

Shutesbury Planning Board and Zoning Board of Appeals
DRAFT Minutes – 03.14.2022
Approved – (05.09.2022)
Virtual Meeting

Meeting Start: 7:16pm

Members Present (PB): Deacon Bonnar, Robert Raymond, Linda Rotondi, Jeff Lacy, Steve Bressler, Nathan Murphy, Michael DeChiara

Members Absent: None

Associate Members: Ashleigh Pyecroft

Associate Members Absent: Jake Messier

Members Present (ZBA): Charles DiMare, Herbert Gilmore, Jeff Lacy

Members Absent ZBA): None

Other present: Becky Torres, Jen Davies, Steve Bressler, Joseph Salvador, Bob Blanchette, Donna West, Meaghen Mikolajczuk and all other unidentified individuals

PB Chair's Call to Order at 7:16pm

Meeting is being recorded

Public comment:

Jen Davies (24 Leverette Road)- Davies: She shares an issue with a developer of a property neighboring her home, developer has installed lights that shine in to her home during night hours and create a large disturbance. She reached out to the developer about the lights, and although he shifted the direction of the lights toward the ground, it is still causing disturbance. Davies explains a second attempt of discussion with the developed but received no answer -spoke to construction workers and was told it was not safe to have the light off at night. She spoke to other neighbors about the light issue and discovered other neighbors had experienced the same disturbance from the lights. Overall looking for a solution with the possibility of creating a by-law. Lacy: comments acknowledging seeing the lights as well; one pointing to a septic tank project and another at a construction truck possibly storing tools. Are these permeant lights? Davies: based on current knowledge there are no plans for taking them down. Future home owner may remove them but no specific time when the property will sell. DeChiara: He checked by-laws, lights are only discussed in marijuana regulations, light traffic signs and for solar by-laws. Based on the conversation, PB does not want undue lighting in town but has not been specifically discussed. Seems a light Bylaw is consistent with previous concerns regarding light pollution. It was suggested that a citizen draft bylaw petition could be filed. Lacy: discussed this light issue with colleagues, and based on responses, lights are easy to regulate through special permits, harder for regulate for residential projects. DeChiara notes that it is similar to noise by-laws, suggests Lacy to send colleague responses to all members. Murphy asks Davies if she knows if there are any dates planned for project completion and possibly sell date, Davies does not have any knowledge of any project completion or selling dates. DeFant suggests looking into

the National Dark Sky Associations for their sample lighting ordinances. Bonnar asks if the town could have a light regulation through general Bylaw rather than zoning. Would be enforced by the police, would that be more practical? SPB agrees. Town Administrators notes of another resident with a similar light issue, a new light by-law may help other residents. Raymond adds that there are 50 town in Massachusetts that have a **no dual light** ordinance(s). Davies asks when a petition would need to be submitted, and Town Administrator explains that the Select Board needs to sign off on it 45 days before May 21st, meaning the petition needs to be turned in by April 6th. PB is interested in looking into lighting by-laws in the future.

Education and guidance:

Bonnar: Lacy has sent out inquiries to the public encourage the public to come to tonight's meeting to ask questions, does anyone have any questions? No questions or comments are made.

Meeting Starting (ZBA): 7:43pm

ZBA Chair's Call to Order at 7:43pm

Meeting is being recorded

Proposed amendment to change ZBA from 3 members to 5:

DeChiara: next step was to send the proposed change to Town counsel, Donna MacNicol, she agreed to the change but suggested changing the wording to 'There shall be..'. DeChiara shares final draft containing the proposed change for both boards to see. Both the ZBA and PB agree on the change and ask DeChiara to send it to the Select Board.

Proposed amendment to change text with respect to extension and alteration of non-conforming properties:

DeChiara: showed Town counsel, Donna MacNicol, amendments to the zoning by-law but she refrained from giving legal advice due to conflict of interest as she lives on Lake Wyola. She suggested Alan Seewald or Koppelman and Page. DiMare: Trust and know Seewald, and would like an opportunity to speak with Seewald before Seewald's deliberation. DeChiara: MacNicol and I discussed a version of the proposed amendment that leaves the section needing further investigation out in order to continue the steps needed to approve the other parts of proposed amendments that are in agreeance with both ZBA and SPB. Shares document via sharescreen to review what was discussed last meeting. DiMare still disagrees with that proposed amendment in red. Lacy suggests that, regardless of the lawyer used for legal advice, they should understand the proposed amendments does not change the meaning of the Bylaw but clarifies it. Gilmore: is there a way of a possible compromise? Compromise would mean agree to legal proposed amendments that also fall within definition without further legal decision. Can we compromise on the issue of what is meant by more non-conforming? DiMare: I agree to the advancement of the collectively agreed proposed amendments, the proposal edits listing specific detriments should be removed for now and be revisited at a further time. Bonnar: acknowledges the board was pointed into the direction of another lawyer for this matter but believes the board does not have authority to seek counsel beyond the town's counsel but could go to the Select Board for permission to seek outside counsel. Select Board is meeting tomorrow night, March 15th, 2022, so I can attend and ask for permission and if granted have a member reach out to Alan Sewall.

What about the yellow note? DiMare: should also be viewed by Alan Sewall, my issue that it can be unconstitutional as applied which can create danger for the town. Gilmore: Believes what is being asked of the lawyer may not be able to be done, asking a lawyer to arbitrate a compromise, should be dealt with the parties applied. DiMare: possible compromise, if no further approachments on any sides then in terms of height the limit is the 28 feet line. Due to the way this by-law is worded, and if denied, could cause lawsuits with low success of winning lawsuit. Lacy: Familiar with three cases, one case in the 80's specific said that taking a non-conformity and extending it upward can be interrupted as substantial more dangerous for the neighborhood. The case DiMare is bringing up does not reserve that. DiMare agrees but notes that it comments on the theory. DeChiara: inspired by Gilmore's attempt to compromise, states that the current language says it is not prohibited but not by right, need a special permit. Can we re-word this language to make it explicit that special permits will not be unreasonably denied? Both ZBA and SPB conclude it may not fix the issue of causing possible lawsuits. DeChiara suggests Lacy and DiMare approach Alan Sewall with the proposed amendments if permission from Select Board is granted. Both boards discuss how DiMare and Lacy will meet with Sewall, Gilmore wants to attend meeting but if Gilmore attends it would count as a full quorum therefore may require a public meeting. To be further discussed.

Motion to Adjourn (ZBA): Motion: Lacy motions to adjourn, second by Gilmore. Vote: Lacy-Aye, Gilmore-Aye, DiMare-Aye.

Meeting Closed (ZBA): 8:30pm

Letter of support for Open Space plans:

Bonnar: Received email from Penny Jaques for a letter of support of the Open Space Recreation plan to help get the plan registered with the state. Drafted a letter provided by Jaques and disturbed to members. DeChiara shares the letter with board vis screenshare. **Motion: Lacy moves to approve the letter and have the Chair sign it on behalf of the board knowing there will be some small changes, DeChiara seconds. Vote: DeChiara-Aye, Bressler-Aye, Lacy-Aye, Rotondi-Aye, Raymond-Aye, Murphy-Aye, and Bonnar-Aye.**

Amendment with respect to energy storage:

Lacy shares a noted version of the energy storage amendment via screenshare. DeChiara: edit the amend use title to reflex prohibiting primary use of energy storage systems for commercial or utility scale energy storage system listed a reference section 3.3-7. Raymond: can you explain the significance of turning it from a primary use to an accessory use? DeChiara: Primary use is a hand along energy storage instillation, for secondary because of the SMART program, any new industrial solar has to have batteries therefore cannot fully prohibit them. 3 scenarios, non-commercial of utility scale energy storage system is allowed by right as long energy is used on site but would still require permits such as building, electrical and wiring. In commercial or utility scale energy storage system as primary use, accessory use is prohibited. In commercial or utility scale energy storage system as accessory use, will require special permit and if a secondary use it must comply with solar by-law or wind by-law based on which is being used. In the required documents section, the biggest issue with safety in batteries is the concept of thermals runaway which is if a part of a battery fails, they heat up causing it to continually get hotter without being able to stop it, water is used to continually keep the battery cool. Added that

it must be adequate for the risks involved in the Hazardous Mitigation Analysis (a third party reviewer at the applicants expense). Number 5 of the environmental and safety sections required design specification must be submitted for energy storage units, energy storage containers and exterior of containers. Number 6 requires an emergency respond plan and a fire and explosion plan. Three dangerous concerned, fires of energy batteries will spread to other batteries, venting the containers may release into the environment and water contamination when used to cool batteries. These are addressed in of the environmental and safety, number 7. Bressler: in this same section, A1 and B1 states similar thing. A1 is the mitigation plan developed by the third party reviewer whereas B1 funds the town with proper protocol and plan correct? DeChiara confirms. DeChiara: noise is tricky, issue is dynamic of batteries because they can't get too hot or too cold which creates noise of the containers keeping them at the correct temperature. Bressler: How do we control the noise when sounds travels differently depending on landscape? DeChiara: looked at wind bylaw which regulation noise for Massachusetts, the number fluctuates. If we say it shouldn't be a nuisance to abutters we can address that during the special permit process and have a better understanding of the landscape. Bressler asks DeChiara to remove 'abutters' from this by-law, DeChiara does so. Lacy asks DeChiara for clarifications in section C, number 2 may not be something they can regulate. DeChiara: number 2 is discussing when a fire may occur the vents will open to reduce temperature but also emits toxic gas that had built up inside the container. Number 3 gives reason to need catchment to capture contaminated water used to cool the battery, prevent contaminated water runoff from leeching into the environment. Number 4 limits the placement of energy storage and protects the most venerable and valuable source areas. Lacy: due to wetland protection regulation, nothing can not in the 100 ft buffer of a wetland, questions establishing aquifers in this section. Suggests this by-law be edited/ reworded. I'm okay with most of this section if we all agree that with solar then this is an accessory use the wavier prevision of our solar by-laws is in effect. I'm okay with stricter wording in this section as long as we are allowed to waiver under certain projects or circumstances. Lastly, this last section, 3.3-7.7, could be taken out due to it being already stated in SWES. Raymond: is there a requirement that there be a water storage facility for adequate water for a fire? Is there any regulations for energy storage spacing? DeChiara: there is a section I added for the requirement of a water facility for the use of fire suppression and energy storage spacing will be covered by the Hazardous Mitigation Analysis. Lacy: to make it clear that all the permitting requirements for either wind or solar attached to an ESS, in applicability- DeChiara: it should be in section C. Lacy confirms and agrees. SPB agrees to send the amended solar energy Storage draft to Town Counsel, MacNicol.

Minutes 10/18, 11/8, 12/6, 2/7, 2/16:

Bonnar: these are the minutes that are missing from Town Clerk, let's start with 2/7 and 2/16. Marshall: finished draft of those and sent them out to all members, DeChiara has sent edits which I have looked over and agree with. Lacy: minutes were sent earlier in the day before meeting, not enough time, have some comments but not finished reading them over. If member input before other members seeing them then we should see what the members input was. DeChiara: sent edits only to Marshall because she's staff, was thinking we could all send edits to Marshall so she may read through them and pick what edits fit best and resend the edited version after. Lacy states he would like to see a version of minutes purely observed by Land Use Clerk before member input. Marshall: I sent out both rough drafts Sunday night, March 13th, 2022, which did not have any member input beforehand. Marshall discusses that minutes processes

between the three boards is different from one another and still needs to learn how each board wants of their minutes. SPB decides its best to have a meeting where members and Land Use Clerk can edit the minutes together but concerns are pointed out that they may take a long time. Meeting to edit minutes to be set at a further time.

Motion to Adjourn: Murphy moves to adjourn, DeChiara seconds. Vote: DeChiara-Aye, Bressler-Aye, Lacy-Aye, Rotondi-Aye, Raymond-Aye, Murphy-Aye, and Bonnar-Aye.

Meeting Closed: 9:41pm