

Shutesbury Planning Board Meeting Minutes  
July 12, 2021, Virtual Meeting Platform

Planning Board Members Present: Deacon Bonnar/Chair, Michael DeChiara, Jeff Lacy, Steve Bressler, Linda Rotondi, Nathan Murphy

Guests: Tim Garcia (NextEra Energy, Inc), Jordan Harrison (NextEra Energy, Inc), Eric Bachrach, Henry Geddes (HC), Mary Lou Conca, Jim Plaza, Renee, Karen Tarlow & John Montanari, Leslie Cerier, Lulu, Mike and Kathleen, 4135291110, Robert E. Seletsky.

Call to Order

Chair calls meeting to order at 7:22 PM. Statement relative to conducting virtual meetings following the Governor's restrictions on public meetings is read into the record by Bonnar.

Election of Chair

At 7:23 PM DeChiara moves to nominate Deacon Bonnar as Chair.

Bressler seconds.

No Discussion.

Roll Call Vote: Lacy: aye, Bressler: aye, Murphy: aye, DeChiara: aye, Rotondi: aye, and Bonnar: aye; the motion carries unanimously.

Public Comment

None

Timothy Garcia, Wheelock Annual Report:

At 7:25 Lacy provides introduction – the board received a second version of the Annual Report via email dated June 9<sup>th</sup>, attached as **2020 Wheelock Special Use Permit Annual Report.pdf**, subsequently referred to as “the report”. Lacy has also been making efforts to schedule a field visit to the Wheelock site with the Planning Board and Conservation Commission, but a date has not yet been set.

Garcia notes that Jordan Harrison (Site Manager) is also present and that he is happy to go through the report and answer questions. DeChiara begins with a list of questions about the report.

A picture included in the report shows a sign on the front gate of the facility that lists Bay4 Energy as the operator. Per Garcia, Bay4 Energy is a contractor contracted by NextEra and NextEra is the operator. Per DeChiara, the Special Permit provides that the operator of the

facility should be listed on the sign. Per Harrison, the number on the sign at the gate is a 24-hour emergency contact number and the sign can be changed out to show “NextEra Energy”.

DeChiara inquires as to whether the Select Board received a copy of the report and whether the fire chief received a copy of the report, in addition to a copy of the project summary, electrical schematic, and site plan, as specified in Operation Condition 4 of the Special Permit. Harrison will see that the Select Board receives a copy of the report and ensure Fire Chief receives the report and verify they have the materials specified per the PB Decision for Wheelock.

Per DeChiara – there should be the name of a responsible individual on the sign. Per Harrison, the individual contact will be himself and this will be added when the sign is swapped out.

DeChiara inquires if the fire department has access to the site. Per Harrison, Town Fire Dept has the combination for the lock and has permission to break the lock in case of emergency.

Per DeChiara, the report indicates that a training for Town Personnel responsible for emergency response will be scheduled and notes that this should have already taken place, prior to the onset of the pandemic.

DeChiara notes the lack of dates and the use of technical language and industry jargon in the maintenance section of the report and requests that clarification be provided, as well as dates. Garcia agrees to accommodate.

Per DeChiara, NextEra should ensure annual frequency and timeliness of the report per PB decision. (Submit annually to Planning Board, Select Board, Fire Chief, Emergency Management Director, and Building Inspector no later than 45 days after the end of the calendar year.)

DeChiara notes the Special Permit condition that mowing be done once annually and inquiries into the two vegetation abatement events noted in the report, one in October and one not specified. Jordan specifies that the second vegetation abatement service is to knock down vegetation that may be causing shading on the panels. Garcia notes that this practice is also for safety reasons.

DeChiara inquires into the status of the wildflower meadow.

Per Garcia – there have been two seeding events, one around commissioning of facility, one when energy storage was put in, and there is planning in progress for another seeding.

Lacy reviews Action Items:

1. NextEra will go on the sign.
2. The report will be delivered to the Select Board.
3. Electrical schematics will go to the Fire Chief.
4. Jordan Harrison (or another appropriate representative) will be listed on the sign as the emergency contact.

5. Emergency training session will be scheduled.
6. The information provided on the maintenance will be cleaned up so a lay person can understand what it says.
7. The 2<sup>nd</sup> report is due February 15, 2022.
8. There will be another seeding event in 2021.

Lacy notes that more questions may come after a site visit is conducted. He is interested in seeing the drainage systems and status of revegetation.

Lacy inquires as to who controls the site and who has access to the site – in reference to trespass orders previously issued by WD Cowels.

Per Garcia, NextEra controls the site and determines who can be admitted to the site but notes that access to the site is limited to the conditions of the special permit.

Per Lacy and Garcia – scheduling of site visit will be forthcoming.

Mary Lou Conca (member of the public) inquires what chemicals are being used and how often? Does the fence permit any wildlife passing through? What is the revenue paid to the town?

Per Harrison and Garcia there are no chemicals or herbicides used on site. There have been no reports of wildlife. There is no effort to control wildlife.

Per Lacy, the fence is up 8 inches off the ground to permit small animals' passage.

Mary Lou Conca inquires whether Garcia and Harrison are aware there is an area within the site that is protected due to Native American burial paces. What would you do if a local tribe contacted you requesting access to the site?

Per Garcia, they are aware of an area that is protected and to not be disturbed. They would evaluate the request at the time we received it – notes that the broader site is a restricted facility with high voltage equipment. Garcia would be the initial point of contact with NextEra for such a request.

Mary Lou Conca notes that the site is protected by provisions MGL Ch 114 Section 7. Conca also notes that Jeff Lacy was talking about no trespass orders and that they are posted on trees around town by the lessor, and that these are outdated, I have been in contact with the Franklin County Sheriff, the trespass orders are no longer valid.

8:00 Brad Spry, West Pelham Road ANR Subdivision

Spry has submitted a revised plan for ANR Subdivision on 409 West Pelham Road. The revision, attached in an email to the Board dated 7/12 at 10:30 AM, reduces from the number of buildable lots included in the ANR from 4 to 3. Spry indicates interest in developing the southernmost lot, which is labeled Lot 3 and will be 33.6 acers on the revised plan, with condos or single-family homes designed for senior living but notes that his initial review of the land has uncovered concerns that wetlands may limit any future development. The ANR plan is screen shared over Zoom.

Murphy inquires if there are any state grant programs that come into play with developing senior housing.

Spry indicates that there are some programs out there and that there are some parties he has been talking to in town who are interested in staying, but again notes that a substantial portion of Lot 3 is a wooded swamp.

Lacy suggests that the open space design provisions in the town bylaw may provide guidance for future plans to develop Lot 3 of the subdivision.

Bonnar asks how the elimination one of the lots affects the conformity of the subdivision, having to do with the existing house being too close to the road.

Spry indicates that his due diligence indicated this is not an issue. Lacy concurs, the ANR does not create new non-conformity.

At 8:15 PM Lacy moves to approve the 3 Lot ANR Subdivision as presented.

DeChiara seconds.

Discussion: Clarification is provided regarding the numbers represented by the ANR – the plan will convert 1 parcel of land into 5 parcels, 3 of which are conforming building lots.

Roll Call Vote: Murphy: aye, Lacy: aye, DeChiara: aye, Rotondi: aye, Bressler: aye, and Bonnar: aye; the motion carries unanimously.

There is some additional discussion of what the fee will be, which will be \$210, \$70 for each buildable lot.

## 6/14 Minutes

At 8:20 PM DeChiara Moves to Approve the minutes from the 6/14 meeting.

Bressler Seconds.

Discussion: The portion of the minutes regarding DeChiara's un-recusal for Wheelock issues is moved from unanticipated business to the section on the Wheelock report.

Roll Call Vote: Murphy: aye, Lacy: aye, DeChiara: aye, Rotondi: aye, Bressler: aye, and Bonnar: aye; the motion carries unanimously.

## Calculation of Special Permit Fees

Engineer Stadnicki had a question about the fees for Special Permit applications to be submitted to the Board; if there are multiple special permit applications required for a project that can be accommodated in a single public hearing, would the applicable fees for each application be charged or would there be a reduction in the applicable fees? Lacy reached out to other towns via Citizen Planners and received responses: 7 came back with a single fee (the highest), 5 said they would charge individual fees for each special permit application.

The Board deliberates on the question of fees for consolidated special permit hearings. Suggestions include making the fee equal to the highest applicable fee for an individual special permit application included in the consolidated hearing. Another suggestion is to charge the highest applicable fee, plus 50% of the next highest fee. A final suggestion is to add a note to the Special Permit Fee Schedule indicating that for multiple residential use special permit applications that are consolidated into a single public hearing, there will be the fee equal to the highest applicable special permit application fee included in the consolidated process, plus the standard fee for additional lots created pursuant to open space design, plus 50% of the fee associated with each additional special permit application included in the consolidated process. Dechiara volunteered to develop language for this final suggestion.

The question of fees for consolidated special permit applications is primarily applicable to residential use applications because the cost of the legal notice is incorporated into the fee for these uses. In addition to covering direct and indirect costs associated with a special permit application, the fees also provide a cost of entry that would deter exploratory special permit applications.

Bonnar raised concerns that for residential uses, the current fee schedule may fall short of the cost incurred for legal notices. Murphy volunteers to do research on the costs of legal notice fees for residential use.

Note that the Special Permit Fee Schedule, as approved 2/8/2021, is currently posted on [Shutesbury.org/planning\\_board](https://shutesbury.org/planning_board).

## Response to Messages to Planning Board Email

8:55 PM 1:40

The Board has a brief discussion on the topic of responding to emails from the public. Typically, the Chair may respond to emails that involve official business that requires the Board to act. An automatic response is not favored because it would go out for every email received. The Board desires to have an acknowledgement go out in response to emails from the public that says the email has been received and encourages the sender to attend the next meeting and participate in public comment and explains that board members must adhere to the requirements of the Open Meeting Law.

At 9:00 PM Bressler Moves that the Board approve DeChiara to come up with a response acknowledging emails to the Planning Board.

Lacy Seconds

Discussion: None

Roll Call Vote: Murphy: aye, DeChiara: aye, Rotondi: aye, Lacy: aye, Bressler: aye, and Bonnar: aye; the motion carries unanimously.

#### Associate Members

Deacon did not send out the town announce because we did not have a date by which people should get back. It is noted that while the Board may specify an end date for submitting a show of interest when soliciting volunteers for associate member appointment, this does not prevent the Board from declining to appoint an associate member as a result, even if one or more individuals express interest.

Dechiara volunteers to post information about associate members on the Planning Board website, that can be linked to during the solicitation process. This will largely be drawn from materials related to the Town Meeting warrant article.

The Board lands on a plan for the Chair to send a town announce to solicit associate members, using 9/8 due date for submitting a show of interest with the intention of inviting the applicants to a 9/13 meeting. Since the Board passed a motion pertaining to the solicitation of associate members at the June 2021 meeting, the Board declines to vote.

#### Reimbursement for Non-recusals

Per Select Board, town officials will be reimbursed for funds expended to be non-recused as abutters. DeChiara will be reimbursed for expenses incurred to become non-recused from deliberation on matters pertaining to the Wheelock project.

#### Unanticipated business:

There is a question as to whether the Solar Bylaw can be overturned by the state without an outcome due to the clause pertaining to Bio Map Critical Habitat. Because the bylaw provides for waivers by the planning board, we do not think the bylaw can be overturned except as applied in a specific special permit application. This is a question of ripeness – can the bylaw be challenged on its face or challenged as applied. In other words, does the Planning Board need to act with respect to a special permit application before the law can be challenged?

At 9:24 PM DeChiara moves to delegate Lacy to speak with Bob Ritchie and Town Council and gather information regarding the ripeness of the solar bylaw with respect to the bio map 2 and critical wildlife habitat provisions to be challenged on its face in court without being applied by the Planning Board.

Lacy Seconds

Discussion: The motion is clarified for the minutes.

Roll Call Vote: Murphy: aye, Lacy: aye, DeChiara: aye, Rotondi: aye, Bressler: aye, and Bonnar: aye; the motion carries unanimously.

Next meeting:  
September

Adjourn:

At 9:32 PM DeChiara moves to adjourn

Bressler Seconds

Discussion: none.

Voice Vote: the motion carries unanimously

Related Documents:

**2020 Wheelock Special Use Permit Annual Report.pdf**

**SP Decision Wheelock Solar (6-6-16) (1).pdf**

**409WestPelhamRdANR2 (6).pdf**

**SPECIAL PERMIT FEE SCHEDULE FINAL 2-8-21.pdf**

These minutes were approved by the Planning Board on 8/25/21.

Respectfully Submitted,  
Nathan Murphy