

Shutesbury Planning Board Minutes

02.13.2023

Approved – 03.13.2023

Virtual Meeting

Meeting Start: 7:00pm

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

Members Absent: Robert Raymond

Associate Members: Ashleigh Pyecroft

Associate Members Absent: Jake Messier

Staff Members: Carey Marshall (LUC)

Other Present: Chuck DiMare, Miriam DeFant, Hilda Greenbaum, Mark Wightman, Joyce Braunhut, Mark Stadnicki, Tracy McNaughton, Sharon Weizenbaum, Penny Jaques, Kiefer Tyrell, Mary Lou Conca, Carlos Fontes, and all other unidentified individuals.

Chair's Call to Order at 7:01pm

Meeting is being recorded

Public Comment

Tracy McNaughton asks, in regards to the Master Plan, if Planning Board (PB) knows the breakout in lake district of seasonal compared to full-time residents? If not, when will that information be gathered again. Bonnar is unsure of the answer but understands that information is what the assessors try to keep up to date. McNaughton asks when the next 'cycle' would be since the Master Plan was completed in 2004. Lacy explains that there is no formal requirement by state statute. DeChiara summarizes that the Municipal Vulnerability Plan recommended updating the Master Plan with climate crisis in particular. He explained that between looming projects headed to PB and the need for broad community engagement, and funding from the town for a consultant, it is unlikely the Master Plan will be updated in the short-term. Lacy points out that a community visioning process as more recently conducted under the direction of a town committee and with assistance from a consultant.

DiMare ANR

DiMare present his ANR project to PB to review; DiMare has attended the last two previous meetings for PB guidance. The ANR is to accurately reflect his special permit approved in November 16th 2017 and the titles of sold parcels; Lot 3 sold and owned by Kathleen LuGosch and Lot A is now conveyed to Lot 1.

Motion: DeChiara moves to approve the ANR as presented by Chuck DiMare regarding the changes as outlined, Lacy seconds. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.

Minutes 6/21/22, 7/5/22, 10/17/22, 11/21/22, 12/12/22, 1/11/23

6/21/22 – Motion: DeChiara moves to approve the 6/21/22 minutes, Murphy seconds. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.

7/5/22 – Motion: DeChiara moves to approve the 7/5/22 minutes, Murphy seconds. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.

10/17/22 – Lacy recalls the Public Comment section of these minutes; wants to confirm with PB that they wish to proceed as written. PB reviews the Public Comment section in the 10/17/2022 minutes. Upon review, PB confirms they wish to proceed as written. Motion: DeChiara moves to approve the 10/17/22 minutes, Lacy seconds. Vote: Bonnar- Aye, Bressler- Abstain, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.

11/21/22 – Murphy notes there is an incorrect ‘Aye’ vote from him regarding the Solar Bylaw Revision; he abstained. Marshall agrees to correct it. Motion: DeChiara moves to approve the 11/21/22 minutes as corrected, Murphy seconds. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.

PB pauses reviewing minutes to open the continued Public Hearing for Wightman's Open Space Design plan for H-151 on Leverett Road.

12/12/22 – Motion: DeChiara moves to approve the 12/12/22 minutes, Lacy seconds. Marshall notes that a small correction to Kiefer Tyrell’s name will need to be fixed; changed from Mac Tyrell to Kiefer Tyrell. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.

1/11/23 – Marshall has completed the draft; awaiting review from Bonnar and DeChiara.

Continued hearing on Mark Wightman's Open Space Design plan for H-151 on Leverett Road

Wightman: he apologies for being unable to be present during the last Public Hearing; he has spoken to his consultant to review what occurred – he understands that there were questions for him regarding moving forward with the permit. Lacy asks how the conservation area requirement will be handled. Wightman has discussed this matter with his lawyer, Dan Graves, and his understanding is that he would need to place a deed restriction on the 14 acres to be set as conservation area that would then have to be held by someone or entity; further that needs to have the special permit completed first before approaching someone or an entity to hold the deed restriction for conservation. Once given the permit, he plans to approach someone that would allow him to own all 18 acres but place a restriction on the designated 14 acres for conservation area; Lacy confirms this process as one of his ownership options – landowners chose who or what entity holds restriction. He notes that with these holders comes a challenge because the holder is responsible for annual inspection and enforcement when necessary. Wightman notes he

has does this before with another property and the entity he went with worked out will; he plans to do research on what that entity was and other possible holder candidates.

DeChiara summaries that during their discussion last meeting, it was confirmed the driveway was not a shared driveway meaning that there could only be one structure on the buildable part of the parcel; it could be a single structure duplex. Lacy confirms the acreage would allow for two structures but since the driveway is proposed as not shared then only one structure is allowed; this could be either single family dwelling (with or without an accessory structure) or single structure duplex. Wightman understands that the town's bylaw allows for a single family home with a detached accessory dwelling as well; asks if that would be covered under this permit or if this would require a shared driveway? Lacy answers that it would not require a shared driveway but would require him or the owner of the property to return to PB for review; it could be attached or de-attached (75ft or more in distance from original structure) and no more than 800sqft.

Jeff summaries that they proposed entrance to the parcel, even though in compliance with the town's zoning bylaws, would involve a lot of ground disturbance, removal of rock walls and trees, and installation of drainage; created concern from the abutters. Wightman states that after the site visit with Bonnar and Lacy he wishes to get the special permit approved with the current proposed 12 foot wide driveway but intends to approach the Zoning Board of Appeals (ZBA) with the intention to get approved the current cart path but modify it so it would work safely for a single family/resident driveway. DeChiara shares photos of the location of the proposed driveway entrance for PB to review. Lacy notes that the current path appears to be centered between the two abutting homes thus wonders why it needs to be re-centered. Wightman explains that the current road is not centered to the property lines.

DeChiara inquires of Jeff if Wightman's process of submitting the Open Space Design to PB first and then going to ZBA for variance is acceptable in terms of sequence. Lacy believes this approach is acceptable because PB can either condition in the permit that Wightman must seek a variance from ZBA before the start of construction or approve the plan, including the driveway, as is. Approving the plan as is allows Wightman to choose whether he will go to the ZBA as he is proposing or stay with the driveway proposed on the plan. ZBA will determine the variance and if not granted, then driveway would be constructed as seen in the plan.

Tyrell: his concerns raised as the last meeting still stands; driveway located 10ft- 15ft from their well, the construction site being 10ft-15ft from their home, draining to the east being the direction of their property (currently dealing with flooding events/damage). DeChiara asks if the proposed driveway, meeting a width compliant with zoning regulations is the issue or if the use of the driveway in general was the issue. Tyrell explains it is a bit of both; proposed driveway's construction being close to the home and well is a concern; also, that with a driveway made there would be lack of privacy due to a bedroom window being visible from proposed driveway. Wightman introduces himself to Tyrell and informs that he tried to reach out before the meeting but was unable to reach anyone. He understands the concerns and proposes to Tyrell that he place a row of arborvitaes starting from the front corner of his house going up parallel to the house and ending at the back of the backyard (providing privacy to the backyard); either on either his own [Wightman] or his land – whichever Tyrell chooses. This would be at Wightman's

expense. Arborvitaes would up to 10ft-12ft in height. The maintenance of the arborvitaes will be the responsibly of the landowner where they reside. He doesn't believe the well will be an issue because they won't have to dig deep for the construction of the driveway regardless of whether it stays as is (ZBA variance granted) or changes as proposed. The drainage feature is a requirement from the town's bylaws and may help in redirecting the water onto his property far behind Tyrell's. Tyrell agrees the vegetative barrier would be an acceptable mitigation. \$10,000 offer was made in lieu of the plantings.

DeChiara wonders if the other abutter has any comments or concerns about the proposed project. Wightman states he has spoken with them and they did not express any concerns; in the past, he allowed the abutter to access his property to drop his lawn trimmings or leaves thus has a good relationship with them. Tyrell confirms he has spoken with them as well and they didn't express concern to him either. Conca asks for the address of the proposed driveway/property and shares her pleasure with using a shared driveway with her neighbor. DeChiara explains that this driveway resides between 97 Leverett Rd and 105 Leverett Rd; shares a map reference for further clarity.

Lacy discusses possible conditions PB could place within the permit such as: before receiving a building permit Wightman must have a holder for the conservation restriction and he must make an effort with ZBA regarding driveway variance. When asked by the PB, Wightman prefers to close the public hearing tonight. **Motion: Lacy moves to close the Public Hearing for Wightman's Open Space Design on H-151 Leverett Rd, DeChiara seconds. Vote: Bonnar-Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.**

Lacy agrees to draft the permit and finding of facts, based on his sense of the board's preview, for PB to review at the next meeting. DeChiara shares his interest in placing conditions based on findings that acknowledge both the applicant's and abutter's interest of keeping the driveway as is. **Motion: Lacy moves to close deliberation for the matter of this case, DeChiara seconds. Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.**

Further deliberation and review of findings will take place during the next meeting on March 13th, 2023

Cowls subdivision plans

Lacy explains that earlier in the day of Special Town Meeting, January 19, 2023, representatives from Cowls dropped off a number (4) of preliminary subdivision plans in an attempt to freeze their zoning rights under the old zoning bylaw and not the solar bylaw that would be voted on later that day (Solar Bylaw Revision). Since then, Lacy and DeChiara have had discussions with Town Counsel, Donna MacNicol, in which they determined the plans were not submitted properly. MacNicol, DeChiara and Lacy have drafted a letter to Cowls, their lawyer and their representative, explaining that the submission was not done correctly and therefore was never officially submitted. Marshall shares the final draft of the letter for PB to review. DeChiara clarifies the two reasons the plans are considered submitted incorrectly – they are required, by state statute to be delivered at a public meeting of the Planning Board or to be sent by registered mail. Neither occurred. In addition, statute requires written notice of submission has to be

submitted to the Town Clerk before the effective date of the bylaw. The town voted at a special town meeting on January 19th approving the bylaw meaning that is the effective date; Cows and representatives would have needed to correctly submit notice of submission on or before January 18th to comply with this additional aspect of statute. **Motion: DeChiara moves the Cows Subdivision Letter be approved, Lacy seconds.** Weizenbaum notes she didn't see Pratt Corner South was not listed and asks if a permit for that location was submitted. Marshall confirms that only four preliminary plans were provided; Pratt West, Pratt East, Montague, and Leverett West – nothing provided for Pratt South. **Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Abstain and Weston- Aye. So moved.**

Associate member legislation

DeChiara summarizes that he and Lacy had a meeting with the Sen. Jo Commerford's chief of staff and legislator director; they were in support of figuring out the most effective approach to need Shutesbury's needs regarding broader role for associate planning board members. The two options are to file legislation for a general statewide bill applying to every municipality in the commonwealth or completing a home rule petition that would only apply to Shutesbury. Sen. Commerford's office recommends a home rule approach as being more expedient.

Michael reported further that Rep. Aaron Sanders, Shutesbury's newly elected state representative, was at the Shutesbury library last week and he discussed this matter with him. A homerule process would start with the House of Representatives and then move to the Senate. During their conversation, Rep. Saunders supported a home rule bill moving forward; he shared that that the process requires a town meeting vote to approve of the petition.; Once approved, it goes to the state representative (Sanders) who submits it to the House. Sanders also suggested submitting the petition language to the Housel Counsel in advance (by March) to review and vetted the proposed language. DeChiara shares the current language of the associate member legislation and the newly revised version for PB to review.

Possible 2023 amendments

Lighting – A citizen approached the PB before 2022 Town Meeting asking to have the PB develop a bylaw for lighting but PB did not have enough time to create draft language. The citizen completed a citizen petition instead that was brought up and ultimately withdrawn at Annual Town Meeting. A part of the Citizen petition asked PB to create a lighting bylaw. Jeff indicated that upon researching the options, a lighting bylaw could be a zoning bylaw or a general bylaw meaning that the Select Board could submit a bylaw if PB wishes not to. PB agrees that is more of a general bylaw and does not want to proceed with drafting anything. DeChiara said that a rough draft of the bylaw was completed late 2022 and that he is willing to share it with the Select Board along with a summary of their discussion.

Municipal Vulnerability Preparedness and Hazard Mitigation – DeChiara says that bylaws addressing various recommendations in these plans could be developed to handle the effects of climate change on the town such as storm water regulations; or the effects of climate migration. Lacy shares that storm water drainage regulations, in his opinion, are usually discussed with subdivision projects; not individual homes or small projects which the PB often sees. He recommends that PB look into curb cuts and driveway entrances from roads. Murphy and DeFant

share support in drafting regulations to regulate stormwater. ***Further discussion of the matter will be continued in future meetings.***

Handbook of Massachusetts Land Use – During DeChiara’s discussions with Lacy and MacNicol regarding the Cowls subdivision plans, he noted that Lacy and MacNicol both own and recommended having a copy of the Handbook of Massachusetts Land Use. The newest 5th edition costs \$600 to purchase. He asks PB to consider either subsidizing purchase by members or having PB purchase a copy to have in Town Hall for PB use and education in handling cases in the future. PB suggests asking if the Library Director, Mary Anne Antonellis, would be interested in purchasing it and having it available to the public along with PB; DeChiara volunteers to reach out to Antonellis. ***Further discussion of the matter will be continued in future meetings.***

Planning Law – *Discussion has been postponed*

Vice chair signature power

DeChiara suggests PB consider electing a vice chair that would have the power to sign on documents in lieu of the PB Chair, in case Bonnar has an emergency where he is unable to sign an important document. Bonnar notes that PB, in the past, has granted him power to sign on the behalf of all PB members on documents that go to the registry of deeds; doesn’t believe that can cover over to a vice chair position. Bressler shares concern of creating a new position and is more comfortable with the current process of Bonnar designating someone during a particular situation in the case of when he is unable to make a meeting and etc. Lacy suggests looking into Hadley Land Use Clerk and how they utilize this position for situations as such. ***Further discussion of the matter will be continued in future meetings.***

Land Use Clerk and Conservation Commission

Discussion has been postponed

Terms of Steve, Michael, and Deacon ending this year

Bonnar notes that himself, DeChiara and Bressler terms are ending this year thus need to decide if they are running again.

Unanticipated business

None

Motion to Adjourn: Bressler moves to adjourn, Lacy seconds. **Vote: Bonnar- Aye, Bressler- Aye, DeChiara- Aye, Lacy- Aye, Murphy- Aye and Weston- Aye. So moved.**

Meeting Close: 9:23pm

Next Meeting: March 13th at 7:00pm

Documents Used:

- DiMare ANR 2023

- DiMare Special Permit Nov 2017
- Wightman Open Space Design Special Permit for H-151 Leverett Rd