

Shutesbury Planning Board Minutes
Approved Minutes – 06.12.2023
(Approved – 09.11.2023)
Virtual Meeting

Meeting Start: 7:00pm

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

Associate Members Present: Ashleigh Pyecroft

Associate Members Absent: Jake Messier

Staff Members: Carey Marshall (LUC)

Other Present: Miriam DeFant, and all other unidentified individuals.

Chair's Call to Order at 7:03pm

Meeting is being recorded

Public Comment

None

Landowner Education and Guidance

None

DeChiara notes that an PB received an inquiry about tiny homes from Elizabeth O'Brian-Fernandez via email but she no longer needs assistance from PB. Lacy adds that questions regarding tiny homes may increase as they become more popular and suggests PB refine their policy for future inquiries. DeChiara agrees and suggests PB create an amendment to the bylaw once PB has defined their policy.

Discussion will be continued at next meeting on July 10, 2023.

Annual town meeting

DeChiara thanks PB members who came to Annual Town meeting for support - the Associate Member Bylaw Home Rule Petition passed. He received an email from Town Counsel, Donna MacNicol, providing instructions for the next steps – once the formal minutes from Town Meeting are completed, the Town Clerk, Grace Bannasch will the give PB a sealed stamped document of the approved motion which will then be send to the state legislature for their initial action. Lacy elaborates that DeChiara and himself have divided the work on this issue; DeChiara is handling the Home Rule Petition approach and he is working on bill in the legislature that would allow to all cities and towns, not just Shutesbury, to have broader responsibilities for associate members.

Associate member appointments

Jake messier is not interested in continuing as an Associate Member. PB plans to put out a town wide announcement to advertise the available PB Associate Member position. PB shares their appreciation for Pyecroft efforts and commitment.

Motion: Murphy moves to have PB recommend to reappoint Ashleigh Pyecroft as a PB Associate Member to the Selectboard effective July 1st, 2023, Raymond seconds. Vote: Bonnar – Aye, Bressler -Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. *The motion carries.*

DeChiara will put together the PB Town Announcement for the opening of a new Associate Member.

Minutes 1/3, 3/13, 4/10, 4/24, 5/8

1/3 – PB reviewed the 01/03/2023 minutes; no comments. **Motion: DeChiara moves to approve the 01/03/2023 minutes, Bonnar seconds. Vote: Bonnar – Aye, Bressler -Aye, DeChiara – Aye, Lacy – Aye, Murphy – Abstain, Raymond – Abstain, and Weston – Aye. *The motion carries.***

3/13 – PB reviewed the 03/13/2023 minutes; no comments. **Motion: DeChiara moves to approve the 03/13/2023 minutes, Lacy seconds.**

Lacy screenshares the 03/13/2023 to review a proposed edit with PB. He highlights a sentence in the minutes stating ‘... he is not the sole member to pass an application because more permits require 2 or more members to approve them’. Marshall clarifies this stated from Lacy was a clarification during that discussion stating that since he has already disclosed himself as the Chair of the ZBA he doesn’t have to abstain and that most permits from the ZBA only require two out of three votes to pass thus he could abstain during the ZBA hearing/vote if need. Lacy corrects Marshall that would be incorrect because for a variance case the ZBA would need a majority vote. Marshall recommends to remove this sentence from the minutes; PB agrees. Murphy suggests removing the statement before the being discussed stating ‘Murphy asks Lacy if he has to abstain because he is the Chair of the ZBA’ as he believes it is not needed. DeChiara disagrees because it explains the reason why PB chose to wait to vote on the permit; PB agrees.

Vote: Bonnar – Aye, Bressler -Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Abstain, and Weston – Aye. *The motion carries.*

4/10 – PB reviewed the 04/10/2023 minutes; no comments. **Motion: DeChiara moves to approve the 04/10/2023 minutes, Lacy seconds.**

Lacy screenshares the 04/10/2023 to review a proposed edit with PB. He points to two places the term ‘common’ driveway was used in the third paragraph of the section titled ‘Mark Wightman Open Space Design plan for H –151 on Leverett Rd’; clarifies this is an incorrect term and should be written as individual driveway. Marshall notes that these were the terms used during the discussion would like to add the correct term in brackets next to the word common to serve

as a correction but not take away from what was stated during the meeting. Lacy disagrees because the zoning bylaws doesn't use the term common but rather shared thus may create confusion; the context of this discussion the special permit was seeking an individual or single dwelling driveway. DeChiara, who was credited saying these statements, agrees with Lacy. Lacy asks Marshall to correct these terms from 'common' to 'individual' and the term 'shared' to 'common'; Marshall agrees.

Murphy shares that he has a proposed edit. He points to the Unanticipated Business section where the topic of discussion was the Shutesbury Elementary School cell service; the document cites him as follows 'Murphy appreciates the feedback; his comment came from his concern over children needing to reach their parents in case of an emergency'. Murphy points out that is not what he stated. He clarifies that he was more interested in parents being able to communicate via cell phone when they are at the school. Marshall screenshares the 04/10/2023 minutes; Marshall edits the original statement to 'Murphy appreciates the feedback but was interested in having parents being able to communicate when at school' as guided by Murphy. Lacy recommends editing the next sentence to match the edit; Marshall edits the sentence to 'DeChiara suggests the school look into getting extenders for the main office'. PB agrees with these changes.

Vote: Bonnar – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. The motion carries

4/24 – PB reviewed the 04/24/2023 minutes; no comments. Motion: DeChiara moves to approve the 04/24/2023 minutes, Lacy seconds. Vote: Bonnar – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Abstain, Raymond – Aye, and Weston – Aye. The motion carries

5/8 – PB reviewed the 05/08/2023 minutes; no comments. Motion: moves to approve the 05/08/2023 minutes, Lacy seconds. Vote: Bonnar – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. The motion carries

Comments for Conservation Commission on wetland regulation

Shutesbury Conservation Commission (SCC) contacted PB regarding the SCC's draft Bylaw Regulations Update; looking for any comments or questions PB may have. DeFant notes that is this a draft of the Bylaw Regulations update, thus will be continually worked on as SCC recently had a working session with their consult Patrick Garner; received feedback from Garner that will result in some edits. Murphy asks if the draft Bylaw Regulations Update were sent via email or only posted on the town website; DeFant clarifies that the draft was both sent via email and posted on the town website. She explains that once the new draft is completed it will be uploaded alongside the previous draft to allow for comparison; SCC is looking into condensing the regulations and remove repetitive information.

SCC's reasons for updating the Bylaw regulations were based on feedback it received from both Town Counsel, Donna MacNicol, and MACC (Massachusetts Association of Conservation Commissioners); towns that don't have clearly defined regulations will struggle to hold onto their homerule jurisdiction upon appeal. During appeals for permits issued under local bylaws, courts will look to the regulations to compare how they differ from the Wetlands Protection Act (WPA); if jurisdiction is not defined clearly then there is possibility of the bylaw and/or

regulations to be thrown out. Towns have bylaw regulations because they are more restrictive/protective of wetlands than WPA. Lacy asks if both the bylaw, which must be approved at Annual Town Meeting, and the bylaw regulations are being currently discussed; DeFant clarifies only the regulations are being updated and discussed. Lacy asks if there is a current bylaw; DeFant confirms there is and it was passed in 1987. Like all local town bylaws, that the conservation commission promulgates all regulations through a process. SCC is currently in the middle of that process as the current regulations are out of date, they were last revised in 2000. Other local towns in Massachusetts that have recently updated their bylaw regulation have longer, detailed, and more scientifically explicit regulations that mirror the WPA. Other reason for the update is because the fees have not been updated in 25 years and they are now inadequate. Also, some of bylaws/regulations have been creating an undue burden on small residential projects; no pathway for a small, inexpensive streamlined permit.

Lacy asks how these regulations are approved. DeFant explains that they are approved by SCC after a public hearing(s); SCC currently has a public hearing date set for June 21st, 2023 at 6:00pm. SCC hired a 3rd party reviewer/consultant Patrick Garner who has spent hours with SCC working on them alongside an unpaid consultant, Janice Stone; a well experienced wetland scientist/conservation agent, former Chair of SCC, and former board member of the MACC who has helped review the draft as well. Lacy asks if there is a side by side comparison of the old and current draft of the bylaw regulations; DeFant states there is not because the current regulations are about 8 pages long versus the new draft that is 67 pages long – believe it wouldn't be helpful as the current regulations have little to no definitions, performance standards and procedures.

DeFant explains that communities are creating regulations that define in explicit detail how decisions will be made about permit applications including what the performance standards are and what scientific basis are for each wetland resource area. This is important because upon appeal or when reviewing complex projects. B for the average landowner with a smaller project, they will be exempt from these long scientific texts because these are small in scope they won't have significant impacts to resource areas. Regardless if SCC doesn't spell out the definitions, performance standards, and procedures then they could lose them in appeal. If SCC hasn't published those standards in regulations in advance then they won't stand upon appeal is what they have been advised.

Bressler asks if there is a way to pull out the regulations out of the 67 page document but then link them to the rationales she has discussed. DeFant doesn't believe that is possible; can't anticipate all possible appeals and why SCC would need them. There is a growing consensus across the conservation commissions throughout the state about what are the most important preambles to put in regulations as well as performance standards.. For most applications the performance standards are not going to be meaningful; rules for individual permit applications will be meaningful. Regulations are a reference to look through to keep SCC honest and for predictability but for applicants it won't be a "go to" instruction manual for how to submit an application; SCC has to distill the regulations into instructions that are easy to understand – current have checklists and written instruction for current bylaw.

DeChiara states that his first thought was that the 67 pages were hard to access but understanding this notion that this will be a used as a reference and that there will be checklists for applicants

gave him comfort. If the instructions are easy to understand and what steps are needed in any permit application situation, then it makes sense. He admits that the document overall is very dense but is comprehensive. He appreciated the places of commonality of things the zoning bylaw and wetland regulation both prioritize; mutually reinforcing. DeFant notes that WPA is ‘as clear as mud’ and conservation commissions are tasked with helping applicants understand it because the state doesn’t.

Lacy states that when he looks at these drafts he will be asking for average person in Shutesbury (home owner) will these regulations make it more confusing or clearly and will it be more expensive; he will be in favoring the regulations that are clear, affordable and not onerous for the average person. DeFant agrees with Lacy; elaborates SCC doesn’t want to over regulate small projects that don’t significant impact resources areas. Many communities are creating a permit pathway for small projects which SCC is proposing to call a small project permit. These permits would not require abutter notification, legal ads, public hearing, professional delineations, or engineered plans; simple application that SCC would develop with a reasonable (\$50) fee and would need a site visit from SCC; in theory would only take two to three weeks to receive the permit. Bressler asks if this is in relation to what is occurring on Lot O-32 and if passed would it then affect anything occurring on Lot O-32; DeFant states it is not motivated by Lot O-32 and will not affect activities on Lot O-32, in her opinion – clarifies these regulations will not change what they are currently doing but rather explain what they are doing.

Unanticipated business

Possible Upcoming Application(s) – Lacy states that on January 19th, 2023 PB ‘received’ Preliminary Subdivision plans in an effort to freeze the zoning; to successfully freeze the zoning, they would have to come back 7 months later with a definitive plan thus the deadline to submit those to PB for review would be August 19th, 2023. If PB were to approve them then they could claim the zoning freeze is in affect for 8 years; want PB to be mindful.

Marshall inquiries about what should be done with the checks ‘received’ in accordance with those plans; has touched them since they approved. PB recommends she speak with Town Counsel, Donna MacNicol.

Legal Defense Fund – DeChiara asked the SelectBoard if it could create a Legal Defense Fund solar suit related cost. He was told by MacNicol it would need to be an approved motion and vote from SelectBoard. DeChiara asked for it to be considered at the June 20th, 2023 meeting and if approved that means the town has the ability to defray some legal costs.

PB Chair – Bonnar reminded the Board that he agreed to be Chair for another year which is now ending. He asks PB to start thinking about who to elect as the new Chair. *Matter will be discussed at next meeting.*

CPC member

DeChiara recommends that he also advertise the PB CPC Member position as well as the PB Associate Member position in the town wide announcement he is putting together; PB agrees.

FRCOG pollinator advice

Discussion Tabled

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

Meeting Close: 8:15pm

Next Meeting: July 10th at 7:00pm

Documents Used:

- Associate Member Home Rule Petition
- Draft Bylaw Regulation Update (SCC)