

Shutesbury Select Board Meeting Minutes
October 23, 2017 Shutesbury Town Hall

Select Board members present: Michael DeChiara/Chair, Melissa Makepeace-O'Neil, and Timothy Logan

Staff present: Becky Torres/Town Administrator; Linda Avis Scott/Administrative Secretary

Guests: Police Sergeant Wendy Masiuk and Tony Torres/Teamsters Union #404 are present prior to the Dog Hearing. The following persons are present for the Dog Hearing: Police Chief Tom Harding, Dog Officer Nancy Long, Lori Saleem, Ronald Meck, Adrian Meck, Attorney Donna MacNicol/Town Counsel, Police Officer Dan Fernandes, George Coombs and Janet Porcelli/Montague

DeChiara calls the meeting to order at 6:33pm.

DeChiara asks Sergeant Masiuk if she requests an open or executive session. Masiuk requests an executive session.

At 6:34pm DeChiara moves to go into executive session for reason #1/to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual and to reconvene in open session; Makepeace-O'Neil seconds the motion. Roll call vote: DeChiara: aye Makepeace-O'Neil: aye and Logan: aye

Open session reconvenes at 7:47 pm.

Dog Hearing/323 Locks Pond Road/Lori Saleem - owner of Mocha: DeChiara opens the hearing at 7:50pm and administers the oath by asking any one planning to testify to raise their right hand and promise to tell the truth, the whole truth, and nothing but the truth. For the record, all present raise their hands and fulfill the oath. DeChiara explains the hearing procedure. Ron Meck, as complainant: Saleem did not comply with the Select Board order and there is documentation to that effect. Saleem states R. Meck has accused her of owning a nuisance dog; she has stepped up her efforts to keep her dog from barking by bringing to the dog to work, crating the dog when she is not home in the evening, the dog is in the house when she is home and she is making a great effort to keep the dog from barking. Saleem explains she canvassed her neighbors and none of them have a problem with her dog, nor have there been any complaints about barking. Saleem provides a document with a map and written testimony from her neighbors and cites emails sent to the Select Board on behalf of Mocha. Saleem states she feels like R. Meck is stalking her. R. Meck: the Select Board determined the dog was a nuisance. DeChiara, to set the historical context, reads from the 1.26.16 Board meeting minutes: "A motion was made and seconded that the Select Board declare that Mocha, the dog owned by Lori Saleem, at 323 Locks Pond Road, is a nuisance dog; motion is unanimously approved" and from the 10.18.16 dog hearing:

"DeChiara: as per Mass General Law, there is a need to note that the owner did not comply with the Select Board requirements. Saleem states that she spoke with

Chief Harding and Torres about the citations earlier on 10.18.16. DeChiara: there needs to be a “good faith” effort to pay the citations. Saleem: there is more conversation to be had about payment of the citations. Vinskey summarizes: the dog must be inside whenever the owner is not home, the dog must be brought in immediately when barking during the evening, the dog shall not be left outside for extended periods from late evening to early morning, and the issuance of one citation will result in a dog hearing. MacNicol clarifies that to meet the statute’s standard the dog may be required to leave the community. DeChiara moves that the Select Board found that the initial order was violated therefore is responding with an expanded order that the dog be kept inside when the owner is not at home, be monitored when outside during the early evening, and not be left out for extended periods from late evening to early morning; the issuance of one citation by the Shutesbury Police or one written report by the State Police will result in another dog hearing. Makepeace-O’Neil seconds the motion that is unanimously passed.”

DeChiara: if another violation occurred, another hearing would be held. Town Counsel Donna MacNicol: it has been a year therefore R. Meck needs to be specific about subsequent violations. Police Chief Harding: in the last month, there have been notices from Shelburne Control regarding barking complaint calls; these calls were not investigated. R. Meck states he has stopped calling the state police as it is irresponsible to take up their time; when he calls, he asks if there are Shutesbury police on duty. DeChiara: there has been at least one violation since 10.18.16. MacNicol and Torres: there was one violation on 2.6.17 when the dog barking was witnessed by a police officer. Saleem: at that time, she was out of work due to an injury and had help. Saleem presents a note, dated 10.23.17, from Town Clerk Susie Mosher demonstrating a schedule for payment of accumulated fines. MacNicol: the citations need to be read in order to know the terms of payment. Torres: the citations are “in house”. Dog Officer Nancy Long: the town issues the citations and they do not have a “pay by” date. DeChiara refers to the “Town of Shutesbury Dog Officer Control Form”: the notice of violation is dated 2.6.17, 323 Locks Pond Road, at 9:30pm, for “noise complaint/barking dog; dog was found roaming freely and the resident was not home”; the citation, issued by Sergeant Masiuk, was for \$75.00 with no “pay by” date. Torres: on that date, someone else was taking care of the dog while the owner was in the hospital. DeChiara to Saleem: a year ago, you were advised that there “needs to be good effort to pay citations”. Saleem: because she was out of work due to a leg fracture, she had no funds to pay the citations; Mocha is a certified service dog now; during her recovery, she had someone watching the dog when Mocha opened the latch on the inside of the door and got out; a new latch that the dog cannot open was installed; she thought the citation was resolved. Long reports visiting Saleem on 2.7.17 and learned that she was staying with her son, phone messages offering help were left however those calls were not returned. MacNicol: have any citations been issued since 2.6.17? Long: no. Harding: there have been visits however no other citations have been issued. George Coombs/ owner of 323 Locks Pond Road: Saleem lives in a close neighborhood; it is a noisy spot and there are dogs barking everywhere; Saleem has been working with Mocha; he does not hear Mocha that much and her bark is not a howling growl. R. Meck: there are no citations because no Shutesbury police are on duty when it happens; the dog has barked at 3:30am and at two

other times during the first two weeks of October. Logan: what has Meck experienced? R. Meck states he has been kept up at night; this is a problem that has been going on for eight years; he is concerned about the dog being out in the cold. Logan restates that R. Meck experiences lack of sleep and has concern for dog. R. Meck states that his main concern is the dog's well being. Saleem: the dog does need to go out at night. Long: all dogs bark; while on a late Saturday evening trip to the Lake looking for a dog living in the woods, there were lots of dog barking. R. Meck: Mocha does long forlorn dog howling for hours; call Shelburne Control and listen to the tapes of his calls with the dog howling in the background. Logan confirms that Meck has been a dog owner. Meck: yes. Logan to Meck: what is the optimum solution. Meck: why is it coming back to me; Saleem has not followed through on the Select Board order. DeChiara: the facts are that there has been a violation and the dog has been declared a nuisance. Adrian Meck is asked if he lives with his dad, R. Meck. A. Meck states that he has opened the back screen door and heard a dog bark; did not plan on saying anything about Mocha. Saleem asks the Select Board to take into consideration the document she provided in which her neighbors, within earshot and nextdoor to R. Meck, do not hear the dog; she does not leave her dog howling outside. DeChiara: after determining the dog to be a nuisance, the Select Board set parameters. MacNicol: the conditions listed in the 10.19.16 letter need to be reviewed in order to determine what has been violated and the next steps to form a decision. The 10.19.16 Select Board letter to Saleem is read into the record by Makepeace-O'Neil. Review of conditions: 1. "That you keep your dog inside whenever you are not at home. Saleem: during the summer, lets her dog be in the garden room – it is a safe place with a high fence and doghouse, then once she is at home, between 5-6pm, the dog is insider with her. DeChiara: as you have stated, you are in violation because the dog has been outside when you are not at home. DeChiara asks Saleem if she remembers receiving the letter. Background on receipt of letter is reviewed: the letter was sent by certified mail on 10.19.16 and returned by the post office as unclaimed; Torres contacted Saleem who picked up the letter on 11.18.16. Condition 2: "When you are home your dog must be monitored whenever it is outside in the early evening and immediately brought in when it barks." Per Saleem, this occurred 100% of the time, the dog is only outside to void. Logan: this is a "he said, she said" situation. MacNicol: as the Board hearing the case, the Select Board needs to decide who is telling the truth. Per R. Meck, the dog does not bark all the time, however, there was barking four consecutive nights in October and this has been going on for seven years and letters and tapes have been sent to the Select Board. DeChiara to R. Meck: has there been barking in the early evening since 10.18.16? R. Meck: briefly several times and there have been occasions when the barking occurred over a period of time. Janet Porcelli: it would have helped if other neighbors came to support Saleem so this would not be only a he said/she said situation. R. Meck: this happened before, in another neighborhood, with the dog being surgically altered. Condition 3: "Your dog will not be left outside for extended periods of time during the late evening to early morning." Saleem: this never happens; she does not leave her dog out overnight. R. Meck: that is not true. Makepeace-O'Neil: during the prior hearing, Vinskey asked R. Meck to email the Select Board anytime the dog barked and to contact Shelburne Control; per Meck's 7.7.17 email, the dog was barking at 2am and at 4 am a few weeks prior and Shelburne Control was not called; another email 8.11.17, no time cited, Shelburne Control was called. DeChiara: the emails do not indicate whether the

dog was inside or outside. Saleem: usually about once a week, Mocha goes out briefly at night; her other neighbors told her that they do not hear Mocha. Condition 4: "That if another citation is issued by the Shutesbury Police Department or a written report from the State Police is received by the Select Board for a barking complaint, another Dog Hearing will be held." It is noted that another citation was issued for a barking incident on 2.6.17. Saleem: Long called to follow through and she (Saleem) understood that situation was resolved and did not understand a citation had been issued. Harding: the citation was left at the door as no one was at home. Saleem: the door was fixed that very same day. DeChiara: the fact is, a citation was issued. Saleem: I had a dog sitter, I was not at fault – this is why you want to take my dog from me? DeChiara: the Select Board has to be methodical and review the four conditions issued: #1 Saleem is in violation; #2 there is disagreement, Saleem says yes and R. Meck says no; #3 Saleem says no; R. Meck says sometimes; #4 Saleem is in violation, citation issued 2.6.17. R. Meck states he has no motivation to make up that the dog is barking in the middle of the night. DeChiara explains that when the public hearing closes there will be no further testimony and the Select Board will deliberate. MacNicol notes that the Select Board may ask questions. Coombs states that he has heard the dog though dogs just bark. Coombs to R. Meck: you are hypersensitive to the dog barking. DeChiara asks for any further testimony. Saleem: Long and Torres have been to her house and observed the conditions for her dog; the Select Board has received fresh dispositions from her neighbors; does not know why R. Meck has been in her yard; she has received disturbing phone messages and notes on her door; this is not a threatening dog. Porcelli: if condition #1 happened consistently, there would not have been a problem. R. Meck states that he did not send phone messages or leave notes at the door; there is a plethora on the issue that was started by James McNaughton and Gayle Huntress who left the neighborhood (3-4 years ago) due to the dog's barking; Saleem's testimony needs to be taken in context; there is something about the configuration of the topography that causes the sound to travel toward his house. Saleem: the folks who have live in McNaughton's house do not hear barking. No further testimony is offered. At 9:00 pm, the public hearing is closed and the Select Board enters deliberation. Torres notes that the Select Board has been working on this issue for seven years and there has been progress because originally there were two dogs. Logan: the Select Board decided, based on facts, that the dog is a nuisance and set up conditions, 50% of which have been violated. MacNicol: one violation is sufficient. Makepeace-O'Neil: conditions have been violated therefore the Select Board needs to make a decision based on the quality of life for one person or to make another set of conditions. DeChiara: the Select Board has dealt with the situation methodically over the years; the conditions were clear and 50% of them were violated; subsequent conditions need to be connected to whether Mocha stays in the house or not; this is not something anyone wants to do. Logan reads from Chapter 140, Section 157, 2(h): " If an owner or keeper of a dog is found in violation of an order issued under this section, the dog shall be subject to seizure and impoundment by a law enforcement or animal control officer." MacNicol: this gives the Select Board authority however does not require the actions; you may decide the dog needs to leave town and you may give Saleem adequate time to do so; if the time period elapses, the dog could be seized, however, this is not a dangerous dog. DeChiara: it seems there are two paths: setting new conditions and if a violation occurs, Mocha does not stay in town or not setting new conditions and requiring Mocha to be

rehoused within a specific period of time. Logan: two conditions have been violated, it seems the course is set. Makepeace-O'Neil: in good will, the situation has been extended in an effort to resolve the problems. Long asks to speak and notes that she has been involved since the beginning; the problem is that only a few people have complained – Huntress, McNaughton and R. Meck; none of the other neighbors have complained; it seems the case has been continued because, over the years, the testimonies of “no complaints” from the neighbors are true. DeChiara to Long: is there an objective condition? Long: the dog can be out from x time to x time and can bark for only a set period; “no barking” is not practical. Harding: it is tough to have an officer there when the dog is barking; generally, the calls come when there is not a Shutesbury officer on duty; getting independent corroboration is difficult; Shelburne Control has taped evidence of the dog barking. MacNicol: could a camera be used? DeChiara: if this were his dog, he would go out of his way to ensure he understood the conditions; in this case, it does not seem Saleem took the conditions seriously, i.e. not starting a citation payment until today; if Saleem did not understand the conditions, she might have called Torres for guidance; to Saleem: your actions show that you did not take the conditions seriously. Saleem: she thought that the dog could be outside on a nice summer day. DeChiara: that is not what the condition said. Saleem: I am crystal clear now. DeChiara: these were mutually agreed upon conditions. Saleem: understands the conditions now and will sign a document agreeing to them; please do not take dog away. DeChiara to R. Meck: is quality of life less of an issue now? R. Meck: if documentation is an issue, he will not call the state police anymore; a surveillance camera would provide verification; has no interest in Mocha going away. DeChiara: if either party moved, the problem would go away; monitoring will not solve the problem. R. Meck: it would solve the discrepancy problem; does not know why the dog is barking in the middle of the night; would be willing to help care for dog if Saleem needed assistance; feels a little silly now, with the decrease in incidents. MacNicol: a motion-activated camera could be installed in the garden area. Saleem confirms that she would have access to such a camera. MacNicol: if there were a complaint, the camera would go to the dog officer for review; this could be an inexpensive camera. Saleem states she would be more than happy to install a camera. Makepeace-O'Neil recommends the dog officer be responsible for accessing/managing the camera. Long agrees to do so. Makepeace-O'Neil: the camera will be lockable so data cannot be altered. Logan: time period and consequences? DeChiara: if we agree to the camera and there is a documented complaint, the dog will need to be removed from town; the camera inserts another opportunity for Mocha to stay. Saleem: how long will the camera be implemented? DeChiara: for six months to a year. Saleem again states her willingness. R. Meck: the problem may start up again after the camera is removed. MacNicol: maintain the current conditions with the addition of a locked camera, installed in the garden area, with access by only the dog officer; if there are no complaints, use of the camera will be reviewed in one year. DeChiara: Long will determine if the complaint is valid; if it is valid, Mocha will need to leave Shutesbury. Makepeace-O'Neil: if there is a violation corroborated by the camera, the dog will need be removed within a time period set by the Select Board. Torres: would ask that a specific time period not be set. MacNicol: the Select Board could set the time period for removal at 30 days with the opportunity for an extension. DeChiara suggests 60 days. Logan confirms the camera will be installed in the enclosed area. DeChiara: if the dog is inside, barking may occur.

DeChiara moves the Select Board sets conditions for the dog, Mocha, owned by Lori Saleem and that the following conditions will remain in place: Conditions #1 and #2 as per 10.19.16 letter to Saleem; Condition #3 is amended to include “And barking for longer for 5 minutes will be considered a violation”; Condition #4 is amended by omitting “another Dog Hearing will be held” and adding “it will be a violation of the order”; addition of Condition #5 “If there is a complaint by anybody that is then verified by the dog officer based upon video/audio evidence, it will be a violation”; addition of Condition #6 “Saleem must acquire a wildlife trail video camera with audio and install same with a view of the enclosed garden area; the camera needs to be installed within fourteen days from the date of this letter; installation is to be verified by the Dog Officer. A violation of any of the Conditions herein will result in the dog being removed from Shutesbury within 60 days. If there is no violation, the Select Board will review the conditions by 10.23.18.” Saleem clarifies that she will purchase and own the camera; Dog Officer Long will verify the installation, lock the camera, and hold the key. DeChiara requests Scott to compile a letter, as per the above, for review by the Select Board 10.30.17. MacNicol explains that Saleem can begin shopping for a camera right away. DeChiara: if Saleem does not obtain the camera within the allotted time, she will be in violation. Logan and Makepeace-O’Neil have no further questions. At 9:53pm, DeChiara moves and Logan seconds the motion to close the public hearing.

Rule of Necessity:

DeChiara: the Select Board needs to consider signing the “Surety Agreement for Solar Site Decommissioning Fund” during the 10.30.17 meeting and two members of the Board are abutters to the Wheelock Parcel, site of the solar project.

MacNicol: Town Counsel can invoke the Rule of Necessity; in this case, Makepeace-O’Neil and DeChiara, as abutters, have a conflict of interest and Logan cannot act alone therefore the Rule of Necessity must be invoked; two out of three members have a conflict of interest. MacNicol: the only reason the Select Board signature is on the Surety is because it is a twenty year agreement; when the twenty year lease is terminated, the Surety Agreement gives the Town the absolute right to enter the property six months after the project has been abandoned and if the site is not cleaned up, the Town will have access to the funds. Per MacNicol: the Surety Agreement is a Planning Board condition; if in 20 years, the Planning Board does not have the right to sue, the Town is party to the document. MacNicol approved the document for the Planning Board and insisted the Select Board sign for enforcement purposes. The Select Board members with conflicts can declare them during the 10.30.17 meeting.

At 10:02pm, Makepeace-O’Neil moves and Logan seconds the motion to adjourn; motion passes unanimously.

List of Documents and Other Items Used at the Meeting:

1. Saleem document “To the Shutesbury Select Board from Concerned Neighbors”
2. 10.23.17 memo from Town Clerk Susie Mosher
3. Town of Shutesbury Dog Officer Control Form dated 2.6.17
4. 10.19.16 Select Board letter to L. Saleem
5. 1.26.16 Select Board minutes regarding Dog Hearing

6. MGL Chapter 140 Section 157
7. 8.11.17 email from R. Meck: "Forward: The Dog"
8. 10.21.17 email from R. Meck: "Re: Dog Hearing 10.23.17 7:30pm"
9. 10.21.17 email from Gwen Shook: "Mocha"
10. 10.22.17 email from Peter Moore: "Ron Meck vs. Lori Saleem/Mocha"
11. 10.23.17 email from Dina Polizzi: "Meeting 10.23 re: Lori Saleem"
12. 10.23.17 email from Josh Lagreze: "Ron Meck vs. Mocha the dog"
13. 10.223.17 email from Leela Joy: "Affidavit for Lori Saleem and Mocha the dog"
14. State Ethics Commission "Advisory 05-05: The Rule of Necessity"

Respectfully submitted,
Linda Avis Scott
Administrative Secretary