

# Shutesbury Planning Board Minutes

Minutes – 10/18/2023

Approved – 03/04/2024

*Virtual Meeting*

**Meeting Start:** 7:00pm

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

**Associate Members Present:** Keith Hastie

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

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

Chair's Call to Order at 7:00pm

Meeting is being recorded

## **Public Comment**

*None*

## **Landowner Guidance and Education**

*None*

## **Associate Members**

DeChiara proposed to PB to change their practice of recommending new associate members to avoid the issue that occurred earlier. The new practice would have an initial meeting with the interested individual looking to join PB as an associate member so they may introduce themselves and answer questions from PB members. Then at the subsequent meeting, PB will take a vote to recommend the individual to the Selectboard if they wish. Weston agrees with DeChiara's suggestion citing that recommending individuals to be associate members is important since they are not being elected by the town.

**Motion: DeChiara moves to for tonight and moving forward the Planning Board, when considering associate members, will vote on the individual no earlier than the next meeting following their presentation, Bressler seconds.**

Raymond is comfortable with this practice but would like to be assured there would be an exception if PB was in an urgent need to act at a particular meeting. DeChiara agrees and believes the board will have that ability. He states that this conversation is not a reflection of Hastie but the process. Weston reiterates that all of the PB members, except for Pyecroft, were elected by the town and were given time to research. This new process would allow PB the same research time.

Murphy does not support this practice on its face. If a member of the PB indicates they need more time to think over a potentially associate member then PB can discuss to push back the

date of a vote. There is also time in between PB voting to recommend and the SelectBoard meeting that allows PB time to search. Rather than having to back out of this practice if PB wants to act quickly, maintaining the ability to act quickly and decide not to if it doesn't suit their purpose. DeChiara clarifies that his suggestion was to provide more time for PB to research and reflect before deciding whether to recommend to the Selectboard or not. Weston believes it is important to have the whole house in order before bringing the matter to the Selectboard. He also agrees that PB would have the ability to make the exception in an urgent event.

Murphy acknowledges that Hastie's appointment process was quick but is glad they were able to do so. He doesn't see the need to pass this motion to say that PB is going to wait a month by default because PB has that ability to do so now. DeChiara clarifies that the motion was not to wait a month but to wait until the subsequent meeting meaning PB could schedule a meeting sooner than a month. Bressler doesn't have concerns with the proposed practice as he understands this is would be a more deliberate process with the ability to have exception if agreed upon. Murphy asks if the exception could still allow for PB to vote in the same meeting as an individual's introduction using the example of Clif Read's CPC appointment. DeChiara disagrees as Read's appointment is different since it was for the CPC, not associate member. The exceptions would only be for cases of urgency as agreed to by PB as the process is intended to be personality free. Bressler agrees that aspect is important.

**Vote: Bonnar – Abstain, Bressler – Aye, DeChiara – Aye, Murphy – Aye, Pyecroft – Aye, Raymond – Aye, and Weston – Aye. *The motion carriers.***

PB received an inquiry from Mary David about becoming an associate member. David introduces herself to PB. She is a retired nurse and her family will be 4<sup>th</sup> generation living at Lake Wyola. Once retired she wanted to volunteer her time and be a part of the community. She was encouraged by Jeff Lacy to consider joining PB and has attended a few meetings to view how the board works. During her career, she was involved in building a new hospital and two critical care units where she learned the process for planning, and the regulations followed.

DeChiara understands that David currently sits on the Conservation Commission (SCC), Zoning Board of Appeals (ZBA) and Lake Wyola Association Committee (LWAC) which are all land use related boards. By joining the Planning Board as an associate member, it would be an additional land use related board which he considers to be too many. He asks if David plans to leave any of these boards/committees and if so, when. David hasn't considered leaving any boards/committees and explains she is the Conservation Commission representative to LWAC to coordinate their communications. Since being retired, she has been enjoying committee and community work. She understands that there have been others who sat on multiple boards/committees and had no issues. She has full time to dedicate to board and committee work she wants to pursue. DeChiara elaborates that the issue isn't about how many boards/committees she is a part of but that they are all related to land use matters; if the matters of each board differed then he would not be concerned. He explains this was discussed two years ago by the Selectboard as 'concentration of power'. For example, if a project on Lake Wyola were to come before the PB, SCC, and ZBA then David would be heavily involved. David understands his concern and has thought about it but she views it differently. She views these boards to work hand in hand so in this case where she sits on all of these boards then she would have a broader

understanding and different perspective. She doesn't see it giving her more power since she would be an associate member learning the ropes and sitting in if a member had to be recused. DeChiara understands her explanation but by her becoming an associate member on PB then she would have three separate voting opportunities on the same project.

Raymond asks that in a case of any solar application, could she objectively follow the solar bylaw. David answers she can be objective when applying the rules. She is a ruler follower in a process and the committee is not interested in her opinion but in how to apply the application to the rules they have. Raymond adds that there have been cases where the PB decision haven't aligned with SCC's recommendations. In a case as such, would her presence and decision capacity on SCC in any way limit her capacity to be totally objective as a PB member. David states that in those cases it would not affect her decisions on the PB; it could be the same problem but looking at it from different aspects. SCC reviews applications on how it could impact wetlands/ their mission whereas PB and ZBA review applications based on the regulations applicable. She understands that two boards may not agree because they are looking at different issues.

DeChiara asks what David thinks about protecting forests and wetlands in relation in to large scale solar. David states generally solar is a great idea for the future but since she hasn't seen any solar projects she doesn't know how the planning and building relate to the wetlands. She doesn't have an opinion. DeChiara states that Shutesbury does have one a solar array. David understands but she wasn't present during those proceedings. She looks at projects individually as they come long and review their impact of the specifics that are known. She can't form an opinion before having the situation before her. DeChiara asks if there is anything she would be concerned about. David doesn't have any concerns yet because she hasn't been a part of process as such. DeChiara clarifies he meant conceptually in regards to approach and issues since this has come up when associate members they have previously been screened. David states she doesn't have a predisposed position as she believes in looking at the facts and issues when presented.

Murphy asks if any long term PB members recall any cases where SCC and PB to be on opposite sides of an issue related to the project. Bonnar and Bressler state they have not. Miriam DeFant, Chair of the Conservation Commission, recalls SCC gave PB a list of recommendations for conditions in regards to the Wheelock Solar Array special permit and not all of the recommendations were incorporated. The permitting process then involved public hearings occurring simultaneously by both SCC and PB. PB recalls the project was relocated to be outside of the SCC's jurisdiction therefore the wetland permit application was withdrawn during the PB public hearings. David shares that in an event that she believes there is serious conflict of interest then she would recuse herself. DeChiara notes that the purpose of an associate member is for them to step in for a member when they are unable to attend or have to recuse themselves; having an associate member that has a higher chance of recusing would not be serving that purpose.

Since this has been asked of previous associate member candidates, DeChiara asks if David has posted anything about solar in solar media. David doesn't use social media therefore has not

posted anything. DeChiara asks she if has written anything in the newspaper regarding solar. David answers that she has not. DeChiara asks if she has made a stand at TM about how she feels about solar energy. David answers that she has not. DeChiara asks what about land use interests her. David answers that she enjoys learning the regulations and helping the public navigate through the process. Learning regulations regarding land use are important to her because of their impact to the town. DeChiara thanks David for her time.

Murphy asks if she has participated in any special permits since she has joined the ZBA. David confirms she has participated in one which was the project that went from PB to ZBA. During this meets she learned how to apply the rules to reach a solution where the request didn't meet the meet all the requirements. The issue that both ZBA and PB had was resolved. Currently on the ZBA, it is her, John Aierstuck, Jon Thompson and Jeff Lacy, as an associate member. David and Aierstuck joined ZBA at the same time last year. Thompson recently joined as a member after being an associate member for a short period of time. Lacy was previously the Chair of the ZBA but now is an associate member and cannot be Chair. ZBA is meeting on November 2<sup>nd</sup>, 2023 to discuss who will be Chair. Murphy asks if she were to be voted in as Chair or Co-Chair of the ZBA would that impact her interest as an PB associate member. David shares that if she were to be voted Chair then she would have to reconsider her interest in being an associate member.

Weston asks if David has any concerns that has driven her to become an associate member. David shares she has no concerns and her drive to learn about the process and regulations are to help people. During her experience on SCC, she has noticed most people struggle to understand the regulations so by being more knowledgeable on that to help people through the process better has been her drive. Weston notes that as a 30 year resident he understands that the Lake Wyola community is a close knit groups so he imagines she has received encouragement from the community. David agrees that she has received support from the community at Lake Wyola. Weston appreciates David's interest. Bonnar agrees and adds that having a resident from Lake Wyola could be helpful because it is a perspective they could use.

DeChiara reflects that his urgency for new associate members was due to Lacy's departure and Messier's departure which left PB with two openings. Now that Pyecroft has been appointed as a member and Hastie as an associate the urgency is no longer present for him.

*PB will make a decision and vote at their next meeting.*

### **Minutes 9/11/23, 9/12/23, 9/26/23**

Carey Marshall (LUC) informs the board she finished drafted the 09/11/23 minutes a day prior to the meeting. She understands that wouldn't have been enough time for the board to review the minutes before tonight's meeting. She will send the draft minutes after this meeting closes. She states that she was not present for the joint meeting with PB and Selectboard on 09/12/2023 and present at the 09/26/2023 joint meeting but not taking minutes. Once the Selectboard minutes from those meetings are posted, she will create minutes using excerpts as she has done in the past.

### **PB Online Functions (email account and website)**

Murphy summarizes that in-between their previous meetings and joint meetings, he went to Town Hall to discuss access to the PB email, town website and MyTowngovernment account. He gained access to these accounts but did not discuss this with DeChiara who has been managing this account on behalf of PB. DeChiara explains there are three main aspects he was managing while Bonnar was Chair; maintaining the email account, sending acknowledgment emails as a response to public inquiries, and updating the PB webpage on the town website. Maintaining the email account included removing and adding members as they were elected to or retired from the board. The acknowledge emails and updating the webpage responsibilities are more important to clarify. PB had discussed previously that DeChiara would answer public information requests and has been doing so for the past year. Two years ago, the PB webpage was reorganized and he has been keeping up with adding relevant documents for public access such as special permit applications under review, bylaw related documents and warrant items. Murphy will now be managing the email account, acknowledgment emails and will direct either DeChiara or Marshall to update or add documents onto the webpage as they come along.

### **Tiny Home Bylaw Discussion**

DeChiara shares he has continued his research and wants to share the important aspects he has learned. Tiny homes are a subset in the accessory dwelling category. Accessory dwellings are not commonly allowed within municipalities in Massachusetts with Shutesbury being one of the few exceptions. Shutesbury's bylaw allows for an accessory dwelling to be up to 800sqft whereas tiny homes are typically between 500sqft – 600sqft. The motivation for considering tiny homes is to create more affordable housing and lower impact living. In municipalities that do allow accessory dwellings, it is common to set limitations such as occupancy by relatives, size of lot, and square footage of the dwelling. He plans to compare Shutesbury's current bylaw regarding accessory dwellings to several other town bylaws he has reviewed. Then he will bring the comparison to the board to discuss and establish their objectives if they were to loosen the bylaw to allow tiny homes.

Murphy asks if PB should include Board of Health in their discussion in the future. Insight on how the septic systems and well instillation process may impact a project subject to a new tiny home bylaw. DeChiara agrees. He shares that it is clear municipalities doesn't want to see a tiny home bylaw allow for a subdivision since that would defeat the concept of open space. Raymond appreciates that DeChiara has been sharing his research with him. He notes that Massachusetts has passed a building code for tiny homes which is helpful for building inspectors. He believes this could potentially be key for Shutesbury becoming an affordable town. Bonnar points out that accessory dwellings depends on common ownership which limits making tiny homes economically available to the wider populations. DeChiara agrees adding PB needs to discuss if the owner occupied requirement should be a part of their bylaw. This would include looking into regulating tiny homes without the owner occupied requirement but not allow creating a subdivision of tiny homes. DeChiara states there needs to be more information gathered on it before the question could be posed to the board. Pycroft asks if she is correct in thinking that the current bylaw would allow an individual to build a 500sqft home as their primary residence and it wouldn't count as a tiny home. Bonnar confirms that is correct. Pycroft asks if the campground provision in the bylaw would relate to tiny homes. DeChiara answers it would not because it is limited as seasonal housing.

*Discussion will continue next meeting*

### **Lighting Bylaw**

DeChiara will pick up research on a lighting bylaw. He may draft a small provision for the board to review for their next meeting.

*Discussion will continue next meeting*

### **Discuss the provisions of G.L. c.41 81P (ANR plans) and 81X - (subdivision plans) which authorize an individual to endorse plans on behalf of the Board.**

Murphy researched provisions of G.L. c.41 81P (ANR plans) and 81X (subdivision plans) and discovered it doesn't limit the board from authorizing more than one board member to endorse plans. Currently, only Bonnar has been authorized for endorsement. Now that Murphy is Chair, he is hoping that the board will vote to authorize him to endorse plans on behalf of the board. He plans to use the same document Bonnar used and collect every member's signatures. Once signed, then he will record it at the Registry of Deeds. DeChiara agrees stating that Bonnar can still endorse on behalf of the board in an event that Murphy is unable to.

**Motion: DeChiara moves that PB approve Nathan Murphy to be authorized to sign ANR plans and Subdivision plans per Ch 41 81p and 81x on behalf of PB, Raymond seconds.**

**Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Murphy – Aye, Pyecroft – Aye, Raymond – Aye, and Weston – Aye. *The motion carriers.***

### **Letter to AG regarding Solar Bylaw**

DeChiara shares that in the last month, two major reports been published. One was the Technical Potential of Solar Siting study published by Mass. DOER establishing that Mass. has 15-18 times the available land for deployment of solar; it looked at all available land based on several suitability criteria. The second report was published by Mass Audubon and Harvard Forest, called Growing Solar, Protecting Nature and included both scientific and economic analysis of how Massachusetts could deploy solar to meet the state's climate goals by 2050 and still protect important environmental resources. He believes these reports are important in documenting new understanding of solar siting in Massachusetts. He shared these reports with Town Counsel, Donna MacNicol, and suggested that the Attorney General should be made aware of them; she agreed. He drafted a letter and sent it to PB to review for discussion tonight. He hasn't received a response from Donna but suggests that if PB wants to approve and sent the letter, to also allow for MacNicol to make any edits once she has reviewed it. The A. G's office got an extension so their ruling deadline regarding the solar bylaw; it is now November 16.

Weston thanks DeChiara for his well drafted letter. Bressler has a few suggestions that he will send to DeChiara. One suggestion is to take the concept of siting solar and the value of carbon sequestration/storage, as laid out in the reports and connect it to public health, safety and welfare. DeChiara agrees and looks forward to Bressler's suggestions.

**Motion: DeChiara moves that PB send a Letter regarding the Solar Bylaw and the DOER AND Mass Audubon reports and sending it to the A.G pending edits/approval by MacNicol, Raymond seconds.**

Bonnar asks if the motion includes PB members edits as well. DeChiara suggests that if any members have edits and briefly discuss them tonight then the edits will be included or addressed later. He asks if other members have any edits to propose. PB has no further suggestions or edits.

**Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Murphy – Abstain, Pycroft – Aye, Raymond – Aye, and Weston – Aye. The motion carriers.**

**Unanticipated Business**

*None*

*Murphy makes DeChiara temporary Chair and leaves the meeting*

**Motion: DeChiara move to meet in Executive Session for Reason No. 3, To discuss strategy with respect litigation if an open meeting may have a detrimental effect on the government’s litigating position. Litigation specific to Complaint received from Cows regarding the Shutesbury Solar Bylaw; not to return to open session, Raymond second.**

**Vote: Bonnar – Aye, Bressler – Aye, DeChiara – Aye, Hastie – Aye, Pycroft – Aye, Raymond – Aye, and Weston – Aye. The motion carriers.**

**Meeting Close: 8:45pm**

**Next Meeting: November 13<sup>th</sup>, 2023 @ 7pm**

**Documents Used**

- Letter to AG regarding Solar Bylaw