

Shutesbury Planning Board
Minutes – May 13, 2024
Approved – August 11, 2025
Virtual Meeting

Board Members Present: Michael DeChiara, Jeff Weston, Nathan Murphy, Tom Siefert, Steve Bressler, Keith Hastie, Ashleigh Pyecroft

Board Members Absent: Deacon Bonnar, Robert Raymond

Other Staff Present: Carey Marshall (Land Use Clerk)

Others Present: John Bernhard

Call to Order: 7:08pm

Chair's Remarks

Regarding the following statement, follow-up questions will be ignored, persons attempting to find motive in the statement will be prosecuted, and persons attempting to find a moral in it will be banished. The Chair's statement for children and parents of children is a quote from *Slaughterhouse Five*, page 17: "I have told my sons that they are not under any circumstances to take part in massacres and that news of massacres of their enemies is not to fill them with satisfaction or glee."

Town Election Results

Murphy offers congratulations to Pyecroft on election to the Planning Board as a full member and to Weston and Murphy on election to three-year terms on the Board.

Public Comment

None.

Education and Guidance

None.

Bernhard ANR for 309 Montague Road and 315 Montague Road

Murphy shares the ANR plan. Bernhard describes project. In 1983 the builder of their porch failed to determine property line so porch is on the property of 309 Montague Road. Previously the owner of 309 agreed to exchange that portion of their lot in return for a portion of Bernhard's property. Bernhard is now selling the property and needs to formalize the lot lines to reflect the conveyances.

Murphy notes plan does not show a subdivision because it does not create any new lots without adequate frontage so it should qualify as an Approval Not Required.

Motion to approve ANR for 309 and 315 Montague Road jointly submitted by John Gary Bernhard and Bryan D. Beneitone: DeChiara; second: Bressler. Approved unanimously.

Murphy will visit Town Hall on Thursday to endorse the plans on behalf of the Board and Bernhard can then record them with the Registry. Marshall confirms Bernhard has paid the fee and asks Murphy to leave two copies, one for Land Use Clerk's files and one for the Assessor.

Discussion of Wheelock Special Permit

Work has been done at the Wheelock site since the project was completed with respect to the Special Permit conditions. Hastie asks if the public has access to the Permit's conditions. Bressler notes it is a public document. Hastie points out the Conservation Commission did a site visit four or five years ago and wants to know if the Special Permit includes allowing the Planning Board to conduct a site visit. Feels that the annual report from Wheelock owner's is brief and not sufficiently informative. A site visit with the Conservation Commission would be more useful.

Several Board members indicate they did not receive the most recent report; Pyecroft indicates she received it a few months ago and will forward it to the rest of the Board. DeChiara states that the report is due by February 15th each year but often comes later. Responds to Hastie that the Planning Board and Conservation Commission did a joint visit a couple of years ago for the reasons Hastie mentioned, specifically to investigate the retaining area that was not functioning to retain water correctly, as reported in the annual report. It has now been at least a year since a site visit. Board needs to be accompanied on the property, but does have the right of inspection and, given historical issues, should do a site visit this year. The Special Permit is not posted but should be because it is a public document; DeChiara will put it up on the Board website. Bressler adds that the Conservation Commission should have a report about what was found at that site visit eighteen months ago. Marshall will look for a site visit report from the Commission and send it to the Board. Murphy recalls some past issues the Board found on the site and agrees another inspection is due; he forwards the report to the Board.

Pyecroft would be interested in participating in a visit and could set it up with the site manager. Hastie would also be interested in participating. DeChiara suggests that at next meeting the Board should have a conversation about the annual report.

Cowls Preliminary Subdivision Plans

Murphy notes the Board has received another round of preliminary subdivision plans from Cowls, hand-delivered to Town Hall on Friday, April 26. He shares and reviews Subdivision Control Law, section 81O, "Regulation of new subdivisions", which requires that plans need to be delivered during a meeting of the board or mailed by registered mail, and notes Section 81S, "Submission of preliminary plan; approval or disapproval; recording". Describes case law involving challenge to a Planning Board's disapproval of a preliminary plan, similar to what the Board has done. Also discussed this with Town Counsel who did not think it necessarily translated the way Murphy described and that it remained an open question.

DeChiara explains the question is what constitutes “submitting” and that Town Counsel noted that Section 81S is about filing and reporting, not submitting. Section 81O is the only part of the law that discusses “submitting” and that requires it be sent by registered mail or at the Board meeting. He recalls that previously when Tom Reidy, attorney for Cowls, wanted to submit subdivision plans he could not do so during the meeting because the meeting was being held via Zoom, so Mr. Reidy was instructed during the Board meeting send them by registered mail. He ended up sending them by priority mail instead, which the Board agreed to accept on a one-time basis despite it being non-compliant with Massachusetts General Law, noting this would not be considered a precedent since at that time Reidy agreed with the Board’s reading of Section 81O and its requirements about submission. To be consistent with what the Board did in the past and with the statute, DeChiara suggests that the Board should do what it did the last time subdivision plans were submitted by Cowls. The Board determined the current plans were not submitted in accordance with the requirements of 81O.

Murphy asks DeChiara to share the draft of the letter he has prepared, which uses the previous letter as a model. DeChiara explains the changes made to the previous letter in preparing this version. In both cases, the submission was not done according to Section 81O and was being rejected by the Board for that reason. Bressler notes that the statute was written before Covid and wonders if the requirement that the plans be delivered in person would render this rejection not meaningful. DeChiara notes that there is an alternative in statute because the plans can be submitted by registered mail. Pyecroft points out the plans were delivered between the timing of two meetings anyway, so concern about not being able to submit them in person during a meeting seems irrelevant. DeChiara notes that even if the Town Clerk signs a receipt for receiving the plans, as she did, that does not mean the applicant complied with the statute since the Town Clerk cannot receive plans on behalf of the Board.

Murphy notes that preliminary plans do not carry a lot of regulatory weight; they’re meant to help prepare for submitting a definitive plan. But they are also part of the zoning act that offers protection from zoning freeze. The question is whether this position on 81O would stand up in court, which we won’t know unless it went to court.

Hastie doesn’t think registered mail is a particularly high bar; it seems routine, especially for a law firm. This should have been easy to comply with. The law was probably written to protect towns so someone can’t complain about plans getting lost. Does the Board have the authority to ignore the requirement, or would that set a risky precedent? Murphy notes the Board is a quasi-judicial body so it has some discretion, but the court sets the precedent.

Weston notes Cowls brought forward the subdivision plans on the 26th for a strategic reason and they are suing the Town, so he thinks the Board should hold them to the standard of the law. He thinks the Board should reject the plans. Asks why we are considering accommodating someone who is suing us.

DeChiara points out that on the afternoon of the last three Town Meetings, the attorney for Cowls showed up at Town Hall and handed their application to whoever was there. If they were organized, they would have done it the week before. They should be doing it in accordance with Mass General Laws.

Siefert also notes Reidy's agreement in the past for a preliminary plan submission by mail and agrees that this situation is not any different.

Murphy clarifies he just wanted to note Section 81S and its requirement that provisions applicable to subdivision plans shall not apply to preliminary plans unless otherwise provided. Just wants to make sure this is something the Board has considered before making its decision.

Bressler agrees there is no downside to sending the letter DeChiara has prepared.

Motion to send letter to Cows and its attorney reflecting that based on the Board's understanding of Section 81O of MGL, the applicants did not submit subdivision plans per statute for four subdivisions: DeChiara; second: Pyecroft. Approved unanimously with one abstention (Murphy).

Checks from Prior Preliminary Plan Submissions

Murphy recalls that when prior preliminary plans were rejected, fee checks were submitted with them. Board also has checks from the January 2024 plan submission and from this submission, none of which have been deposited. Proposes returning the ones from 2023 but depositing the ones from January 2024 for the plans that were reviewed.

DeChiara suggests it be in parallel to how plans are received. For plans the Board does not recognize as being submitted, fee should be returned. Fees for plans recognized should be kept.

Bressler proposes returning the checks by registered mail.

Marshall notes that the bylaw requires that a copy of the plans be sent back with the letter to the consultant who prepared them but the applicant only receives the letter, which was done last time. If the checks are from Cows, the checks would go with just the letter back to the applicant and not to the consultant with the plans. Murphy agrees.

Motion to adopt the practice of returning checks for fees if the Board does not recognize a preliminary subdivision plan as having been properly submitted but depositing them if they have been properly submitted: DeChiara; second: Pyecroft. Approved unanimously.

Community Engagement

Murphy recalls that the public hearing about zoning amendments a month ago had no members of the public in attendance, which is not uncommon. He wants to foster higher levels of engagement with the Board's work. Will submit outline of a plan next month for finalizing in July. Suggests sending a Town Announce email about the Board and including content in the Newsletter. DeChiara agrees with the Newsletter idea, also notes that few people read legal notices in the paper so perhaps also doing a Town Announce about hearings would get interest. Murphy agrees.

DeChiara suggests question of NextDoor for discussion at next meeting; it's a high-traffic site, but since it is privately owned, perhaps someone other than the Board itself should be posting on it. Murphy would be interested in the kind of immediate feedback posts would get, even though social media isn't the best means for getting public opinion. DeChiara notes that under Open Meeting Law, if a town board officially posts something, members of that board can't comment on it, which creates an odd dynamic because people often expect an exchange on social media.

Murphy agrees it is important to stay on the right side of Open Meeting Law. Wonders about a blog on the Board's website to publicize key decisions from meetings. DeChiara notes they'd have to be careful to state just the facts and avoid commentary and opinion. Murphy agrees that it would have to be just a recap of the high points from the open meeting, not a discussion forum. Will present some more developed ideas at the next Board meeting.

FY25 Goals

Murphy suggests that Tiny Houses and affordable housing. Discussed with Matteo Pangallo at Town Meeting about trying to work with Community Preservation Committee and Rita Farrell on the Select Board about finding affordable housing avenues.

Encourages Board members to reflect for next meeting on priorities they would like the Board to work on in the coming fiscal year. Wants to work also on posting agendas earlier.

Bressler requests the Board hold at least one in-person meeting. Murphy suggests it be the August meeting. Marshall suggests it be hybrid and Murphy agrees. DeChiara notes meeting format will be subject of the all-boards meeting on June 11 and there are issues of accessibility either way: being online allows many people to participate or attend who normally couldn't, but Gayle Huntress reports that 2% of people in town still don't have the ability to get online.

All-Boards Meeting on June 11

Murphy reminds Board of the All-Boards Meeting on June 11. Pyecroft notes they received an email about the meeting. Murphy will not be able to attend but hopes someone from the Board will go. Pyecroft notes the email indicates they want at least one person from each committee to attend. Pyecroft might be able to attend but would be difficult. Weston also notes he might be able to attend. Murphy proposes arranging who goes via email.

State Permitting

DeChiara reports the state is moving to consolidate decisions about clean energy/decarbonization permitting decisions at the state level. Governor's Commission on Energy Siting and Permitting reported on March 29 with recommendations, but more alarming is H.4501 omnibus climate bill from Joint Committee on Telecommunications, Utilities, and Energy. Most concerning in it is their definition of electric decarbonization projects as encompassing all renewable energy projects and storage systems regardless of size. Unlike the Commission's recommendations, there are no size parameters, meaning all projects would go through one state office and not the town. This would strip all local roles for Planning Board, ZBA, Conservation Commission, and

Board of Health. DeChiara objects because municipalities would be given only an advisory role and also notes the practical challenge if all 351 cities and towns send projects to one office to handle because constructive approval comes after 12 months. Projects will come in, not get addressed, and then come out automatically as proposed after 12 months. Agrees there is a climate emergency but disagrees that this is the solution. Would prefer a partnership between state and localities. Notes that the aide from the Joint Committee with whom he talked didn't even know where Shutesbury is located but these are the people who will be making decisions for the town. Notes the Senate chair of the Joint Committee already assumes all municipalities have nothing valuable to contribute based on the legislator's previous statements.

Bressler notes that this is going to disproportionately impact western Massachusetts, and once again eastern Massachusetts is going to be making decisions with little regard for communities and people in this part of the state. Asks what can be done.

DeChiara suggests organizing. Aaron Saunders seems to understand the dilemma but there's little he can do from his place. Jo Comerford is working to help try to minimize the damage caused by the bill as well. Planning Board could write a letter of concern to the legislature. DeChiara also working to publicize it in the media, as are others across the state. Municipalities need to step up and assert their role. Recalls that during Commission's hearings, some people from the Cape raised idea of the state working with municipalities to put solar on publicly owned buildings, which is another way to involve local decision-makers. Notes that the Quabbin Reservoir work began in 1926 and here we are nearly 100 years later with almost the same exact dynamic.

Bressler agrees that this is Quabbin all over again. Offers to work on letter with DeChiara and suggests we reach out to other town's Planning Boards to join the letter.

DeChiara agrees, and notes the Massachusetts Municipal Association is surprisingly not worried. Points out that nobody from western Massachusetts was on the Governor's Commission.

Pyecroft asks how much lobbying has led to this. DeChiara is sure the developers have been very active. Pyecroft asks who would be approving permits. DeChiara notes it would be a state office; currently Energy Facilities Siting Board deals with 100mw and larger projects and projects that qualify for that can bypass local permitting. Probably that Board or something similar. Notes there are some good things in the proposal. The authors took feedback they heard about environmental justice concerns and included provisions to address that, but there is no reference to rural communities or protecting environment or public health in rural communities. Murphy notes that no part of Shutesbury meets the criteria for being an environmental justice community, which involves income criteria, language criteria, and minority population criteria.

Weston thinks Wendell would be interested in a combined letter. Applauds DeChiara's work raising public awareness and advocating on this. Points out that municipalities being limited only to advisory role on battery systems. This would be very damaging to western communities because this is where developers want to be because land is cheaper here. Seems to have been written to help large landowners make money. Will be devastating for towns like Shutesbury.

Pyecroft asks how this compares to what is happening nationwide and if there are any lawsuits, even going back to the time of Quabbin. DeChiara notes there was a lot of local objections at the time but to no avail. Pyecroft agrees a letter would be good to start with.

DeChiara and Bressler will write a letter and Weston will reach out to Wendell about joining it. Bressler suggests networking with other town Planning Boards and DeChiara suggests Pelham.

Weston points out that these towns border the Quabbin, protecting Boston's unfiltered water supply, and all we're trying to do is protect our shared aquifer from toxic chemicals that leak from battery storage. This is eastern Massachusetts's water supply we're trying to safeguard.

Pyecroft proposes reaching out to area journalists as well those in Boston.

DeChiara can aim to have draft of a letter ready for June 10 meeting.

Motion that DeChiara draft a letter on this issue on behalf of the Planning Board: Bressler; second: Weston. Approved unanimously with one abstention (Murphy).

Town Meeting Review

Murphy reports the lighting bylaw and omnibus zoning bylaw amendment passed Town Meeting with clear majorities. EES general bylaw from the Select Board also passed with clear majority.

Unanticipated Business

None.

Adjournment

Motion to adjourn: DeChiara; second: Pyecroft. Approved unanimously.

Adjourned: 8:54pm

List of Documents Used:

- ANR plan and Application for Endorsement for 309 and 315 Montague Road
- Annual report for 2023 from Wheelock solar site
- Subdivision Control Law (MGL I, VII, Chapter 41, Sections 81O and 81S)
- Planning Board letter of May 13, 2024 to W. D. Cows (Cinda Jones) and Tetra Tech (Mathew Moyen)