

# Shutesbury Planning Board Minutes

DRAFT Minutes – 08.08.2022

(Approved – 12.12.2022)

*Virtual Meeting*

**Meeting Start:** 7:00pm

**Members Present:** Deacon Bonnar, Michael DeChiara, Jeff Lacy, Nathan Murphy, Steven Bressler, Jeff Weston, Robert Raymond

**Members Absent:** None

**Associate Members:** None

**Associate Members Absent:** Jake Messier, Ashleigh Pycroft

**Staff Members:** Carey Marshall (LUC)

**Other Present:** Rob Gage, Mary Lou Conca, Miriam DeFant, Elizabeth Fernandez O'Brien, Sharon Weizenbaum, Leslie Bracebridge, and all other unidentified individuals.

Chair's Call to Order at 7:02pm

Meeting is being recorded

## **7PM Public comment**

None

## **Landowner education and guidance**

Bonnar: Robert Gage has reached out to Planning Board, PB, about his property on SandHill Rd. Gage: Parcel T-8(12.6 acres) is owned by his parents but will be given to himself and his 3 other siblings – across from the conservation area. They are looking for guidance about the property because they are considered developing it responsibly in the future. There was a preliminary wetlands assessment done. He wants to speak to PB before ordering a survey (could have it done by September 1<sup>st</sup>). The property has 1,200ft of frontage and more than a few wetlands present. He seeks guidance on what the next steps should be. DeChiara: he is confused on why this is first being discussed with PB and not Conservation Commission, SCC – Miriam DeFant is the Chair of SCC and present in tonight's meeting. Gage: he has been communicating with Penny Jaques (former Chair of SCC) via email and she has sent him some helpful documents. He was involved with Environmental Health at the local/county level for a number of years in Pennsylvania and he understands it is just as complicated in Massachusetts. DeFant: Jaques is no longer on the commission therefore she recommends that she and he have a discussion regarding the parcel. Gage agrees.

Lacy: he could run through various development options but he believes it is not PB place to indicate preferred options. Bonnar agrees. Lacy, noting the acreage and the frontage, sums through various options permitted by the Zoning Board of Appeals (ZBA). The possibility of common driveway is mentioned. He suggests reading Article 9 of the bylaw which is Open Space design. He also recommends hiring a planner or a landscape architect to help them further

develop a plan of what he and his siblings are looking for – offers to speak with whomever he hires to provide more guidance if needed.

Gage thanks Lacy for his information. Gage plans to speak to DeFant in regards to more info about the wetland regulations.

### **Minutes 11/8/21, 5/18, 6/13, 6/21**

11.08.2021 – Murphy is currently drafting these minutes, will discuss at further time.

05.18.2022 – Minutes were approved for this meeting but Marshall has to add the corrections approved. Once corrections are completed she will send them to Town Clerk, Grace Bannasch.

06.13.2022 & 06.21.2022 – Marshall is currently drafting these minutes, will discuss at further time.

### **Whelock site visit**

Lacy: He reached out to Walker but his voicemail is full – tried to contact him via email but no response. Has anyone seen any activity in the area? DeChiara: he saw a large roll of what appears to be thick wire. He is assuming that is for the wiring for Pratt Corner Rd as committed to between AMP and National Grid – mostly like will be behind soon but has not heard any official word. Lacy: he will continue to reach out but if this continues then he suggests having a letter sent from the building inspector mentioning the possibility of revoking the special permit. DeChiara: he would support that because PB had told EXTERA they wanted to conduct the site visit after the winter – spring has come and gone and still haven't been able to conduct a site visit. Lacy: there is a condition in the special permit stating that 'things shall be maintained in good order' – there are actions that can be considered as violations that are not being corrected. If PB has still not heard back from EXTERA then he suggests action should be taken.

### **Solar bylaw review**

DeChiara: he sent out the most recently updated version of the solar bylaw revision on Sunday August 7<sup>th</sup>, 2022 - highlighting certain sections that PB should review tonight. To summarize, after the last meeting he made edits to reflect discussion and then received edits from Lacy shortly after. After applying Lacy's edits, he had a conversation with Lacy and Town counsel, Donna MacNicol, and made edits to reflect that conversation (this is the version sent out on Sunday). DeChiara shares the 2022 solar bylaw revision v 8-7-22 for the PB to review.

DeChiara: the premise is Lacy had raised the issue that after Tracer Lane and SJC decision, Waltham was criticized because it only allowed 1-2% of the city to be developed with solar. The issue was if Shutesbury looked similar and faced with the same challenge then the same outcome may occur. MacNicol pointed out that Shutesbury and Waltham are not the same – Shutesbury has forested land and if the town sees it needs to be protected then it should be stated and clearly defined in the bylaw.

DeChiara: The main topic of discussion last meeting was the Critical Natural Landscape and how it is unable to be developed under the current bylaw. Pycroft made a suggestion that if PB has to allow the Critical Natural Landscape, then declare a higher bar for that development. After

discussing this topic and suggestion with MacNicol and Lacy, they developed two options. Option 1 keeps original protections but adds option for waiver with cause. Option 2 allows development in Critical Natural Landscape (CNL) but limits project size from 15 acres to 10 acres. As of July 2020, in the SMART regulations state that if a solar installation gets sited in Core Habitat or Critical Natural Landscape the project cannot get a SMART subsidy – the state indirectly agreeing these areas should be protected. Lacy: he was feeling one way until DeChiara had reminded him of the rejection of those areas for subsidies programs which made him more interested in keeping what PB currently has – it was justified by the state.

Lacy: He worries still that when the areas are mapped out it doesn't leave any areas available for solar development unless with a waiver. In Tracer Lane, there was no application that caused Waltham to be challenged – it was just their bylaws on their face being challenged. He worries that a lawyer could challenge Shutesbury's bylaw by stating that PB has pushed development away from the roads and into protected lands that don't allow development. The implication being that maybe PB should allow solar development by the roads which are the only places that aren't protected. He suggested that PB should make it clear in this particular section (section 8.10 -6C) about the waiver. Bressler: could you give an example of what a waiver with cause may be? Lacy: PB received an application for a solar proposal in a block of land that doesn't have any remarkable/outstanding resources. All the Critical Natural Landscape are large polygons that are not the same throughout - some of the land not possess important resources, interesting plants, historical features, etc. That may provide cause to not protect that particular proposed block. DeChiara: he interpreted that this cause to be similar to a cause when terminating an employee for example – have to give a legitimate reason as to why. He was thinking that the proposal would have to explain why the solar proposal had to place in this specific area within the Critical Natural Landscape. Lacy: that would fall under hardship. PB could introduce the idea of hardship if it is wanted. Raymond: the waiver for cause under section 8.10 -6C exists whether it is stated or not, correct? Lacy: yes. Raymond: why should it be stated at all? If it is stated, why not give some type of definition or example(s) to make it a clearly defined concept? Lacy: normally PB would not list it because the waiver provides for any provision in section 8.10 but he felt that placing it here would be appropriate after reviewing Tracer Lane – strengths this section that be viewed as weak. Raymond: it becomes confusing because the question raises why bother placing it here and not in any of the other bylaws. Lacy: because to him this section is a soft spot in the bylaw due to the large amount of land that is ruled out. The way out of the soft spot is to offer a waiver. A lawyer that is trying to think of a good facial challenge to this bylaw might read the waiver provision and conclude that a facial challenge may not be in order because they [PB] is presenting the waiver up front – will have to go through the application process and be denied a waiver before they can appeal. DeChiara: hearing the feedback from Raymond, he suggests further defining 'waiver with a cause' to provide more clarity to an applicant/lawyer. Lacy agrees.

Bonnar: what does the prepositional phrase 'for cause' mean in this section – is it necessary? Lacy: there are standards in 8.10 -6C; there are 2 waiver standards stated that have to be met. Bressler: to summarize, the waiver gives PB wiggle room in case a lawyer says PB can't do this because the bylaw has restrictions that unreasonable regulates solar development. He agrees that the waiver should be mentioned in this section. DeChiara: he agrees but given the vagueness it allows PB some wiggle room but also potentially gives developers free range to go forward.

Lacy: he suggests adding to the section explaining what the PB is looking for within a waiver for cause beyond the standards that are currently listed. Bressler: he agrees and suggests listing one example would suffice.

Weston: for cause, could a developer state they have surveyed all the land in Shutesbury and the block they are proposing for solar development is the only place that works? Lacy: that could be a hardship which is an option to add into this section as well. With all this being said, an applicant could go before the Zoning Board of Appeals and get a variance. Bonnar: that would be after an application? Lacy: yes after being denied. DeChiara: in terms of writing, it appears that after discussion PB is in like of option 1 – if so then he could place this into the draft to be edited later to reflect tonight’s meeting. Lacy: he doesn’t want to dismiss option 2 because if an applicant were to propose a smaller solar development as this option is stating then that is something that could be used as part of the waiver.

Bonnar: are the 2020 SMART regulations the most up-to-date regulations? DeChiara: yes, nothing has changed since the posting of these regulations. Weston: is it too much to have a combination of both options? Lacy: that could be a part of what PB approves. Bressler: he doesn’t believe PB needs to be that specific when there is a waiver for cause available – that can be defined when it comes before the PB. DeChiara: again, it seems PB is in agreement with option 1 but not 100%. Lacy: he agrees and suggests that DeChiara further revise this section and change ‘waiver for cause’ to ‘waiver for demonstrated cause’. DeChiara agrees. Sharon Weizenbaum (712 Pratt Corner Rd): she had heard the discussion about what could be defined as cause; specially about degraded land. She worries that in the long term if land becomes degraded from logging activity and then an applicant claims that section of land logged as already degraded. Lacy: he believes that the PB would see through something of that nature if it were to occur. DeChiara: he agrees and thanks Weizenbaum for her comment. He suggested that he will continue to revise this section using option 1 - will continue the discussion next meeting with his new edit. PB agrees.

DeChiara: the second section to be discussed tonight is section B. Dimensional Requirements. Since the first version of the bylaw in 2015/2016, large scale solar has been defined as more than 1.5 acres and no greater than 15 acres. Lacy and himself decided that even though it is stated in the back of the entire zoning bylaw, adding to this section will provide the upmost clarity. Lacy and himself had another conversation later about the technology is becoming more efficient – presuming that generally solar developments can produce 6MW using less than 15 acres. Lacy suggested that rather than putting a cap on acreage, PB put a cap on how much could be generated. As time goes on and it becomes more efficient than the limit could drop from 15 acres to 12 acres and so on. He suggested putting in both so that the bylaw would read ‘6MW of electricity or no greater than 15 acres of land, whichever is less’ – could be stated as whichever is greater if that is what PB wants.

Lacy: his original worry about limiting the acreage was lessened by MacNicol informing in this is common in other town bylaws. His worry is that this would be challenged based on bylaw makes the project non-economic – he understand that state SMART program will provide incentives to support projects up to 6MW. He doesn’t feel as strongly that this will be an issue

later on. If we choose to combine these two concepts as suggested than he suggest it should state whichever is less.

Raymond: he isn't sure why PB should do anything besides acreage in this matter; seems to make it more complicated. Why is PB concerning about how efficient the solar development is? Weston: the issue with acreage is that it might be possible to the applicant putting in the solar development to choose different 5 acre parcels that would disrupt more than the 15 acres. He suggests writing it as 15 continuous acres rather than the possible disturbing the habitat more by separating the development into separate units. Lacy: in the current solar bylaw it allows only one large scale solar develop in each of the 8 blocks – so if one were to be a singular 5 acre solar development then that would meet the requirement in that block (no further solar development in that block). Bressler: if PB is only allowing one large solar development in each solar distract and if the technology advances to the point where 5 acres is efficient for 5MW, you [Lacy] are still confident that PB could still limit one to each distract? Lacy: yes. Miriam DeFant (74 Pratt Corner Rd): she could envision some designs where having more decentralized could be better environmentally specific if an applicant was carving the site out of wetlands and slopes – a good example is Wheelock having a buffer strip in the middle of it for slope protection. Even with wetlands having an irregular layout may lessen some environmental impacts if for example it allowed an isolated wetlands to have some corridor connections with other wetlands. If some of these revisions are being written to tie closer to the language in the Dover amendment then she doesn't see how electricity output ties into as clearly as acreage. DeChiara: he thanks DeFant for her comments. Raymond's comment has clarified the issue of citing production as a limit because the bylaw is not about production but about the footprint of the development – production doesn't tie into the background piece PB has added in the beginning discuss the importance of public health, safety, and welfare. He believes that this section should be left the way it current reads. Bonnar: by limiting the acreage PB can create an incentive for a developer to use more expensive but more efficient panels – if they come in with a proposal using cheap panels, can PB require that in order to reduce the acreage the applicant must use more expensive panels? Lacy: that would be part of the economics of it so yes. Bressler: based on the Tracer case PB shouldn't decrease the available acreage. PB agrees to leave this section as is.

DeChiara summarizes the added language cited in blue font for PB to review – the language added clarifies the reasoning for the restrictions created by the Solar bylaw in terms of protecting public health, safety, and welfare. Bressler thanks DeChiara for his efforts is creating the detail he has in these blue font sections. Lacy: in section 8.10 -C12, he suggests that it should be required to have a hydrogeologist complete the work required in this section even though they are not licensed in the state. PB needs a person with knowledge of what occurs both above and below the surface. Raymond: he suggests it say 'a person with an understand of hydrogeology'. DeChiara agrees with both suggestions and corrections this section to reflect so.

PB has no further questions or comments.

**Motion to Adjourn:** Bressler moves to adjourn, Lacy seconds. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphey- Aye, Raymond- Aye, and Weston- Aye.

**Meeting Close: 8:20**

**Documents Used:**

- 2022 solar bylaw revision -v 8-7-22