

Shutesbury Planning Board Meeting Minutes
March 8, 2021 Virtual Meeting Platform

Planning Board members present: Deacon Bonnar/Chair, Michael DeChiara, Robert Raymond, Linda Rotondi, Jeff Lacy, Steven Bressler, and Nathan Murphy
Staff present: Tessa Dowling/Land Use Clerk

Guests: Susie Mosher, Henry Geddes, Robert Seletsky, Miriam DeFant, Diane Jacoby

Bonnar calls the meeting to order at 7:05pm.

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

Public Comment

A public comment was raised in regards to the Planning Board spending time with the public to hear their thoughts in regards to discussions with Amp Solar and not wait until close to the end of a solar project to include public comments.

Planning Board members explained that the Planning Board has not received any applications from Amp Solar. The Planning Board is not directly involved with the discussions the Select Board has had with Amp Solar. The Planning Board would be involved with any questions or changes proposed concerning the town's solar bylaw.

DeChiara has attended the recent Select Board meetings and gave an update on the meeting discussions regarding aspects of potential solar development plans.

There were no public comments on other topics.

Lacy Disclosure

The Town of Pelham hired Lacy as a consultant to rewrite their town's solar bylaw last year. Now Pelham has a solar project on Cows land in front of their Planning Board and has asked Lacy to be the independent consultant to review the application from a zoning perspective. Lacy called the Town Counsel and MA Ethics Commission and they determined it was not a conflict of interest. Lacy completed a disclosure form that explains that there is an appearance of a conflict but not an actual conflict of interest. The disclosure form will be filed with Shutesbury and Pelham.

Minutes

At 7:12pm, DeChiara moves and Raymond seconds a motion to approve the February 8, 2021 meeting minute. After the discussion and vote below the minutes were approved.
Roll Call Vote: DeChiara: aye, Lacy: aye, Bressler: aye, Murphy: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

Dowling screen shares edits to the drafted February 8, 2021 meeting minutes from DeChiara. DeChiara discusses the edits as Dowling scrolls through the document. The biggest change was adding language to the section under "DeChiara recusal status" to clarify that the MA Ethics Commission determined DeChiara did not need to recuse as an abutter to one of the Cows projects because he showed he did not have a financial interest in the project outcome.

At 7:15pm, Lacy moves and DeChiara seconds a motion to approve the edits to the minutes with DeChiara's edits. Roll Call Vote: DeChiara: aye, Lacy: aye, Bressler: aye, Murphy: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

Annual Report

Dowling e-mailed the ZBA annual report template to the Planning Board so they could see what is included in a board annual report. The first section of the report outlines the role of the Board and the second part is a list of projects and important decisions completed during the fiscal year. DeChiara volunteers to draft the Planning Board's annual report and he will share it with Bonnar for review. The Board approves. Lacy offers to send DeChiara his description of the role of the Planning Board to help with first section of the report.

Amendment for Associate Members

DeChiara shared the draft of the associate member bylaw from last meeting with Town Counsel and has shared her comments with the Board.

DeChiara screen shares a version of bylaw that includes Town Counsel's edits and the Board discusses the bylaw one paragraph at a time.

Major changes include:

- Simplifying the language in the first and second paragraphs to outline the position and process instead of giving details.
- Stating that the Planning Board would recommend individuals as associate members and appoint members jointly with the Select Board. Previously the involvement of the Select Board in the appointment was at the Select Board's discretion.
- Changing the appointment term to one year instead of three. There would be no limit on the number of times an appointment could be renewed.
- Town Counsel recommended describing the expectations for an associate member and not describing norms. The Board discusses their expectations around associate member attendance and participation during meetings: associate members would be expected to regularly attend meetings and participate at the discretion of the chairperson.

At 7:48pm, Lacy moves and Murphy seconds a motion to approve the bylaw with the amendments during the meeting. Roll Call Vote: DeChiara: aye, Lacy: aye, Bressler: aye, Murphy: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

DeChiara will send the amended bylaw to the Select Board for review before Town Meeting. Per Bonnar, Town Meeting is tentatively scheduled for June 12, 2021.

Solar Update

DeChiara attended the joint Select Board-Planning Board meetings on March 1st and the Select Board meeting on March 2nd and led discussion about the meetings.

The March 1st meeting, which Amp Energy attended, focused on the possible Memorandum of Understanding (MOU) between Shutesbury and Amp Solar and the town's solar bylaw. Amp Solar did not attend the March 2nd meeting, which also discussed the solar bylaw. The MOU falls under the purview of the Select Board with the Planning Board as a stakeholder. Zoning

bylaw changes has generally fallen to the Planning Board and review of solar project is definitely the role of the Planning Board.

Per DeChiara, in the state solar permitting program (SMART), overseen by MA Department of Energy Resources, public entity solar projects are moved to a preferred category (Category 1) within the program. The possible MOU shows Amp Solar's interest in creating a public entity project. As a public entity project, Amp Solar would receive a higher incentive (adder) from the state, approval of incentives can occur prior to permitting and without the usual documentation, and projects can be sited in environmentally sensitive areas which would normally make them ineligible for SMART credits.

Board members raise the possibility of a Shutesbury and Amp Solar agreement where ownership is shared, profits are shared, or the power generated is sent to the town at a lower cost.

At the March 1st meeting, Amp Energy suggested a different bylaw category for municipal development solar projects. DeFant adds that Amp Solar would like the new category to be permitted by site plan review and not special permit. Per Lacy, site plans cannot easily be denied. DeChiara suggested that if the bylaw were amended the Board might want to write a definition for municipal partnership and consider shared ownership of solar projects.

Also at the March 1st meeting, Amp Solar raised concerns about road access to solar sites due to bylaw definitions for road use. Per Lacy, that was not the intent of the bylaw and that interpretation could be corrected under a waiver (Bylaw Section 8.10 -2D).

Per Lacy, other possible impediments to solar projects include, the limit of an 1000ft driveway (which cannot be waived but can be extended under a variance), site soil type, and the topography of the land.

At the March 2nd meeting, concerns were raised about the bylaw due to M.G.L Chapter 40A Section 3 that says solar cannot be unreasonable regulated and due to the requirement for the site plan to map suspected Native American archeological sites. The Select Board discusses whether they should hire a lawyer besides Town Counsel to review the bylaw.

Per DeChiara, the Planning Board discussed the language of the solar bylaw with town counsel for two hours during the development of amendment in 2020. The Attorney General approved the bylaw but, because large solar projects are relatively new in MA, it is not clear what is considered unreasonable solar regulation and solar companies can litigate. Per Lacy, it is unlikely someone would sue the town regarding the bylaw but they might sue to appeal a decision based on bylaw findings. Geddes and DeFant, as members of the Historical Commission, will be providing the Select Board and the Planning Board with recommendations on how applicants can address the bylaw's requirements to map Native American archeological sites.

There was a public request to incorporate time for public comment regarding any future changes to the solar bylaw and to discuss the benefits of development, and a comment that the solar bylaw may be too limiting.

The Select Board will reach out the Planning Board to discuss the solar bylaw in more detail.

Unanticipated business

There was no unanticipated business.

At 9:48pm, Bressler moves and Lacy seconds a motion to adjourn the meeting. Roll Call
Vote: DeChiara: aye, Bressler: aye, Murphy: aye, Rotondi: aye, Lacy: aye, and Bonnar:
aye; the motion carries. Raymond had to leave early.

Respectfully submitted,
Tessa Dowling
Land Use Clerk