels, gravel pads and detention basin changes. Macel acknowledges the need for a special permit amendment. Bonnar: the documents need to be submitted to the Town Clerk in advance of the time needed to post the public legal notice for 10.15.18. Lacy: the most important details to be included on the plan are the drainage changes.

Cannabis Bylaw Discussion: Sanford Lewis suggests 9.27.18 as a date for the community forum and notes that Don Wakoluk and Mary Lou Conca have expressed interest in membership on the Cannabis Advisory Committee; the speaker, Aimee Burke, has broad experience with cannabis on the west coast and the testing of plants. Lewis identifies the concern about growing hemp and cannabis and the cross pollination that can occur. Lacy: the Planning Board is concerned with issues related to growing and land use. Lewis: we need to know what makes sense for Shutesbury and the bylaws will come out of this. DeChiara: the town approved the formation of the Cannabis Advisory Committee. Lacy: the Committee was going to be advisory to the Planning Board. Lewis: we need to develop a sustainable strategy for both outdoor sun-grown hemp and cannabis that is appropriate for Shutesbury; Franklin County is now promoting hemp and if hemp is grown indiscriminately, it will rule out cannabis; zoning bylaws need to include notification requirements for hemp growing. Don Wakoluk: Lewis is offering a solution for both cannabis and hemp. Lewis refers to his document “Sustainable Development, Cannabis and Hemp: Legal, Ethical and Planning Considerations for Western Massachusetts” and notes the he is working with the Northeast Organic Farming Association (NOFA). Lacy: notes how, as an example, his field would change due to the requirements for growing cannabis, i.e. fencing, lighting and surveillance; as a Planning Board member, his principal concern are bylaws related to siting; recommends Lewis invite Jeff Bagg to speak at the forum - Bagg is a professional planner from Easthampton with experience in zoning for cannabis development. Lewis will plan for a mix of presenters on the topics of growing and bylaw development. Bonnar: the Planning Board needs to figure what regulation is appropriate. Lewis: the forum will focus on sustainable cannabis growing for Shutesbury and the region and will be co-sponsored by the Planning Board and The Sustainable Cannabis Project of Western Massachusetts. Lewis notes that Conca is considering dedicating part of her property to marijuana growing; thus, this forum is meant to answer questions. MacNicol: are people even aware that hemp can undermine cannabis growing and do they even care; if there is interest in sustainable cannabis growth, that will help define the approach to bylaws. Lewis: backyard cannabis growers may be affected by hemp growth. MacNicol: a community meeting may give the Board an idea of what people are interested in. Lewis: we need to proceed with the assumption that we do not want to eliminate sun grown cannabis; the goal may be to come up with a community strategy. MacNicol: there are aspects that the Planning Board can be working on, i.e. distance from schools. DeChiara explains that he went through the FRCOG template, looked at the Cannabis Control Commission guidance and regulations and conferred with Peggy Sloan/FRCOG who looked at places where communities may have issues with facilities to create his “Analysis of FRCOG Marijuana Template”; the Whately “Adult Use Recreational and Medical Marijuana Establishments” bylaw has been approved – it follows the FRCOG model however is more liberal; it is his sense that the Planning

Board has leverage. MacNicol: regarding the distances from any place where children congregate, the State regulations are the maximum you can do. DeChiara explains that he developed the document titled “Types of Marijuana Establishments” as a reference. Bonnar requests members review the relative materials in the packet in advance of the next meeting. Raymond requests a sample host agreement from MacNicol who notes that the regulations set the outside parameters – they set the framework for what people have to abide by and the CCC controls the permitting; there are small areas that the Board can consider for zoning. Lacy moves that the Planning Board authorize a stipend for Jeff Bagg, if needed, of up to \$200 from the Planning Board expense line; DeChiara seconds the motion that passes unanimously.

DeChiara moves and Lacy seconds a motion to approve the 8.13.18 meeting minutes; the minutes, as amended, are unanimously approved.

DeChiara moves the Planning Board use \$85.96 for the Board’s expense line to cover the cost of printing the updated *Town of Shutesbury Zoning Bylaws*; Raymond seconds the motion that passes unanimously.

Lacy encourages members to consider participating in upcoming Citizen Planner Training Collaborative educational events.

2019 Bylaw Amendment Proposals: carry over to a future meeting

At 9:32pm, Raymond moves and Lacy seconds a motion to adjourn the meeting; the motion passes unanimously.

Documents and Other Items Used at the Meeting:

1. 9.5.18 email from Patrick Rondeau “Lovley GM solar tracker – 9 Round Hills Rd” and related site plans
2. Plan of Land prepared by Harold L. Eaton and Associates, dated 10.6.1992 “Definitive Subdivision ‘Round Hills’”
3. “Sustainable Development, Cannabis and Hemp: Legal, Ethical and Planning Considerations for Western Massachusetts” by Sanford Lewis
4. 9.4.18 “Analysis of FRCOG Marijuana Template” and “Types of Marijuana Establishments” by DeChiara
5. Whately “Adult Use Recreational and Medical Marijuana Establishments” bylaw

Respectfully submitted,
Linda Avis Scott
Land Use Clerk