

Shutesbury Planning Board Meeting Minutes
June 22, 2020 Virtual Meeting

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

Planning Board member absent: James Aaron

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Town Counsel Donna MacNicol, Don Wakoluk, HenaSusha Schiffman, Jim Barron; Elaine Puleo and Melissa Makepeace-O'Neil/Select Board, Penny Kim, Gail Fleischaker, Julie Rypysc, Ashleigh Pyecroft, Sarah Bista; Penny Jaques/Conservation Commission, Henry Geddes; Becky Torres/Town Administrator, Kevin Rudden/Administrative Assessor, Meryl Mandell, Susie Mosher, Eric Stocker, David Kilroy, Glenn Armitage, Serge Fedrovsky, Rita Farrell, Susan Millinger, Paul Lyons/Town Moderator, and Judy Eiseman/Pelham Planning Board. This list is incomplete as not all virtual attendees were identified.

Bonnar calls the meeting to order at 7:00pm.

Statement relative to conducting virtual meetings following the Governor's restrictions on public meetings is read into the record by Bonnar.

Public Comment: None offered.

DeChiara moves and Lacy seconds a motion to approve the 6.1.20 meeting minutes. Roll call vote: DeChiara: aye, Rotondi: aye, Lacy: aye, Raymond: abstain, Bonnar: aye, Bressler: aye; the motion carries.

Special Permit Fees: Lacy notes that other towns charge from \$500-\$1,000 for large scale solar applications and suggests the Planning Board consider this range; for context, the cell tower legal ad cost \$422, abutter notices with postage are required as well as staff time for extensive minute taking and filing in excess of other projects. DeChiara: as decided during the 6.1.20 meeting, the preferred solution was for Lacy to draft a fee schedule for consideration; for tonight, though, the focus is on the special permit fee for a major ground mount solar facility. The current special permit fee is \$200. Bonnar asks if it is legally okay to have a specific fee for large scale ground mount solar facilities. Lacy: yes, these projects are much larger, involve more acreage, have many more abutters and require more effort by the Land Use Clerk. DeChiara: this would be a step toward tagging fees to the complexity of a project; the Board can continue to evaluate fees over time. Town Counsel Donna MacNicol: fees can reasonably reflect the cost to the town, i.e. the number of abutters, staff time, advertising; a fee is legitimate if it reflects complexity, i.e. a new deck on a house vs. a large-scale solar installation; consultant fees cannot be considered however legal costs can be. Bonnar: for large-scale solar facilities, the legal fees far outweigh other costs. DeChiara: if the costs are near \$1,000, that seems to be an appropriate fee. Bonnar: it is not hard to imagine \$1,000 in costs especially with the legal fees. Bressler moves the Planning Board increase the special permit fee to \$1,000; Raymond seconds the motion. DeChiara: subsequently, other project types can be considered. MacNicol: the Board can broaden out the fee schedule to reflect the type and complexity of the project. Bressler revises the motion on the table and moves the Planning Board increase the special permit fee to \$1,000 for large-scale

ground mounted solar electric installations; DeChiara seconds the motion. Roll call: DeChiara: aye, Lacy: aye, Rotondi: aye, Raymond: aye, Bressler: aye, and Bonnar: aye; the motion carries.

Proposed Zoning Bylaw Amendments/Annual Town Meeting: MacNicol to DeChiara's question: the explanation for any additional language changes will need to be done during the public hearing. Bonnar asks the Board to consider plans for their annual town meeting presentation. MacNicol: per the Department of Public Health, there are to be as few handouts as possible; current proposed Zoning Bylaw amendment language is fully laid out in the warrant; any change will need to be considered through an amendment from the floor and there could be a short handout with the proposed language change. MacNicol continues: at well attended outdoor town meetings, it is very difficult to count votes accurately; for other than a unanimous vote, the Town Moderator and Town Clerk may want to have two people per section to count. Penny Kim: this can be requested at the beginning of the meeting. MacNicol: if the Moderator allows, a vote could be taken to allow a "declaration of a 2/3rds vote" so counting would not be necessary if it is clear that at least 2/3rds of voters are in favor of the motion. DeChiara will present the sign bylaw amendment, Lacy will present the open space design amendment and both Lacy and DeChiara will present the solar amendment. Becky Torres/Town Administrator: the mics will be located in the front and the plan is to have mic covers available; Select Board members will read the warrant article motions. Gail Fleischaker advises checking with Board of Health about handouts. Torres: folks are being asked to bring their own handouts; there will be a few packets available for those who do not have one and a handout with the language change can be made available; the full warrant and other materials are on the Select Board webpage and there is link on Town's homepage; later this week, packets will be available outside Town Hall for those who are not current ShutesburyNet subscribers; due to COVID-19, mailings requiring volunteers are not possible. Torres explains that the warrant articles have been reordered with the goal of completing the budget early and achieving a consent motion to group routine noncontroversial articles; the solar amendment is #15; the expectation is to complete #22-23 on 6.27.20; the remaining nine articles could be continued to Monday, 6.29.30; the sign and open space bylaws are #29 and 30.

Public Hearing to Consider Proposed Zoning Bylaw Amendments:

Bonnar calls the public hearing to order at 7:23pm.

Bonnar reads into the record a statement relative to conducting virtual meetings following the Governor's restrictions on public meetings. Bonnar suggest dispensing with the reading of the public legal notice (see file).

- A. Proposed Amendments to Section 8.4 Sign Regulations: DeChiara reviews the screen shared "Background on Proposed 2020 Sign Bylaw Amendment" document. Lacy: according to the existing bylaw, signs are required to be on the premise so most current signs are out of compliance; the more liberal proposal is for signs to be out of travel way. Meryl Mandell: there is a valid sign regulation and current signs should come into conformance. DeChiara: if signs were set back according to the current regulation, most of them would be in the woods; those who placed these signs were not being exploitive, they were being practical. Mandell emphasizes the need for conformance. DeChiara: the Planning Board is not aware of any egregious signs. Mandell notes that there may be offensive non-compliant signs and asks about the rules for signs on town property. DeChiara reads Section 8.4-5 2. "Signs on Town Property" property into the record:

“Only municipal signs, except permitted signs located between the lot line of privately-owned premises and five (5) feet of the travelled lanes of a public roadway, may be placed upon town-owned property including the Town Common, frontage bordering town buildings, parks, recreation, conservation, or watershed area. Municipal signs shall require approval from the Select Board or its designee.” Mandell: who will remove non-approved signs? DeChiara reads Section 8.4-7 “Signs on Town Property” into the record: “Signs erected on Town property not in compliance with 8.4-5(C)2 may be removed without notice by the Select Board or its designee. If known, the owner of the sign shall be contacted within 48 hours. The sign shall be stored for a period of two weeks to allow the owner to retrieve the sign, at which time the Select Board or its designee may dispose of the sign.” DeChiara continues: the Building Inspector is the enforcer for signs not located on town property. MacNicol to Mandell’s point about how enforcement works with grandfathering, suggests the language in Section 8.4-4 “Nonconforming Signs” be amended to “an existing sign on private property...is grandfathered”. MacNicol to Bonnar’s question: most road layout is by easement not by fee ownership; the right of way is not the Town’s property. Mandell: in most cases, the right of way for most roads is wider. MacNicol: the Town’s right of way is an easement unless the Town took it through fee ownership. Mandell: when the roads were first designed, they were registered in the County. DeChiara: the Planning Board worked out the distance from the road in a reasonable way; the grandfathering would be for those signs, in place before 6.27.20, that are non-compliant only by their distance from the road. MacNicol suggests language that grandfathered signs that may be in the right of way but does not include signs currently on other than “right of way” town-owned land. DeChiara: town-owned land could be listed, i.e. town common, town buildings. MacNicol suggests “town use other than roadways”. DeChiara and Bressler agree with MacNicol’s suggestion. Bonnar concurs and recommends an amendment be made at town meeting. Lacy: the goal would be to allow current signs to be grandfathered and for new signs to be compliant. Torres, citing the need for freedom of speech, asks if the objective is to keep temporary signs off the town common or will temporary signs be allowed on town property. MacNicol explains that the amendment uses sign categories rather than the term “temporary signs” as in the current bylaw. Susan Millinger asks about League of Women Voters signs on the town common. DeChiara: such a sign would need Select Board approval. DeChiara offers to prepare language to be offered as an amendment from the floor during annual town meeting. MacNicol asks if there is any limitation to the number of permissions to have a sign on someone else’s property, in other words, one could, with permission, put up eighteen signs. DeChiara: it could be possible to do so. Lacy suggests DeChiara and MacNicol develop the amendment language. Bonnar explains that citizenry will vote on the amendment made from the floor. Lacy moves and Raymond seconds a motion for DeChiara to draft amendment language that addresses the problems discussed relative to grandfathering; this language will be reviewed by Town Counsel MacNicol and be offered as an amendment from the floor during annual town meeting. Roll call vote: DeChiara: aye, Lacy: aye, Rotondi: aye, Bressler: aye, Raymond: aye, and Bonnar: aye; the motion carries.

B. Proposed Amendments to Section 8.10 Ground-Mounted Solar Electric Installations:

Lacy: subsequent to the Wheelock project, the Planning Board designed this proposed

amendment that limits the number of installations that can be proposed over time; it is stricter but is not unreasonable regulation. Lacy reviews the proposed changes, highlighted in yellow, via screen share: 8.10-1 (c) in the "Purpose" was updated per the Conservation Commission; 8.10-2 C. clarifies that a special permit is required; 8.10-3 "General Requirements" B. includes the current 4:1 ratio requirement that for every acre cut, four acres are set aside for carbon sequestration; the prohibition on commercial forestry with exceptions was added. Lacy continues: in 8.10-3 C., language was added to require a wildflower meadow, a more ideal habitat for pollinators, that is to be designed by a relevant professional. DeChiara explains that 8.10-3 F. was expanded to include "as defined by the National Historic Preservation Act" and requires a written assessment on the project's "effects on each identified historic resource or property and ways to avoid, minimize or mitigate any adverse effects..." Lacy, regarding 8.10-3 H, explains that a revision to the language has been worked on with MacNicol; construction access needs to be from paved town roads not from our barely adequate town dirt roads; in the alternative, the applicant could post a bond or fund the paving of the section of dirt road necessary to reach the project site. DeChiara: with MacNicol's assistance, H. was rewritten to clarify the waiver language while maintaining Planning Board special permit authority. Lacy reads the proposed amendment to H. into the record: "Vehicular access for the purpose of construction shall be from paved (bituminous or chip sealed) Town roads. Any proposed waiver to this section under 8.10-2, C shall be transmitted to the Shutesbury Highway Department and Select Board with 35 days allowed for comment. No such waiver request shall be approved by the Planning Board without written concurrence from the Select Board". DeChiara regarding 8.10-3 I.: the required frontage is true for any development in town; it is an articulation of *The Town of Shutesbury Zoning Bylaw*.

Susie Mosher asks, regarding the new wording, is it still a good idea to start with the restriction to paved roads and whether the Planning Board has asked the Highway Department about access. Mosher is concerned about using paved roads for solar that could be used for access to house lots. Lacy: the Planning Board is of the opinion that the network of unpaved roads barely works for the houses located on them; they were built for sparse residential traffic and it is too much to use them for heavy industrial construction; with construction workers coming and going every day, paved roads will not degrade like dirt roads. DeChiara explains that having lived on Pratt Corner Road during Wheelock's construction, these are industrial installations with flat-bed semis lining up every morning for weeks at a time along with a whole crew of workers with large vehicles; the Planning Board realizes that for this type of project, paved access is necessary.

Ashleigh Pyecroft asks why the language was distilled. MacNicol: the language for H. was not clear enough and there was confusion about jurisdiction; the Select Board and Highway Department have responsibilities and the Planning Board has their jurisdiction; the language was simplified such that if the applicant wants a waiver, it must be submitted to the Select Board and Highway Department while the Planning Board's jurisdiction remains intact. DeChiara: the new language for H. is more flexible. Pyecroft, as an abutter to the Baker site, asks if the access road has to be paved. Lacy: H. pertains to construction access and is not about maintenance access. MacNicol: the access road between houses is not a public way; the Planning Board can condition "this way" and

how it's use might physically affect an abutter's property within the special permit process.

Lacy: 8.10-3 J. refers to a map titled "Large Ground Mounted Solar Electric Installation Districts" (screenshare) that limits the number of solar farms in Shutesbury. Lacy to Judy Eiseman/Pelham Planning Board: "large scale" is limited to 15 acres however, because there is a waiver provision, a larger site could be proposed; 15 acres is the total area dedicated to solar with an additional 60 acres, on the same parcel, dedicated to carbon sequestration for the life of the project; this definition is in the current bylaw. DeChiara refers to the map: the nine numbered blocks are bound by roadways; the unnumbered areas are too small for development. Lacy: the Leonard, West Pelham, and Pelham Hill Roads block is ringed with homes and has a large wetland in its middle.

Kevin Rudden/Administrative Assessor notes that blocks #9, 5, and 6 are primarily owned by the State. Lacy agrees, however notes that there is quite a lot of private land within these blocks. Rudden notes that #6 is largely owned by the State. DeChiara: the goal is to balance distribution. Rudden: from a tax policy, the number of possible solar sites pushes down the tax burden. Rudden recommends taking out #9, 5, and 6 noting that he identified parcels with 20 or more acres of open space and is willing to screenshare this map. Bonnar observes that existing parcels are not forever. Rudden: if the bylaw is to benefit citizens, the sites should be on land that offers the benefit of a PILOT (payment in lieu of taxes) not on State owned land. DeChiara: one of the bylaws' values is to maintain large contiguous tracts of forest land. Rudden recommends a map based on private land that will benefit taxpayers. MacNicol notes that the concept of the map is identify where development is allowed; not allowing #9, 5, and 6 based on ownership is a concern. Bonnar gives permission for Rudden to screenshare his map. Rudden explains that his position is to argue from the tax perspective because, in Shutesbury, the homeowner bears 96% of the tax burden. DeChiara: the intent of the map is to distribute large scale solar over the town and for there to be responsible development while maintaining contiguous forest. Rudden shares his screen: the majority of blocks #5, 6, and 9 are owned by the State with very little private land in #9 and #6 is completely owned by the State. Rudden's map identifies vacant lots of 20+ acres that includes the portions of #5 and #9 not owned by the State. Lacy: parcels are fluid and there is not a problem with any of the blocks except #6. Rudden yields his point.

For his question regarding where size is defined, Henry Geddes is referred to the "Definition" section and the "Use Table" in *The Town of Shutesbury Zoning Bylaw*. Bressler and DeChiara: there is no change to the definition. Responding to Torres' question, Lacy reads from 8.10-3 B.: "the plans shall designate...land on the same lot and of a size equal to four times the total area of such installation."; if the solar site is 15 acres, an additional 60 acres needs to be set aside. DeChiara regarding 8.10-4 A. 3.: the description will include the "location" of any Native American sites. Lacy: this change is consistent with the first sentence of 8.10-4 A. 3. Lacy: in 8.10-4 C.1., "known carcinogenic" was added; 8.10-6 G., "incompatible appearance from the roadway" has been added. Lacy continues: the requirement that an ANRAD (Abbreviated Notice of Resource Area Delineation) be submitted was added to 8.10-7 D.1. on the recommendation of the Conservation Commission; this process results in upfront agreement on the location of wetlands. Penny Jaques/Conservation Commission: solar developers want to submit an ANRAD before the special permit process; the ConCom

currently has ANRADs for four sites. Lacy: based on what was learned from the Wheelock site, in 8.10-7 D.2. work must be kept at least 100' away from wetland resources to allow adequate buffer and area for infiltration. Lacy: the addition of "or taken off line" was added to "Abandoning and Decommissioning" A.1. per MacNicol. Bonnar to Pyecroft's question: yes, a supermajority is needed to pass a special permit. Lacy to Pyecroft's question regarding Planning Board members (2) who abut the Baker Road parcel: a supermajority is still required. DeChiara explains that the Rule of Necessity may be invoked; this requires each abutting Planning Board member to acknowledge their conflict. MacNicol confirms that only elected boards can use the Rule of Necessity if there is no quorum.

Lacy to Susan Millinger's question: there is no limit on the number of small or residential solar electric installations; small systems, in certain districts are by Planning Board special permit; there are no changes to these requirements.

Geddes, noticing that noise is not addressed in the bylaw, will submit a model from another town that might be useful to the Planning Board. MacNicol to Eric Stocker's question: once the bylaw is passed, it has to go to Attorney General's office for approval; if it is thought there is a "taking", the Attorney General's office will state a caution in their letter to the Town. MacNicol does not think the bylaw would constitute a taking.

DeChiara to Pyecroft's question: PILOTs are for the life of the project and are negotiated with the Select Board and the developer; the amount is negotiated and is based on the value of the equipment. MacNicol: basically, per MGL Chapter 59 Section 5, solar projects are exempt from taxes; for years, it was considered that this applied to residential projects, however, a large scale developer took the issue to the Appellate Tax Board who ruled that solar electric installation personal property is not taxable; the related town is arguing that a PILOT is different and the developer should not get out of payments; proposed legislation to clarify that the exemption is only for residential installations is on hold due to COVID-19 restrictions; the pending legislation recognizes the importance of PILOTs to towns. Per MacNicol: most solar companies are not trying to get out of their PILOT responsibility; if these companies argue they do not owe taxes, when the legislation changes, the taxes may be higher. Mosher: based on the requirement that access be off paved roads and the restriction to nine areas, the effect is that there will not be much opportunity to develop large scale in Shutesbury; is that the purpose of the amendments? DeChiara: the goal of the amendments is to allow solar development in a thoughtful regulated way and opportunities have been created; in another planning scenario, there could be an industrial area for all large-scale installations. Lacy: or, there could be no limits; the map will allow a total of nine or eight based on Rudden's suggestion. DeChiara notes that Leverett's solar bylaw is very restrictive. Bonnar to Eiseman's question: slope is addressed in the bylaw (8.10-7 B.4.) Lacy: the limit is 15% of the original slope which worked out well for the Wheelock site.

- C. Proposed Amendments to Article V. Open Space Design: Lacy reviews, via screenshare, the changes the first Open Space Design bylaw in the State explaining that the revisions attempt to bring the original model current with natural resource protection bylaws. Lacy continues: 5.1-1, "Purpose" was revised with input from the Conservation Commission; regarding "An Open Space Design that does not require approval as a subdivision is allowed by special permit subject to approval by the Planning Board", the special permit

requirement is a better vehicle for evaluating projects, allows more Planning Board discretion and requires abutter noticing and a public hearing. Lacy: 5.1-2 B. is a corollary to the special permit requirement and is based on cases presented to the Planning Board; the changes include the ability to consider conservation benefits and detriments and tempers the number of allowable units based on the potential impact to benefits. Per Lacy, the rounding down in 5.3-2 is more in line with current zoning practice; in 5.3-3 C., the inclusion of “whole project area” clarifies the intent of the bylaw and is based on a case presented to the Board; the 25% in 5.3-4 B.1. and 5.3-5 reflects the need to be consistent. Lacy: in Section 5.6, “Permanent Open Space”, this language reflects the intent of the bylaw and closes a loophole, found by a potential applicant, that open space could be part of a backyard. Regarding 5.6-1, Lacy explains that the proposed change is a benefit to the applicant because it allows more ways to conserve than only by conservation restriction, i.e. an easement, recorded conditions; this change is based on the experience of applicants finding it difficult to find a conservation restriction holder. Torres wonders what impact the changes will have for new applicants. Lacy: the goal is to achieve conservation and not windfall development; there are many more development options through the Open Space Design bylaw than other towns have in their regular bylaws. Bressler: the amendments will close loopholes and bring the bylaw into closer alignment with its original intent. Lacy: by offering conservation restriction options, we are addressing applicants’ largest problem. Bonnar: with experience, the Board learned how applicants have tried to game the system. DeChiara: inquiries helped the Board learn. Torres: do you expect the number of applicants to increase? Bonnar: that has to do with the amount of building that is being done. Bressler: this bylaw allows projects that could not be done with the old bylaw; the spirit of the Board is not to block, it is to help applicants. At 9:47pm, Lacy moves and DeChiara seconds a motion to close the public hearing. Pyecroft thanks the Planning Board for their work. Roll call vote: DeChiara: aye, Lacy: aye, Rotondi: aye, Bressler: aye, Raymond: aye, and Bonnar: aye; the motion carries.

Documents and Other Items Used at the Meeting:

1. Proposed Amendments to Section 8.4 Sign Regulations
2. “Background on Proposed 2020 Sign Bylaw Amendment” by DeChiara
3. Proposed Amendments to Section 8.10 Ground-Mounted Solar Electric Installations
4. Proposed amendment to 8.10-3 H.
5. 6.2.20 comment from Susie Mosher regarding Solar Farming
6. 6.21.20 email from Penny Jaques: “Weighing in on the solar by-law revisions”
7. Proposed Amendments to Article V. Open Space Design

Respectfully submitted,
Linda Avis Scott
Land Use Clerk