

Shutesbury Planning Board Minutes
Approved Minutes – 07/10/2023
(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 Absent: Ashleigh Pyecroft

Staff Members: Carey Marshall (LUC)

Other Present: Keith Ross, Chris Perry, Mark Wightman, Chuck J. DiMare, and other unidentified individuals.

Chair's Call to Order at 7:03pm

Meeting is being recorded

Election of Chair

DeChiara nominates Nathan Murphy as Chair for the Planning Board, Lacy seconds. Vote: Bressler – Aye, Bonnar – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Abstain, Raymond – Aye, and Weston – Aye. *The motion carriers.*

PB Members give gratitude to Bonnar for his long service as PB Chair. Murphy thanks PB Members for his nomination as Chair.

Public Comment

None

Landowner Education and Guidance

Keith Ross introduces himself to PB as a Forester from LandVest. He has been working with his long term clients, the Hartshorn family, managing their 21,000 – 22,000 acres of forest along the New Hampshire border. His clients are interested in purchasing a portion of land from the Perry Family on 351 Wendell Rd with the interest of owning the land long term for forest management. The Hartshorn family has in the past has sold their older properties as conservation land and intend to do the same with this property. Ross explains the Hartshorns' plan to buy 61.75 acres and the Perry family is to keep a 12 acre lot. He is here tonight to discuss the possible way of using Briggs Rd as access to the 61.75 acre property. The current frontage to the property from Briggs Rd is 201ft but he states that they can get it to 300ft. His concern is that this road may not be deemed an access road to this property and therefore would be designated as a non-buildable. This matters since the Hartshorn family may want to build a home in the future. He understands that Briggs Road is a private road and the Perry Family has sold two building lots in the 70's. DeChiara screenshares a drafted map showing the proposed lots provided by Ross for PB to review.

Lacy confirms that Briggs Road is not a town road as it may have been a part of the large town road discontinuance that occurred in the past. Ross confirms that the deeds of the homes built on the two building lots sold by the Perry family have language in them stating these properties reside on discontinued town roads, thus the discontinuance must have occurred before the sale. Lacy agrees but acknowledges that the mass discontinuance he described before may have occurred after these sales. He elaborates that there are homes present on Briggs Road and therefore these homes can be accessed by the discontinued/private road but if any new lots or houses were to be created, then it couldn't be proposed/listed as public, private, or subdivision road. Instead, it would have to be listed as what's known as a *way in existence* before the subdivision control law was adopted by the town. Then PB would evaluate the lot along with the other criteria listed in this type of application. Keith summarizes that he could approach the PB with a plan to show the 12 acre lot (with proper frontage) cut off from the balance of the property, then the balance of the property wouldn't be labeled as non-buildable. In the future, if his clients want to build on the land then they would come back to PB to create a lot on a way of existence before the subdivision breaks. As of now, the land being purchased doesn't have enough frontage from Briggs Rd (201ft) as required so he and the current owner would need to adjust the frontage. The proposed 12 acre lot has 166ft of frontage on Briggs Rd therefore he can work with the owner to design the new lot to have enough frontage (250ft).

Chris Perry, current owner of the property, provides some history of the property: his family, the Fredrowskis, owned all the land currently showed on the proposed map all the way up Wendell Rd past the Shutesbury Athletic Club in the 40s-50s. The property was sold in parts to family members whom built homes or later sold the lots over time. He explains that the property is under forestry management and has been accessed in the past using Briggs Rd. There is an existing logging road accessible off of Briggs Rd that proves access to the land Hartshorn is interested in purchasing. Murphy comments that Ross should keep in mind the 1,000ft driveway limit if the future landowner wanted to build. The logging road off of Briggs Rd is lengthy in order to access the back portion of the property due to the shape of the lot. Ross understands and notes that the likelihood of his client building a home is low.

Wightman Driveway (Open Space Design)

Wightman stated that he went before the ZBA and was granted a variance permit. The ZBA was amenable but requested that the driveway be 10ft wide instead of the 8-9ft width that was approved by PB in his Open Space Design special permit. This increase in width would require him to push the driveway out further on one side and to do so it would mean he needs to push back the existing stone walls/piles to make that room available. The width increase was due to the ZBA's concern of emergency vehicles ability to properly access the property using an 8-9ft driveway. He understands that the limit for vehicle's wheelbase width is 8ft but the concern was about the width of the emergency vehicles bodies and, when snow is present, how wide the driveway could be plowed if the driveway was only 8-9ft. He agrees with their concerns and the compromised decision but it requires him to come back to PB to amend his special permit.

Murphy asks DeChiara and Lacy if this would then require a Public Hearing. Both Lacy and DeChiara agrees this would require Public Hearing as it is stated in their bylaw. Lacy adds that this issue could be later reviewed by PB to decide whether or not they would want to amend the bylaw to allow/create a simple process for small amendments such as this one.

Wightman asks what is needed from him for this process. Lacy stated he [Wightman] would need to fill out a special permit application form citing the request is to amend the special permit as discussed in this meeting and submit it to the PB. When listing the documents for this application, Wightman can reference the previous documents on file.

Lacy informs Wightman that the ZBA meets on Wednesday July 12th, 2023 to discuss the decision and permit for his ZBA application. He relays that he will receive a copy to review once it is completed. He shares that he has written in three conditions: only one side of the rock wall will be pushed to minimize the amount of disturbance, to ensure drainage down the driveway remains on the applicant land, and that a 12ft wide by 15ft high corridor be maintained vegetation free. Wightman's only concern about the corridor is if there are any trees that fall within that 12ft width because the trees near the driveway were to remain. Lacy explains that his concern is with snow that it may bring trees down into the corridor and affect any larger vehicles from access. Wightman clarifies that Lacy's concern is only with the limbs and branches of trees and not the trunk of the tree. Lacy agrees and states that he is going to do a short site visit to ensure this 12ft X 15ft corridor will be appropriate/fit. Wightman plans to get the application submitted to Marshall during her office hours tomorrow.

DiMare ANR

DeChiara screenshares DiMare's new ANR plan for PB to review. Murphy asks if the changes to the ANR plan is to add small sections of land to already existing lots. DiMare confirms and summarizes that since the special permit was created in 2015/2016, Lot A has been merged with Lot 1 making it a 3.1 acre lot. As mandated by the special permit, he is proposing to split Lot B into two sections; Lot B1 and B2. Lot B1 is exactly half an acre and is to be conveyed to Lot 1 therefore making Lot 1 3.6 acres. DeChiara asks if Lot B2 will now be its own lot. DiMare confirms it will be but in the future he plans to come back to PB with another ANR to convey Lot B2 to either Lot 1 or Lot 2.

DeChiara asks Lacy what the proper way to approve the ANR would be. Lacy explains that since Form A was submitted, then this would require a vote. DiMare asks if Bonnar still has signing authorization. Bonnar confirms he still holds signing authorization even though he is no longer Chair. Bonnar acknowledges that even though Lot 1 is already an existing building lot this would still be considered a new building lot as this adding to it would define its definition. DiMare agrees. Bonnar wants to be clear on this because PB needs to understand what the correct charge is for this ANR. DiMare states he has paid \$70 when he submitted Form A. Lacy confirms that the charge for an ANR submission would be \$70 per new building lot thus in this case it would be \$70. Lacy admits the language for this process in terms of fees is confusing because it is while the lots are changing in size and shape they don't allow for any additional building opportunities. PB agrees that this language is not clear and should be revised.

Motion: Lacy moves to approve DiMare's ANR plan as discussed and authorize Bonnar to sign for PB, DeChiara seconds. Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye and Weston – Aye. *The motion carries.*

Bonnar Logging Compliant

PB received an email from Mary Lou Conca regarding a complaint she had about forest cutting within Bonnar's property. Bonnar acknowledges Conca is unfortunately not present for the meeting but wants to make a statement that the cutting is more than a mile away from AMP sites and there is no clearcutting involved. He also clarifies that the land he owns that is close to AMP is under a Conservation Restriction from Fish and Wildlife. He wants to make clear he is not violating any wetland laws or clear cutting.

Motion: Lacy moves that the email from Mary Lou Conca will be included in the related documents for this set of minutes for this meeting and in the meeting Bonnar indicated that the part of his land that is currently being logged is not adjacent to anything being looked at by AMP as accepted by PB, DeChiara seconds. Marshall notes that if the logging was conducted as a part of agriculture then it is exempted from the WPA. **Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye and Weston – Aye. *The motion carries.***

Lacy Departure

Lacy announces that he will be moving to Conway, Massachusetts as early as Fall 2023 or as late as next Spring 2024. He has informed both ZBA and Select Board of his departure as it means he can no longer serve on the PB once he officially moves.

DeChiara thanks Lacy for his many years of service on both boards. DeChiara explains that, procedurally, once Lacy departs, then PB and Select Board meet to appoint someone for the remainder of the fiscal year, at which point someone else can be elected from the remainder of Lacy's term. DeChiara shares that although the PB just put out an announcement for an associate member, he believes PB should consider leaving the spot open so that PB can appoint Lacy as the associate member. This would allow for PB to have Lacy on the board to provide guidance and, in a case where Murphy needs to recuse himself from any future solar matters, then Lacy would be able to act as a member. Murphy agrees and suggests talking with Town Counsel, Donna MacNicol, to ensure its valid. Lacy plans to also try to serve as an associate member on the ZBA as well since the other current members are new to board as of last year. DeChiara suggests that PB could consider asking Pyecroft if she would be interested in being appointed as a member for the time being once Lacy departs. Pyecroft is not present at the meeting but PB should discuss at a later meeting. Bonnar notes that PB shouldn't wait on looking for a new associate member as DeChiara mentioned earlier if Pyecroft ends up being a member. DeChiara agrees.

Weston gives gratitude to Lacy for his long service on the PB and thanks him for the knowledge he has shared with him during the short time he has been on the board. Weston also understands that Jon Thompson, new associate member of the ZBA, is also knowledgeable in planning and suggests that PB ask if Thompson would be interested in being an associate member for PB as well. Lacy states that Thompson was the Chair of the PB when he joined 27 years ago. Lacy agrees that Thompson is a great resource but he plans on convincing Thompson to be a full time member of the ZBA so that he can be an associate member when he leaves. Raymond also shares gratitude for Lacy's time on the PB.

Associate Member and CPC Member

DeChiara thanks Bressler and Weston for their help in editing the text used in the announcement for both PB associate member and PB CPC member position openings. PB has not received any inquiries regarding these positions so far.

New Fiscal Year Thoughts

DeChiara suggest that in September PB should discuss creating a list of possible amendments to look into. At the last meeting, he stated he would do some research in tiny homes but he unfortunately has not gotten to it; plans to do so soon. As, of now, he has two topics in mind for possible amendments; ANR fees and dark sky/lighting changes.

Lacy asks if there was an email inquiry for tiny homes. Murphy states it was an inquiry about accessory apartments. Bonnar shared the meeting agenda and zoom link with Emily Bayard but she is not present tonight.

In terms of ANR fees, Murphy believes it should be a simply revision. The current language it states its \$75 for each new buildable lot. It should be clarified the application itself is \$75 and for additional new building lot then it would be another \$75. For example, if an ANR has two new building lots then it would be \$150 in total. This needs to be clarified because as its written currently it appears that if no new building lots are proposed then there is no fee. Murphy believes even though this is a simply language change it should be formally discussed as an agenda item at their next meeting. DeChiara agrees and likes the idea of differentiating between a lot modification and a new building lot as it could provide the needed clarity.

Unanticipated Business

Solar Bylaw Lawsuit Article – Lacy notes there has been a lot in the paper about the Shutesbury Solar Lawsuit with most of it being supportive except for one article written by Michael Seward. In this article, Seward stated that health, safety and welfare were abused justifications for zoning regulation of solar. Lacy was curious if PB was interested in writing a response or to leave it be.

DeChiara shares his observation that municipal governments tend to be unnecessarily quiet/don't defend themselves when it comes to debunking incorrect information. He states that overall, the town is being sued for a bylaw that was supported by the vast majority of the town and recommended by the PB, therefore there is nothing unreasonable in stating this. PB wouldn't be getting into the details of litigation but instead addressing the basis and rationale of the bylaw. Murphy shares he would not participate in any article about this particular lawsuit but he would suggest that any action made by the board publicly with respect to any portion of town bylaw could potentially be used in legal action against a member of or the board as a whole or town. If the article was deemed to impair the ability of the individual or the board to act in a fair or judicious manner with respect to some matter that came before the board.

Bressler shares he recollects this article was in response to a different article posted a week before by Shutesbury resident Jill Buchanan. In this article, Ms. Buchanan states stating that our bylaw was defensible in a small town like Shutesbury. Bressler believes the article Lacy has mentioned is in response to this article he is describing but the difference is that the Seward

article had a major editorial headline versus Buchanan's which did not. Bressler believes there were inaccuracies that were overstated in the Seward essay but believes PB shouldn't get involved. DeChiara and Lacy agrees with Bressler. Lacy notes that Seward's article was a shot over their bow and Bressler points out it was written by a realtor.

Defense Fund – DeChiara attended a Select Board meeting two weeks ago, as a resident and not a member of the PB, to discuss the idea of the Select Board creating a legal defense fund. Before he went to the Select Board, he checked with the Town Administrator, *Rebecca Torres*, Town Accountant, *Gail Weiss*, Town Treasurer, *Ryan Mailloux*, and Chair of the Select Board, *Rita Farrell*, all of whom agreed with the idea. He explains that how this fund would work; that the town could accept gifts with a dedicated charge for what the funds could be used for. It will be discussed further at tomorrow night's Select Board meeting. He believes this is a fiscally prudent approach. Lacy shares that at a recent appointment he met a fellow resident who was asking how they were able to donate so he understands there is a general interest present.

Murphy notes that this fund could potentially be used for Right of First Refusal in terms of Chapter 61 land. DeChiara states that if the charge is legal defense then the funds could only be used for legal defense which would be to pay attorney and other legal fees. Murphy agrees but if the account were to be set up more broadly than that could be anymore potential use. DeChiara agrees and shares that an environmental lawyer mentioned to him that the Town has the Right of First Refusal on the plots. He was under the impression that if land is being sold out of Chapter 61 that the Town would have Right of First Refusal since there is a proposed change of use He doesn't believe that would be the within the Town's budget.

Open Space Design – Bonnar notes the Open Space Design plans have been hard to deal with and suggests PB consider the possible of finding new ways to make them easier. He believes they have been difficult and time consuming. He understands by be the nature of the what PB is doing but worth looking into making them easier if possible. Lacy agrees noting that two out of three they have reviewed only involved building one home. DeChiara agrees and based on their observations from their recent Open Space Design review, Open Space Design shouldn't be the end result if an ANR isn't possible. Lacy summaries that their bylaw for Open Space Design was presented as easier for small landowners with small projects but the larger subdivision plans would be more regulated by PB.

Murphy asks what three Open Space Design projects were that the PB reviewed. Lacy states it was first DiMare permitted under Site Plan Review, and Olshevski on Locks Pond Rd permitted under Site Plan Review. PB then amendment the bylaw for Open Space Design to be permitted under Special Permit thus the third was Wightman on Leverett Rd permitted under Special Permit.

Chair – Bressler asks Bonnar if he has any words of advice has he passed the torch to Murphy. Bonnar doesn't have any advice and states it is a position that takes time to get use to. Lacy asks if Murphy has discussed this with his employer. Murphy shares that he has and in cases that involve anything with utilities such as transmission, solar, or general generation facility he would not participate in the debate and would abstain when voting occurs; this would include in any bylaws or regulations. DeChiara suggests talking to MacNicol in advance when those topics are

presumed to be discussed. DeChiara is interested if there is a way for Murphy to chair meetings on these issues but not be counted among the people who can participate in a special permit. For example, there is 7 members total and if Murphy were able to function in an administrative role and then have an associate member fill in as a 7 member.

Lacy explains that for PB to approve a Special Permit, there needs to be, at minimum, 5 members who have attended each public hearing meeting related to the Special Permit application and all 5 members would have to vote in support for it to be approved. With a PB of 7 members this allows for two extra members in case one or two members missing a meeting or voting against the special permit. In this case where Murphy would be Chair but not abstain from voting, PB needs to figure out if it would be appropriate to have an associate member fill in for Murphy since he wouldn't be voting in a matter that discusses the subjects previously mentioned. PB having an associate member act as a full member in this case could be seen as adding an 8th member since Murphy wouldn't be fully recused in order to maintain Chair function. PB agrees this matter should be discussed with MacNicol.

Motion to Adjourn: Raymond moves to adjourn, Bressler seconds. Vote: Bressler – Aye, Bonnar – Aye, DeChiara – Aye, Lacy – Aye, Murphy – Aye, Raymond – Aye, and Weston – Aye. The motion carriers.

Meeting Close: 8:45pm

Next Meeting: August 14th, 2023 at 7:00pm

Documents Used

- Wightman Open Space Design H-151 Leverett Rd Special Permit
- Wightman Open Space Design H-151 Leverett Rd Variance Special Permit
- DiMare ANR
- Mary Lou Conca Bonnar Logging Complaint