

Shutesbury Planning Board
September 9, 2015
Shutesbury Town Hall
Meeting Minutes

Planning Board Members Present: Deacon Bonnar, Linda Rotondi, Jon Thompson, Steve Bressler, and Jeff Lacy

Planning Board Members Absent: Ralph Armstrong and Jim Aaron

Staff Present: Linda Avis Scott/Administrative Secretary

Guests: Attorney Donna MacNicol/Town Counsel; see guest list.

Meeting called to order by Bonnar/Chair at 7:30pm.

Bonnar introduces the Board members present.

Open Public Hearing on Warrant Article Citizen Petition to Adopt a Temporary Solar Moratorium at 7:30pm

Rotondi reads the public legal notice for a public hearing on a warrant article citizen petition to adopt a temporary solar zoning moratorium that prevents issuance of permits for any "Large Scale, Non-Residential Solar Photovoltaic System" into the record.

Bonnar: the moratorium warrant is listed first in the notice. Miriam DeFant/74 Pratt Corner Road presents testimony "Respectfully Submitted by Miriam DeFant September 8, 2015 and notes that she has crossed out the erroneous document title. DeFant reads her testimony into the record noting that any language relative to mega-wattage was intentionally omitted as the technology may change. DeFant states that she sees the bylaw as a work in process. Michael DeChiara/56 Pratt Corner Road states that he has a process question and asks if testimony addressing both warrant article petitions can be submitted at the same time. MacNicol: it is okay to submit testimony addressing both warrant articles.

Bonnar invites comments/questions from the public in attendance and the Planning Board.

Diane Gula/480 Pratt Corner Road: thinks the town should decide upon the moratorium and the bylaw before permitting the project; is concerned about wells, vernal pools, and forests; project will rape the land of beautiful trees on 30 acres; she moved here for woods; nothing will be left when the project is over; cites need for a solar bylaw before any size project is built.

DeChiara, stating that he is speaking as a resident and is not representing any group or committee: some time in the past the Planning Board was asked to address a solar bylaw; we are not leading as other towns have already created bylaws; we need to have a bylaw to address how we do solar; a moratorium is temporary and may not be needed at all, depending on how a bylaw is created. DeChiara: both the developer and consultant say a bylaw is helpful; we need to design a bylaw that makes sense; we want a process that is clear and works; if a bylaw is passed, it would not kill this project because there is the potential for the developer to submit an Approval Not Required (ANR). DeChiara: if an

ANR is approved and held up, the project would be grandfathered and could go forward even if a moratorium and bylaw are passed; wants solar development that he can feel proud of - cites the Northampton project that will provide power to the town and a list of towns that have solar bylaws.

Marnin Lebovits/Lake Street Development Partners states that he never had an opinion about whether a solar bylaw should be developed; there are zoning regulations that govern solar development; when Marcus/NEE saw this bylaw, he stated "this is not what I recommended," as it is not what the DOER recommends; it is clear that those that support the private (citizen) petition live right around the project site; this project is a long term option for the town; a solar bylaw should be done with a long term vision, not a bylaw directed toward a specific project with such restrictive criteria; it is the Board's decision about what to do; Lake Street wants to be a partner with the town for at least twenty years

MacNicol/Town Counsel: per Chapter 40A Section 6, special permits and building permits issued after the first notice of the public hearing are affected by the bylaw; a subdivision plan filed before the effective date of the bylaw is protected for seven years; an ANR is protected for three years; these are ways to protect the project from a bylaw change. Bressler: it is a given that a moratorium and/or bylaw change could not prohibit this project from going forward. DeChiara: we need to think about what we want in the long term.

Penny Jaques/Conservation Commission asks about the ANR process. MacNicol: an ANR divides land into building lots for which frontage is needed; once you have a building lot, you can build whatever the Planning Board permits; an ANR protects for only three years and would be subject to some requirements; a subdivision plan offers much more protection.

Randi Sinutzer/78 Pratt Corner Road: this is a commercial development. MacNicol: a subdivision plan is for any land use allowed in the area; neither the ANR nor subdivision is restricted to residential. DeFant: a subdivision requires Planning Board approval for an access road. MacNicol: special permit approval is discretionary; ANR and subdivision approval are not discretionary if their criteria are met; a special permit would still be required. DeFant: most of the solar bylaws that she looked at had dimensional requirements; they came up with what they thought was a reasonable proposal; they did not think only about stopping the project on the Wheelock parcel; it is not possible to have a commercial array project with Leverett's dimensional limits; thinks it is in the Town's best interest to have dimensional requirements. Attorney Michael

Pill/representing Lake Street: referring to memorandum handed out at the Shutesbury Athletic Club meeting, points to the need for accuracy; the comment that the Planning Board can issue a permit with criteria and conditions - the special permit is discretionary; they cannot unreasonable regulate; this, as DeFant says, is an expensive process; Shutesbury already has criteria; the proposed bylaw is a minefield of problems, i.e. the 200' setback requirement; refers to current setback requirements; DEP Title 5 in MA only requires 100' setback for septic systems. Pill, per Chap. 40A Section 3, cannot prohibit or unreasonable regulate - not a bare assertion (as per the proposed bylaw) that a 200' setback is needed for hydrology; in respect to citing other towns, read the letters that are sent to these towns from the Attorney General's office. Pill: if you do not want to set

the stage for litigation, this bylaw is fraught with problems; the Planning Board is the special permit granting authority (SPGA).

Don Wakoluk/215 Leverett Road: concerned that this sort of development was made using a cookie cutter approach, i.e. close to the utilities, wetlands were looked at, they are going through the proper committees; what is not looked at, is whether Cows will be motivated to replant the forest in 20 years. Wakoluk: the Planning Board has a unique role in planning the future; the developer could have planned a lighter footprint, i.e. patch cuts that were never suggested. Wakoluk: the moratorium gives the Planning Board the opportunity to suggest the developers create a project with a lighter footprint. DeChiara: would guess all 350 MA towns have a special permit process; if Pill is suggesting this is sufficient, why did the Department of Energy Resources (DOER) recommend towns develop solar bylaws? DeChiara: Massachusetts has put out a sign that renewable energy is welcome; there is a need to have straight rules for solar development. DeFant: one of her concerns is that she heard there are challenges to solar bylaws; feels these challenges will be worked out in the courts and is concerned about the costs of litigation to towns. DeFant: her hope for the bylaw is that it will give the Planning Board guidance for permitting solar projects and will protect the town from litigation. Robert Kibler/74 Pratt Corner Road: if a special permit is granted at the discretion of the current Planning Board, whose discretion will it be in 3-5 years? Kibler: both the town and the developers should have something to rely on and not depend on who the elected officials are. Lacy: it is true, the special permit is discretionary, however, there are criteria providing a framework and limits have to be hinged on the criteria; can see how having further guidance that is tailored to solar development would be helpful; perhaps authority could be improved upon. DeChiara: in the model bylaw, there are questions about what may be missed and a checklist of what to look at.

Andrea Cummings/69 Pratt Corner Road: it may need to be specified that the incline should not be more than 5%; referring to the current bylaw, it seems that what we have in place does protect us, so she doesn't understand how this project could even be considered; cannot understand how this could possibly happen. Gula referring to the compressors and transformers, does National Grid have enough capacity to accept this project, will more transformers need to be added, has this been talked about because she does not want hear more transformer noise? DeFant: it is her understanding that you can have a septic system 100' from a well because their hydrology does not connect; a 200' setback is needed to maximize distance to ensure pre-post development hydrology; need to have as much distance from wells as possible.

Bonnar requests testimony be restricted to the moratorium warrant article petition. Cummings asks about the relationship between state and local law. MacNicol: if something is completely regulated by the state, then state trumps local; if there is some local regulation, the town has a say; the moratorium and bylaw warrant article petitions are legal, although, she is not sure the moratorium language is legal; the two petitions have to go on the warrant as written. MacNicol: if, in fact, the Planning Board is considering a supportable moratorium or change to the bylaw, amendments can be made on the town meeting floor; if there is substantial change to the bylaw, add another warrant article. MacNicol: concern is that the temporary moratorium is not defined; to be acceptable, a time definition is needed; the purpose section is adequate; "large scale solar" is not defined, however, this could be amended at town meeting. Bonnar: there are

no non-residential districts in Shutesbury. Bressler: can we work out our moratorium language before town meeting? MacNicol: no, the article cannot be changed; moratorium fixes would be simple on town meeting floor. Bressler: if the Planning Board worked on another moratorium article, what would the process be? MacNicol: the same process, a public hearing would need to be held. Lacy: the two would run parallel at town meeting and we would have a discussion about why the Planning Board "fixed" the language. DeChiara: "until such time" is not sufficient? MacNicol: no, a specific timeline is needed. Kibler shares an example, "until such time as bylaw passage or not to exceed 15 months." MacNicol: may work, the Attorney General's (AG's) office will need to approve; she would need to call and ask. Kibler: the sooner the moratorium can be terminated the better. MacNicol: an article to terminate the moratorium once the bylaw is passed could be added to the warrant. Lacy confirms that the petitioners cannot change the articles' language. MacNicol: correct; can be amended on the floor by the Planning Board at town meeting. Bonnar: citizens are free to come up with another petition. DeChiara asks MacNicol to explain the six-month criteria. MacNicol: per Chapter 40A Section 5, six months from tonight, if town meeting has not voted on the warrant articles, the process has to start over. Kibler: at that point, are the petitioners free to submit a new article? MacNicol: yes, it is your right to re-petition; if a petition article is voted down at town meeting, there is a two-year wait to re-submit; the petition articles say "annual," therefore these go to annual town meeting. MacNicol: if the whole process is followed and the first articles are on the warrant along with new petition articles that pass, the first ones would be passed-over; petitions have to be taken literally; because the time frames do not work out, you may have to start over. Lacy: can the Select Board schedule a special town meeting? MacNicol: yes, however, the petitioners do not have to agree; the articles would still be on annual. Thompson: a 2/3 vote is required. MacNicol: yes. DeFant: the Planning Board could be tasked to do a study to determine what land is available for solar development, consider issues about setback, and create solar overlay districts; suggests the Planning Board continue the public hearing. Bonnar: if continued, what happens? MacNicol: if continued, could argue the extension extends the six-month requirement; would confirm this with the AG's office. Cummings: if a special town meeting for the moratorium article were held, would it fulfill the 6-month criteria? MacNicol: if voted in, you would have a moratorium; the article would still appear on the annual warrant and would be passed-over. Thompson: if defeated? MacNicol: the 6-month criteria would not be met; the Town Clerk has to send the entire process into the AG's office for approval; if the process is not followed, it has to be repeated.

Leslie Bracebridge/530 Wendell Road: 10% of voters are needed for a special town meeting petition article. MacNicol: a special town meeting would need to be called by the Select Board; this is the only way a special town meeting will happen. DeChiara: if the Planning Board discussed and continued to December, it would fall within the 6-month time frame. MacNicol: this hearing would have to be continued. DeChiara: if the Planning Board creates a new article, they can do a public hearing when they choose. MacNicol: per Chap. 40A Section 5, if town meeting fails to adopt a bylaw within six months after the hearing is concluded and if it appears a continuance was made, the 6-month criteria could be met. Lacy: petitions cannot be changed. MacNicol: the Planning Board could take input, during the continuance, to work on amendments to be done on the floor of town meeting. Bressler: explains options – work on amending or propose new

moratorium. MacNicol: does not know how much amending could be done to the bylaw petition; the Planning Board could review line by line to see what needs to be done and could commission a study as suggested by DeFant; there may be other things to add that boost up the solar bylaw; this language has to go to annual town meeting; the Planning Board has to decide whether or not to support. DeFant: thinks there would be a lot of support for a collaborative process and crafting something new. Cummings: how will annual town meeting actions affect this project? MacNicol: if a special permit were issued before a bylaw change, or if an ANR or a subdivision plan is submitted, the project would not be affected. Pill: regarding the bylaw issue and Chapter 40A Section 9, about the start and end of a public hearing, a continuation could be used (extension of time). MacNicol: Pill's point is that there are criteria for continuing. Thompson: both parties need to agree to the continuance. MacNicol: is confident zoning hearings do not take place only on one night; there is not much doubt that hearings can be continued. DeFant: cannot arbitrarily continue; there has to be legitimate reason, i.e. to obtain more data, to do a study. DeChiara: requests the timing for special permit, ANR and subdivision be explained at a future meeting. Bonnar asks if the discussion relative to the moratorium article petition is done for now. Cummings: could we do another petition? DeChiara: need signatures from 10% of the voters for a special town meeting petition. Brief break then meeting is resumed at 9:00pm.

Open Public Hearing on Warrant Article Citizen Petition to Amend Zoning Bylaw – Large Scale Solar Photovoltaic Installation at 9:00pm

Petitioner DeFant requests her testimony, presented earlier, be entered into the record for this public hearing as well. DeFant: most of the bylaw language is boiler plate, i.e. criteria for setback, dimension and siting, overall scale, differentiation between small or medium scale systems is specific; every technology comes with its own challenges; we need to think about how solar development fits with other land uses/needs. DeFant: theirs is a vision for a different type of solar system that would benefit town residents' energy use; they would like to see zoning by right for cooperatively or municipally owned projects.

Lebovits refers to his testimony, "Comparison of Private Petition Solar Zoning Amendment with 1. Current Shutesbury Zoning Bylaw Map and with 2. 'Model As-of-Right Zoning Bylaw: Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations' prepared by Mass. DOER" dated 9.9.15: report addresses some of the key problems with the proposed zoning amendment; we fully support cooperative and municipally owned projects and would like commercial projects to be allowed as well; the type of regulation in the proposed bylaw is specific to this project; requests his testimony be accepted into the record.

DeChiara: the special permit criteria are somewhat subjective and qualitative; the benefit of the bylaw is that it is focused on a specific type of development and reduces the qualitative criteria; Leverett talks about acreage in their bylaw; Shutesbury is not cutting edge on this; this proposal is not radical and it does not preclude commercial development. DeFant: in looking at other bylaws, they do define buffer zones and the size of tracts; it is arbitrary, what we decide is appropriate for the available land; this is more generous than other similarly sized towns' solar bylaws. Lacy: concerned about the

dimensional issues; there is no simple way to alter dimensional requirements; could you bypass a variance within the special permit process? MacNicol: if you are doing a solar bylaw, small installations are by right, Site Plan Review (SPR) for medium, large installations must comply with SPR and the solar bylaw; in this proposed bylaw, you would want to say in the SPR criteria, that it must comply with zoning bylaw; it could have certain setbacks but provide a provision to vary; the AG looks at a bylaw, if it does not look unconstitutional, they approve; they caution, on solar bylaws, that you must reasonably regulate. MacNicol: there is not a lot of case law for solar; there is case law about reasonable regulation for the protection of public health, safety or welfare; could argue for reasonable setback, i.e. if there is fire, may need to let burn as volunteer fire department may not be able to respond; you may want to have in the bylaw, that based on the Fire Chief's recommendation, the setback could be reduced. MacNicol: if you have good reasons/criteria to grant less dimensional requirements or relief from dimensional requirements, this could be put in the bylaw. DeFant: if dimensional requirements allow no projects larger than 2 acres or 1 megawatt, what would be the reason for waiving? Lacy: may not be able to waive everything. Cummings: there have been fires and explosions at the substation, could this be in bylaw? Rotondi: National Grid would make those decisions. Kibler: power will not go into the substation if it is not needed in Shutesbury. Lebovits: National Grid controls how the power is used. Kibler: when the solar system is active, it would lessen the power going into the grid. Rotondi: power cannot go both ways through the wires. DeChiara: this would be too complex to amend at town meeting; the Planning Board could support and put on the annual town meeting warrant, put on the annual warrant and not support, or create a new bylaw. Bressler: agrees, too complicated to amend on floor of town meeting. Lacy: asks the petitioners where their bylaw came from? DeFant: does not remember all the towns' bylaws they consulted, though did include Deerfield, Leverett, Heath, Hatfield and other larger towns in the eastern part of the state though these had business districts; there is some common language in all the bylaws, some have very restrictive language. Lacy: the DOER model has no dimensional requirements. DeFant: they wanted to craft a bylaw that would pass town meeting; restrictive language would not necessarily pass; 2-megawatts/8 acres \ allows a commercial sized development; they are restricting scale. Lacy: why the limit? DeFant: that is the threshold for a commercial project. Lacy: forest or landfill? Kibler: Orange has a 2-megawatt site that could fit in Shutesbury. DeFant: the technology is evolving and efficiency is increasing; may increase the amount of megawatts produced on a site. Lacy: 2-megawatts or 8-acre limit? DeFant: there is no megawatt limit, only a size limit. Kibler: now, 8 acres might fit a 2.5-megawatt project. DeFant: there are commercially viable 8-acre projects in the state. Lacy references # 2c of the proposed bylaws and asks about the non-residential requirement. DeFant: there may have been a misunderstanding, they were thinking about the Forest Conservation District (FC). Lacy: all zones in Shutesbury allow residential development; is the intent to have solar developments in the FC? DeFant: yes. Lacy: if restricted to FC, this would get the solar projects at least 500' from the road. Lacy referring to #3, 8 acres within 80 acres, how much of Shutesbury is off limits if this restriction is in place? DeFant: we don't have this analysis; this is why they are asking for a study; there has to be some sort of space around the projects. Lacy: why worry about noise, it is not in the state model? DeFant: other towns set decibel levels. Lacy: you call for a noise study, which is expensive and is not

called for; what is the precedent for the 200' setback? DeFant: in light of the concerns about hydrology, erosion, and fire, as mention by MacNicol. Kibler: solar projects create an impervious area and runoff, the idea with a 200' setback is to contain the area affected by runoff within the project boundary; in reality, you cannot completely protect the wells because well recharge areas do not have a boundary; this is an effort to protect wells. Lacy: setback is beneficial in the case of fire; it is not beneficial up gradient. DeChiara: heat radiation? DeFant: there can be a radiational effect that creates a localized microclimate, for up to 1000', which studies show could be up to a 2-3 degree rise in temperature. Lacy: did not see anything about a requirement for habitat creation or land clearing/ retention of natural soils in other models. DeFant: some of the low impact design (LID) features were not included; would personally like to see LID included. Lebovits: we are doing a 6-megawatt project in Deerfield. Pill requests the Planning Board members read Lebovits' memo (testimony presented earlier in the meeting). DeFant: is asking the Planning Board to make a decision about whether they see a need for further study in order to evaluate this warrant article. Lacy suggests leaving the public hearing open for now. Bonnar: we haven't had time to study the written materials that have been provided. Pill: closing the hearing is the end of public input, then the Board deliberates which is not part of the public hearing; challenges the Board not to continue. DeFant: if the Planning Board decides to take a look at land use, she would like to be part of this discussion as feels this is important and would be valuable in answering questions. Rotondi: DeFant can still attend meetings and give input outside the public hearing. DeFant: if the discussion is part of warrant consideration, shouldn't it be part of the public hearing? DeChiara: if you can continue legitimately, it is best to continue in light of Lacy's questions to DeFant; these answers should be part of public hearing and allow the six-month timeline. Lacy: is not interested in continuing to meet the 6-month criteria; would like time to read testimony and ask Lebovits questions after reading. It is clarified that if the Planning Board decides to draft a bylaw, there would be a new bylaw public hearing. Bonnar: the Board could hold a public hearing on the Planning Board bylaw and the citizen petition if it is still "alive." Kibler: if closed, will we have to have another hearing within 6 months of town meeting; discussing both on the same night would be beneficial. Lacy: the continuation of special permit public hearing is scheduled for 9.21.15. MacNicol: the purpose of the continuation is to allow the petitioners to come back with more testimony and for the Planning Board to ask questions relative to the testimony.

List of questions for the petitioners to answer:

1. Where did the models used come from, as distinguished from original material?
2. Why an 8-acre limit?
3. Why non-residential?
4. Why the 8/80 restriction? How would this impact Shutesbury and how many parcels would this rule out?
5. Why worry about noise?
6. Why such deep setbacks, especially 200'?

DeFant asks about the availability of parcel maps and is referred to the set of hanging maps in the meeting room, the Assessors' office and MassGIS.

A motion is made, seconded and all Planning Board members agree to meet on 10.5.15 at 7pm; they will have a regular meeting and continue both petition article public hearings. DeFant: this is the same week as the SCC continuation. Pill objects to stalling; leaves meeting at 9:50pm. DeFant is not asking to stall the process she is asking to make it easier for folks to attend. Lacy moves to continue both public hearings to 10.5.15 for further public input and for the Board to ask questions; all members agree to hold the regular meeting at 7:00 pm and the public hearing at 7:30pm.

All agree to carryover the other business on the agenda to a future meeting. Bonnar suggests planning some regular meeting business time for the 9.21.15 meeting. Bressler: will not be in attendance on 9.21.15. Lacy: the Mullin rule was adopted by the Town allowing a member to miss one meeting by listening to audio report. Pill: talk to MacNicol for guidance on Mullin; whether you need to do minutes or audio refer to MacNicol. Bracebridge: Select Board allows remote participation. Lacy: per the State decision, a member can do this once.

Motion is made to adjourn the meeting at 10:02pm, it is seconded and all members agree.

List of documents and other items used at the meeting:

1. Notice of Public Hearings published in the 8.18.15 and 8.25.15 *Daily Hampshire Gazette*
2. Warrant article petition "To adopt a temporary solar zoning moratorium that prevents issuance of permits for any 'Large Scale, Non-Residential Solar Photovoltaic System' until such time as the Town has approved a solar zoning bylaw
3. Warrant article petition "To adopt a 'Large-Scale Solar Photovoltaic Installation' bylaw as an amendment to the Town of Shutesbury Zoning Bylaw
4. 9.8.15 testimony submitted by Miriam DeFant
5. 9.9.15 testimony submitted by Marnin Lebovits: "Comparison of Private Petition Solar Zoning Amendment with 1. Current Shutesbury Zoning Bylaw Map and with 2. 'Model As-of-Right Zoning Bylaw: Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations' prepared by Mass. DOER"
6. 8.24.15 Tighe & Bond Peer Review Services report by Jean Christy
7. "Administration, Senate propose raising solar net metering cap," *The Beacon*, September 2015
8. List of "Master Plan Working Group Possibles"
9. Planning Board 7.27.15 meeting minutes

Respectfully submitted,
Linda Avis Scott
Administrative Secretary