

Shutesbury Planning Board Meeting Minutes
April 26, 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: Amy Hirsch, Michael Pill, Jim Plaza, Miriam DeFant, Ziporah Hildabrand, Don Wakoluk, Mary Lou Conca, Susie Mosher, Silvia Lavana, Ashleigh Sullivan Pyecroft, Michael Larkin, Jill Buchanan, Leslie Bracebridge, Ken Lindsay, Henry Geddes, Michael Vinskey, Robert E. Seletsky, Allen Hanson, Paula Lyons, Mark Protti

Bonnar calls the meeting to order at 7:01pm.

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

Public Comment

DeFant, as a member of the Historic Commission, explains that the Commission is working with W.D. Cows and MA Historical Commission Officers to survey potential solar development areas on Cows' land to identify if there are any sensitive historically significant areas. The Historic Commission has the authority to withhold the location of historical areas from the public for their protection. The Historic Commission would like to set up a process for discussion of how to withhold information regarding sensitive areas proposed to the Planning Board in advance of any special permit applications. . What this process will look like will be discussed at the next Planning Board meeting. Town Counsel, Donna MacNicol, will be invited to the discussion.

Public members raise concerns that if a solar project comes in front of the Planning Board that there is sufficient time for public comment and discussion. The public also wants time to comment on any new bylaw amendments. Board members explain that public meeting recordings can be requested from the Town Clerk, that meeting minutes are posted on the town website, that questions can be raised by attending meetings or sending letters, and that there will be a public hearing about any amendments that will be going to town meeting.

Michael Pill - driveway length and contract zoning

Pill sent an email letter to the Select Board, Town Counsel, the Planning Board, and various other town board members on April 26, 2021. Pill summarizes the letter. Recently he has been the defense lawyer for a land use case for East Longmeadow relating to town solar bylaws. In the East Longmeadow case the judge did not support the town's solar bylaw and ruled in the solar company's favor without letting the town set any conditions on the solar project.

Per Lacy, there are differences between the East Longmeadow solar bylaw and the Shutesbury solar bylaw. The Shutesbury bylaw allows solar development in approximately 80% of the town rather than East Longmeadow which allows only 11%; Shutesbury allows solar development in residential districts; East Long Meadow does not

Besides describing the court case, Pill explains that he thinks the town could ask for one million dollars from Amp Energy between the payment in lieu of taxes, operation costs from a possible public entity partnership between Amp Energy and the Select Board, and a portion of project revenue since Amp Energy could be getting an adder incentive from the state solar program. DeChiara indicates that this portion of the conversation is more relevant to the Select Board, as it is the Select Board, not the Planning Board, who signs contracts on behalf of the town. Furthermore, there are currently no solar project applications in front of the Planning Board at this time.

Minutes 3/1, 3/8, 4/5

Dowling learned from the Admin Secretary, Linda Avis Scott, that the minutes from the joint Select Board and Planning Board meetings (Meetings on March 1st and April 5th) were edited and approved only by Select Board. The minutes, once approved, were sent to the Planning Board for their recorders.

DeChiara screen shared the edits he had for the March 8, 2021 meeting minutes and reviewed the edits with the Planning Board.

At 7:53pm, Bonnar moves and Bessler seconds a motion to approve the March 8, 2021 meeting minutes as amended by DeChiara. Roll Call Vote: DeChiara: aye, Lacy: aye, Bressler: aye, Murphy: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

Access and Associate Member amendments

The Associate Member bylaw amendment has been voted on by the Select Board and returned back by the Select Board, clearing the way for a public hearing

Lacy screen shares the proposed Access bylaw amendment, which would add Article III Section 3.6 to clarify that road access to the Forest Conservation (FC) district can be permitted under a permit application. Previously the language in the Zoning Bylaws unintentionally impeded road access to the FC district. Town Counsel approved the language and the placement of the proposed bylaw amendment.

At 8:03pm, DeChiara moves and Bressler seconds a motion to approve the access to use amendment and to send the amendment to the Select Board for review. Roll Call Vote: DeChiara: aye, Lacy: aye, Bressler: aye, Murphy: aye, Rotondi: aye, Raymond: aye, and Bonnar: aye; the motion carries.

Bonnar designates DeChiara to email the access amendment to the Select Board.

The Planning Board discusses possible dates for the public hearing for the two proposed amendments before the June 12, 2021 town meeting. However, the hearing date depends on when the Select Board sends the access amendment back to the Planning Board.

Dowling will ensure that notice of the amendment public hearing is posted in the Hampshire Gazette one and two weeks before the hearing date when it is scheduled.

Public comment is raised concerning zoning bylaw limits to driveway lengths and the challenge of obtaining a waiver to the driveway length bylaw. The Planning Board has no plans to propose

an amendment to change the driveway length limit (Bylaw 8.6-2). Limits to driveway lengths protect core of the FC district from being developed and are important for safety reasons to allow easy access by fire and police vehicles. Variances are possible to obtain from the Board. Public comments also mention the benefits to wildlife to have contiguous forests not divided by roads.

Annual report from Wheelock

Lacy has obtained the contact information for the new tenant on the Wheelock solar array site from the Town Administrator and has left a message to invite them to a Planning Board meeting to talk about the project conditions and the required annual report. Lacy will ask that the Wheelock tenants give a presentation at the meeting on current project conditions. The Board will look into the possibility of having an independent consultant monitor the site.

Report on meeting with DOER

DeChiara reached out to Department of Energy Resources to ask questions about the state solar incentive program (SMART). DeChiara, Bonnar, the Town Administrator, a Select Board member, and several Amp Energy representatives attended the meeting with DOER. A summary of the meeting has been sent to the Planning Board.

Main points from the meeting include:

- There are no previous public entity projects in the state so what is required in a contract to qualify for that type of solar project in the state program is not clear. The state's intention was to facilitate municipalities operating their own solar arrays, so Amp Energy's idea of a public entity project is different.
- A memorandum of understanding between the Select Board and Amp Energy, if one were created, would not qualify as a contract under the state program.
- There are several benefits for Amp Energy to create a public entity project: The solar project would be considered as Category one, which would place Amp Energy ahead in the queue of projects, the rate and value of the state incentives would increase, and the solar project could be sited on environmentally core habitat lands and still receive incentive payments
- The state program does not prohibit revenue sharing between the town and the solar company but this has never been done.

Planning Board members mention concerns about paying for the benefits of solar operations employees if a public entity project was formed between Amp Energy and the town.

Open meeting law

DeChiara has shared Open Meeting Law information and guidance regarding subcommittees he obtained from training phone conversation with Assistant Attorney General Sarah Monahan in the Division of Open Government. According to the AAG, by definition, an individual member of a committee cannot be a subcommittee since a subcommittee requires multiple people. A subcommittee is only created by designation by the chair or a vote by the committee. If no formal action is taken, a subcommittee cannot be created. The formal action needs to identify or affirm designation of multiple people.

If a public body designates an individual member to do work between meetings, that person is not a subcommittee and is allowed to speak with other members of the public body as part of the designated work as long as the exchange does not meet the level of quorum, including through

serial communication. If in an open public meeting, a body designates an individual to do work and at the same meeting another member volunteers to assist the designated individual, that does not create a subcommittee.

If a sub quorum of members of a public body engage on a topic within the jurisdiction of the public body but without the knowledge or consent of the body, even if it involves multiple members working in an organized manner, this is not a subcommittee since the full body or a quorum of the body was unaware of this activity and did not take official action.

Unanticipated business

The Planning Board discusses Penny Jaques email that suggested the town invite Zara Dowling, UMass Clean Energy Extension Research Fellow, to answer questions about the state solar program (SMART). DeFant offers to share the slides from a MACC presentation by Zara Dowling.

At 9:24pm, Bressler moves and Lacy seconds a motion for Bonnar to write a letter to the Select Board supporting an invitation to Zara Dowling. Roll Call Vote: DeChiara: aye, Bressler: aye, Murphy: aye, Rotondi: aye, Lacy: aye, and Bonnar: aye; the motion carries. Raymond had to leave early.

Dowling was asked by the Conservation Commission to give an update on the wetland delineation permits (ANRADs) on Cowls' properties that are before the Commission. So far four of the six ANRAD hearings have been closed and the permits issued. With the more complicated wetland maps, the Commission has issued a condition that if a project application (Notice of Intent) on the property comes before the Commission, the flags delineating the wetlands must be refreshed in consecutive numeric order. However, a project on the property may avoid wetland impacts and only come before the Planning Board. In that case, the Commission recommends that the Planning Board should consider asking that the flags delineating wetlands on the Cowls' property be refreshed and numbered in consecutive order.

At 9:29pm, DeChiara 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