

**TOWN OF SHELBURNE
Planning Board
Minuets of Meeting August 12, 2015**

A duly posted meeting of the Shelburne Planning Board was held on Wednesday, August 12, 2015 at 7 pm in the Shelburne Town Hall, 51 Bridge St., Shelburne Falls, MA.

Present: John Wheeler, Chair
Will Flanders
Josiah Simpson
George Dole
Cam Stevenson
Alain Peteroy, FLT Director of Land Conservation
Pat Smith, FRCOG

Administrative Assistant: Liz Kidder

Absent:

Audience:

Press:

The meeting was called to order at 7: 00 pm.

A motion to approve the minutes as corrected of July 8, 2015 was made by Cam and seconded by Will.

The Board members noted 3 typos: minuets instead of minutes, sower instead of solar and EIS instead of DIS.

Vote: 4 in favor, 0 opposed, 1 abstention by John as Chair of the meeting.

ANR Plans - none presented.

NEW BUSINESS – Cam asked about a Draft Noise Bylaw that had been sent to Towns by the FRCOG. John said he could bring it up at the Selectmen’s meeting to see if they were going to pursue it. Pat Smith noted that she had worked on it with Peggy Sloan and that it is a general disturbance bylaw for construction projects. It was prepared as a general town bylaw so that it could be adopted more quickly by the Town and it would only need a simple majority vote at a regular or special Town Meeting. To affect the proposed Kinder Morgan pipeline, it would need to be in place before a filing by Kinder Morgan with FERC. John noted that he has a list of concerns that will be discussed at a Shelburne Pipeline committee meeting tomorrow night. Will asked if the FERC approval would override any bylaw like this. Pat Smith said it may well but if most of the towns incorporate such disturbance regulations, FERC may take them into consideration in developing their conditions for KM if the Pipeline is constructed. Cam noted it would be up to the Selectboard to take action or assign it to some other Board. John said he would convey any suggestions from this board to the Shelburne Pipeline committee if other Board members had any items they feel should be discussed.

OLD BUSINESS

Cluster/Natural Resource Zoning Bylaw – John and Liz introduced Alain Peteroy, Director of Land Conservation of the Franklin Land Trust and welcomed Pat Smith, Senior Land Use Planner at the FRCOG, to the meeting. Alain discussed the progress relative to Shelburne participating in the Landscape Partnership Program. If Shelburne applies it would be in the fall of 2016. If the Town was successful, the Planning Board could possibly be eligible for a grant to hire a consultant to help develop a natural resource protection zoning bylaw, however, those funds would not be available until January 2017 at the earliest. Both Alain and Pat noted that while several towns in the area have passed Open Space or NRPZ in the last few years, no projects have actually been developed.

Alain mentioned that there is a Wendell landowner with about 100 acres who has had a vision to develop it using a cluster or natural resource approach. He has found it more difficult that he had expected. For example he has encountered issues related to how to cover the cost of the surveys for each lot and identifying whether the utilities should be individual or shared. She noted that many of the bylaws have mandated conservation restriction (CRs). Someone has to hold the CR and

Approved: _____ Date: _____ 1

in reality it is either the town or a local land trust, sometimes jointly. From the FLT perspective, a small cluster of houses can be a situation that is ripe for violations since people find 1 acre a small lot for a home and structures such as play sets or accessory buildings. The FLT is currently developing a policy for the long term monitoring of a cluster development's conservation land. For this type of project, the participating owners have lost the option of financial savings through a donation of a conservation restriction because the bylaw has mandated the CR, therefore the IRS would not consider it a charitable donation. All conservation restrictions have to be monitored every year and when there are multiple owners involved with one conservation restriction, it definitely creates more work for the FLT or other CR holder.

Pat Smith mentioned that Petersham has a new bylaw that would allow a larger lot per owner, such as 10 acres, so that each property owner can have a CR but this situation makes more work for the FLT. Alain noted it is important to make it very clear as to who owns the open space land. Will the developer establish a homeowners association? Is it a corporation? Who does the FLT call when there is a problem? Will said if the homeowners association holds the land they are then responsible to make sure the CR is monitored. They would have to police themselves. Cam and Will discussed building the conservation restrictions into a covenant. Alain raised the concern of neighbors policing each other. Alain mentioned that it also costs the Land Trust staff time and expenses to do the monitoring and stewardship. In some situations the towns are accepting the restriction and getting assistance and guidance from the Land Trust. In some cases the CR is co-held by the Town and FLT but the FLT still needs to be paid enough to cover their monitoring and stewardship responsibilities every year.

Pat reviewed for the Board the difference between a traditional cluster zoning bylaw and Natural Resource Protection Zoning: she noted that traditional zoning presents a cluster subdivision design as an option for a developer while NRPZ presents cluster as the standard for a subdivision and a developer could only follow a traditional subdivision layout if they can prove that a cluster development wouldn't work on that particular parcel of land. Pat noted that one town also passed a bylaw that put a limit of the number of ANR's that could be developed each year. George noted that the economy has held back subdivision developments. Pat noted this is the time to do the bylaw revisions before the economy turns around.

Alain explained that the initial cost for the FLT to assist with a conservation restriction for an open space development would start at around \$15,000 dollars (or more) and then additional funds would be needed if there are a lot of houses – pro-rated accordingly. She explained that a baseline document that has to be developed that costs \$2-5,000 dollars depending upon the project. Some of the remainder of the money goes into a legal defense fund and then some into a long term monitoring fund. Example of the most common violations on the restricted land would include: dumping of old garbage, installation of a satellite dish, or installation of a play structure or garden shed.

Will suggested that conditions should be built into the homeowner's association agreement that they would have to cover the costs of the monitoring of the restriction in perpetuity. This would give the homeowners an incentive to ensure respect for the restriction in order to save the association money in the long run. Alain said FLT is also looking at some long term spreading out of the fees -- for example when a house lot is sold then fees are paid to the FLT; it's a scenario in development so that there isn't as large an upfront cost to the landowner. Will suggested the homeowners association would have to pay the legal fees incurred by the FLT if the homeowners create a problem.

Will noted that NRPZ also seems to include a complex analysis used to determine the number of possible house lots. Pat commented that NRPZ usually requires at least 75 % of the property be placed into the restriction. The analysis identifies the building envelope and the number of units after the analysis of the property.

Will and John asked if it was possible to create a hybrid bylaw where the incentives, such as additional house lots, are so strong a landowner would want to do a cluster development rather than a traditional subdivision. Pat noted that the traditional cluster incentive focused on infrastructure cost savings. George noted that when you get into too much sharing of services such as water supply, you can come under state regulations.

In response to a question, Alain noted solar panels could be installed for personal use solar on the house lot but not for commercial. Will asked if a homeowner was planning to do commercial solar in the future would that be limited by the CR.

Approved: _____ Date: _____ 2

Alain responded she didn't think the state would approve a CR that had a large scale solar installation option included. The Board thanked Alain and said that her information was very helpful. The Board thanked Pat for coming and she asked the Board to let her know what type of assistance they would like from the FRCOG relative to a cluster bylaw since her assistance is only available through the end of December.

Will suggested that the Board needed to decide what to include in a Shelburne bylaw and then have the FRCOG prepare a draft bylaw for the Board to review. The consensus of the Board was to create a traditional cluster bylaw that adds incentives for additional lots to encourage a developer to design a cluster subdivision with open space protection. Will and John noted that the Buckland bylaw seemed to be traditional cluster with incentives which may be easier to pass in Shelburne than a full NRPZ bylaw. Will said he is interested in seeing how much of the requirements for the homeowners association agreement can be built into the zoning bylaw.

John said he thought it would be very important to keep the process very open to the public so that they have plenty of opportunity to voice their opinions and to review any draft bylaws. The Board felt it would be beneficial to hold a public information meeting and ask Jeff Lacy to come and give his powerpoint presentation on NRPZ and cluster bylaws. This meeting would be open to all town boards and the public as well. John said he would go to the Selectboard and ask them if there is a fund out of which they could take \$100 to cover Jeff Lacy's fee. Liz was asked to prepare a notice of the public information meeting and to send appropriate information to the local press. The Board consensus was to try for Wednesday, September 23rd as the first choice date and to hold the meeting at the school cafeteria. Liz was asked to coordinate this meeting.

Coordination with ZBA for ATM 2016 – Liz noted that she had received an email that the ZBA had planned on discussing bylaws which need revising at their August meeting but they did not have a quorum. They did an informal poll of the members present who felt it would be better to meet with the Planning Board in October. John had talked with Joe Palmeri on some other issues and noted he prefers attending the September meeting. John said he would communicate with Joe and say that either September or October is fine.

Tennessee Gas Pipeline Company, L.L.C. Northeast Energy Direct Project, FERC Docket No. PF14-22 updates – Liz presented the Board the file of documents received during the last month in regards to the Pipeline project. John reported there is a meeting of the Shelburne Pipeline Committee tomorrow night to review items to be included in a Shelburne scoping letter. John will be participating on the Shelburne Committee and will keep the Board up to date as needed. He will attend the meeting and he asked any members to email him if they have any additional concerns to be included.

Subdivision Regulations - Josiah and Will reviewed the sections they edited. Josiah felt that the original Shelburne subdivision language was better than the language in the Orange regulation relative to Development Impact Statements; he moved some of the paragraphs around to improve the flow. The consensus of the Board was to follow Josiah's changes as prepared. Will explained he contacted TP Daly insurance in Springfield to discuss how to ensure that a project is completed as approved. Based upon his discussions, he felt that using a Restrictive Covenant is the best way to achieve the town's goals and performance guarantee. There was a lengthy discussion on how to ensure that a project gets finished when it can take time to sell all the lots. George noted that developers do not like to put the finish coat on a road until all the lots are sold and house placement determined since too often they have to make changes and dig up the road surface. They like to wait to do the finish cost on the road until all the houses are in. Will said he will put something in for a reserve account allowing for partial releases and the Board concurred. The Board set a goal of reviewing pages 36-48 at their next meeting.

COMMITTEE UPDATES

FRCOG Planning Board – FRCOG didn't meet, Cam had nothing to report.

Open Space – John said that the committee hasn't met recently.

Other town board updates – John will be going to next Pipeline meeting tomorrow.

OTHER BUSINESS NOT REASONABLY FORESEEN 48 HOURS PRIOR TO THE MEETING – none presented.

Approved: _____ Date: _____ 3

READ MAIL – the Board read mail as listed below.

PUBLIC COMMENTS – none presented.

SCHEDULE NEXT MEETING – September 9, 2015, possibly Sept. 23rd with Jeff Lacey

A motion to adjourn the meeting was made by Will and seconded by Josiah.
Vote: 4 in favor, 0 opposed, 1 abstention by John as chair of the meeting.

Meeting was adjourned at 9:41pm.

Respectfully submitted by,

Liz Kidder
Administrative Assistant
Shelburne Planning Board

List of Documents:

Public Hearing Notices for neighboring towns: Greenfield (2), Charlemont (1)
Letter from EOHHS regarding Home Modification Loan Program
July 14, 2015 email from Peggy Sloan regarding Jeff Lacey
August 11, 2015 email from Faye Whitney regarding ZBA meeting
Emails from Peggy Sloan regarding Regional Pipeline Advisory Committee: July 21 and July 22, 2015
FERC’s Environmental Review Process Chart
Pipeline Concerns for Northfield as of July 1, 2015
Memo from Joe Judd to Bob Manners regarding Pipeline issues
Email from Peggy Sloan, August 6, 2015 regarding model General Bylaw for Noise, Earth Removal and Related Disturbances and a copy of the bylaw
August 10, 2015 email from Will Flanders regarding Performance Guarantees and revised related draft sections of the subdivision regulations.
August 10, 2015 email from Josiah Simpson regarding Development Impact Statements and revised related draft sections of the subdivision regulations.