

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

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

**Guests:** Miram DeFant (ConCom), Jake Messier (Associate Member Applicant), Ashleigh Pyecroft (Associate Member Applicant), Micha, Nick Yarmac, Steven Mikolajczuk, Joseph's iPad, Timothy Garcia (NextEra), Mary, Charlene Galenski, Donna West, Gradey (NextEra Civil Engineer), Green Miles Lipton, LLP (Michael Pill), HenaSusha, Dennis, Herbert Gilmore (ZBA), Timothy, Jennifer, Chuck DiMari, Fran Merigan, Mark Rivers, Bob Blanchette, Katie, Jonathan, Jen, Sue, Jonathan

**Call to Order:**

Chair calls meeting to order at 7:00 PM. Bonnar notes that the meeting is being recorded.

**Public Comment:**

None

**Meet with Next Era about plans resulting from Wheelock site visit:**

Garcia indicates that the roads will be regraded within the next month – this is their most pressing concern as they need to ensure the roads are easily traveled for access to the site. Regarding the ditches, their civil engineer agrees that they may need to be reinforced a bit. When the contractor is out there doing the roads, they will assess the ditches and possibly do work on them at that time.

Gradey, NextEra Civil Engineer indicates that the ditches are not functioning as designed – it's over topping and running over the road.

DeFant requests that the silt fences outside the perimeter of the site be removed – these are construction phase items that should have been removed after construction and stabilization. She also asks about the entrance to the site from Pratt Corner Road, noting that there has been sediment and pooling, and whether any work is planned for that area.

NextEra notes that they will remove the silt fences and that they intend to assess the entrance from Pratt Corner Road when the contractor is there to fix the erosion on the road. Further, they suspect that the planned site work may alleviate the issues at the site entrance.

Regarding the basin – this also isn't working as designed – it maybe be sediment from the construction phase – this can cause it to clog. There is also a skimmer option, which would drain water through the side of the basin wall – this could be a design change that might require a special permit and action before the Conservation Commission. DeFant notes that repairing the roads and ditches would not need to go before the Conservation Commission but that a Request for Applicability (RDA) would probably be appropriate for new features or change to the basin. The initial basin work will be early 2022, (not 2021) and will involve attempts to address the issue within the current design. Before doing anything new, NextEra will bring these proposals to the board.

Current plan is to go out in the next month or so and deal with the erosion on the road, assess the ditch at that time, possibly do work on the ditches at that time, assess the entrance from Pratt Corner Rd. Garcia will be in touch with Jeff so that a site visit can be planned.

### **Associate membership:**

The board asks each candidate to speak about their interest in joining the Planning Board as an associate member.

Jake notes that he recently moved to Shutesbury from Worcester and love their new home. He has founded his own non-profit that provides marketing and communications services to the non-profit sector. Jake has served on multiple boards, including the Greater Worcester Community Foundation, other municipal boards, and non-profit boards.

Ashleigh has been in Shutesbury for almost 20 years. She is a high school teacher and a mom – busy for sure. Became aware of the work of the Planning Board as an abutter to one of the Cowl's parcels that was a potential for a solar development. She has been involved with the PTO, worked as the secretary. Now that her son is in high school, she no longer works with the PTO and has time available to assist and is willing to serve as an associate member. Notes that she has experience in public facing roles. Notes that she learned from following the municipal processes in town at the Planning Board and Select Board.

Lacy asks the candidates if they understand and are prepared for the commitment involved in sitting through a special permit hearing. They both answer in the affirmative.

Both candidates are not abutters to any of the potential Cows' projects.

Raymond asks if they can be impartial in the application of the town's solar bylaw. Jake answers in the affirmative. Ashleigh also says that she can be unbiased, but notes that she did have concerns about the potential for a solar development on a parcel directly abutting her property, that would have a shared driveway. She also adds that she is here because she has an appreciation for the democratic process, including hearing concerns from citizens as well as hearing the proposals from developers.

At 7:50 PM DeChiara moves that Jake Messier be recommended to be an associate member of the Planning Board.

Lacy seconds.

No discussion.

Roll call vote: Bressler: aye, Murphy: aye, Raymond: aye, Lacy: aye, DeChiara: aye, Rotondi: aye, Bonnar: aye.

The motion passes unanimously.

At 7:51 PM DeChiara moves that Ashley Pyecroft be recommended to be an associate member of the Planning Board.

Lacy seconds.

No discussion.

Roll call vote: Bressler: aye, Murphy: aye, Raymond: aye, Lacy: aye, Rotondi: aye, DeChiara: aye, Bonnar: aye.

The motion passes unanimously.

#### **Meet with ZBA regarding 11/6 site visit to Lake Wyola:**

At 8:00 Chuck DiMare calls the meeting to order, announces that the Governor's mandate is no longer in effect and notes that the meeting is being recorded. DiMare notes that the two agenda items for approving minutes will be skipped as the other ZBA board members have not yet reviewed the draft minutes. The next agenda item is to review the site visit at Lake Wyola that took place on Saturday, 11/06/21 at 1:00 PM.

Jeff reviews the site visit. We started on the Southeast side of the lake on South Laurel Dr and stopped at 5 different sites, ending at 32 Lake Drive. DeChiara shares photos of the different locations of the visit. Lacy notes that some areas of the lake would not produce opposition because these areas are thinly populated and requests to build up dwellings typically does not interfere with a neighbor's view. Other areas of the lake are more densely populated, and neighbors tend to submit negative testimony at the hearings where the applicant is seeking to increase the height of their dwelling.

DiMare indicates he would like to solicit public participation in the process and that he is interested in increasing the height limitation of the bylaw.

DeChiara indicates that a bank appraisal may provide an objective measure as to how any changes may affect the value of abutting properties.

DiMare argues that any alteration that increases the height of a non-conforming structure within its exiting footprint does not increase the non-conforming nature of the structure and

should therefore be allowed by right. DiMare also notes that there is case law that supports his argument.

Lacy – notes that he does not agree that the cases referenced by DiMari are good examples to inform our decision on zoning at Lake Wyola. He notes that the state statute requires that to have alterations on a lawfully non-conforming property, a finding must be made that the alterations are not substantially more detrimental to the neighborhood than the existing nonconformity. Lacy indicates that he doesn't see a need to change the bylaw.

DiMare notes that there are also cases where the rulings by municipal boards were overturned by the courts as being "arbitrary and capricious," even in situations where the alterations did increase the non-conformity of the structure.

Murphy requests DiMare cite the case that was arbitrary and capricious. DiMare said it was the Longbar case, but that he read twenty or thirty cases.

Bressler suggests we don't know the answer at this point, but we should research how other lake communities handle this question and solicit the opinion of the public.

Lacy notes the Mass Municipal Lawyers listserv may be a good resource to learn how other lake communities deal with this issue.

Gilmore emphasizes that the bylaw we have is not written in stone and that we can change it.

Charlene Galenski (member of public) – indicates that the current bylaw would have been problematic for her – if she was not able to build up a number of inches, she would not have been able to keep the bedrooms because the ceiling was too low. She also asks whether it is legal for the Lake Wyola district to have different height limitations for residential dwelling than other parts of town.

DiMare – says he would not weigh in on whether it is legal but indicates that it probably is.

Lacy answers that the differences in zoning are legal.

Michael Pill states that the zoning is legal. Notes that Dimare is correct to not weigh in, as a Judge would not weigh in on a case that is not before them and that board members are quasi-judicial administrative decision makers – in effect judges. Notes that courts are reluctant to override municipal legislative bodies.

Mary David – comments that this is not black and white and notes that these issues of building up do impact neighbors and need to be carefully considered.

The PB and ZBA will regroup on 12/13. Lacy will perform some research.

Nick Yarmac of 18 Wyola Drive says that the majority of people who live on the lake are not registered in Shutesbury so will not be able to vote at town meeting.

DeChiara moves at 9:05 to appoint Lacy to take the lead on the topic.

Second: Raymond.

Discussion: none.

Bonnar takes a roll call vote: Bressler: aye, Murphy: aye, Lacy: aye, Rotondi: aye, Lacy: aye, DeChiara: aye, Raymond: aye, Bonner: aye. Motion carries unanimously.

The ZBA also votes unanimously in favor of the motion put forth by the Planning Board.

DiMarei asks for a motion to adjourn the ZBA meeting.

At 9:15 Lacy moves to adjourn the ZBA meeting.

Second: Gillmore.

Discussion: none.

Dimare takes a roll call vote: Lacy: aye, Gilmore: aye, DiMare: aye. The motion passes unanimously.

### **Minutes 9/13, 10/4, 10/12, 10/18**

At 9:16 DeChiara moves to approve the minutes of 9/13/2021.

Second: Lacy

Discussion: we should disapprove the minutes so we can go over the edits for next time.

Roll call vote: Bressler: nay, Murphy: nay, Lacy: nay, Rotondi: nay, DeChiara: nay, Bonner: nay. (Raymond temporarily leaves the meeting – returns prior next roll call vote)

DeChiara provides update on minutes for 10/04 – they were started by former land use clerk but need to be reviewed – they will be ready for following month.

### **Waltham Solar Case (Tracer Lane):**

Background: MGL Ch. 40A Section 3, 9<sup>th</sup> paragraph precludes zoning from prohibiting or unreasonably regulating solar development unless to protect public safety or welfare. A case before the Supreme Judicial Court (SJC) could impact precedent around this law.

DeChiara suggests the town should submit an Amicus Brief advocating for municipalities ability to regulate solar.

Lacy says he doesn't see the facts of the case as being applicable to Shutesbury as Waltham allows roughly 2% of their land for solar, and the development in question isn't located within

Waltham city limits, but rather, an access road to the site is located within a residential neighborhood in Waltham.

Michael Pill points out that the SJC picking up a case like this from the appellate court and issuing requests for Amicus Briefs with broad scope is an unusual development. He also notes that imposing conditions are a good way for municipalities to manage solar development, but that outright denial may be inviting action in court, unless the reason for denial is for something intractable. There is reference to a case with PLH LLC – involving the Ware Planning Board – in conclusion, the state law provision limits the discretion of boards.

DeChiara suggests that, because when MGL Ch. 40A Section 3 was created prior to industrial application of photovoltaics and because Shutesbury has a good solar bylaw, the town should take some action to weigh in with the SJC request for Amicus Brief.

Lacy suggests that this should also be pursued legislatively to add more clarification to the language of the law.

The Board estimates, with some feedback from Michael Pill, that the cost of filing an amicus brief through town council would be somewhere between \$3,000 and \$5,000.

At 9:50 DeChiara moves that the PB recommend to SB that we file an amicus brief to the SJC to support our solar bylaw.

Second: Lacy.

Discussion: None

Roll Call Vote: Raymond: aye, Bressler: aye, Lacy: aye, Murphy: abstain, Rotondi: aye, DeChiara: aye, Bonner: aye – the motion carries.

#### **Discuss possible meetings with Donna MacNicol and Bob Ritchie:**

Lacy indicates that this is in the works for this Friday (11/12). Agenda will be as follows:

1. Lake Wyola District zoning questions (Related to ongoing PB discussions with ZBA.)
2. Attorney General decision on Planning Board Associate Member bylaw (The Attorney General rejected Shutesbury's bylaw amendment passed at Annual Town Meeting.)
3. Potential Mass Municipal Lawyers Association action regarding the Tracer Lane Amicus Brief.

#### **Tiny Houses:**

Deferred

#### **Municipal Vulnerability Preparedness:**

Deferred

**Theriault Frontage Question:**

Lacy explains the situation to Michael Pill, who asked for background on the issue. Jeff explained that the question is whether it meets the requirements to be a grandfathered lot that is buildable. PB made the determination that it does, but Theriault backed out and decided not to pursue the property in question.

**Annual report:**

Deferred

**Unanticipated Business:**

None.

**Adjourn:**

At 9:57 PM DeChiara moves to adjourn.

Bressler seconds.

Discussion: none.

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

**These minutes were approved by the Planning Board on 10/17/2022.**

Respectfully Submitted,  
Nathan Murphy