

Shutesbury Select Board Meeting Minutes
March 30, 2021 Virtual Meeting Platform

Select Board members present: Melissa Makepeace-O'Neil/Chair, April Stein, and Rita Farrell

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

Other Town Officials present: Miriam DeFant/Historical & Conservation Commissions, Mary Lou Conca/Historical Commission, Don Wakoluk/Tree Warden, Michael DeChiara and Jeff Lacy/Planning Board,

Guests: Leslie Luchonok, Susan Rice, Leslie Cerier, Susan Millinger, Robert Seletsky, Diane Jacoby, Marina Gurman, Penny Kim, Kate McConnell, Mary Jo Johnson, Ria Windcaller, Brigid Murphy, Penny Jaques and other unidentified parties.

Makepeace-O'Neil calls the meeting to order at 5:45pm.

Agenda Review: Stein requests consideration of the Select Board FY20 annual report.

Makepeace-O'Neil: the Conservation Commission appointment will be postponed to the next meeting as will appointments to the Police Study Group; there were few responses to the Town Announcement seeking letters of interest from those interested in serving on the Group; it has come to our attention that the orange warning block may have prevented the announcement being read by a broader group; it will be re-announced and appointments considered at a future meeting; strategies for announcements will be considered at 6:05pm.

Public Comment:

1. Michael DeChiara states he watched the video recording of the 3.16.21 Conservation Commission appointment discussion and found it to be inappropriate and that it should have been done in executive session under Reason #1: "To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual" ("Open Meeting Law Guide & Educational Materials", Attorney General's Office, January 2018). DeChiara continues: the discussion about Don Wakoluk's character did not seem necessary and should have been done in an executive session; the Town Administrator, rather than warning about the potential need for an executive session, took part in the discussion; also, the reference to "no trespass orders" should not have taken place because, as volunteers, we are technically Town employees. DeChiara recommends this part of the record be struck; the Select Board should respect the vote of a committee to recommend an appointment; if the Select Board overturns the vote of a committee, it puts into question the annual appointment process; the Commission voted and it is not appropriate to put off the appointment again. DeChiara also asks for follow-up on an email he sent to Select Board members last week regarding contract negotiation planning.
2. Miriam DeFant acknowledges that the Conservation Commission appointment discussion is being postponed therefore reads her 3.29.21 email letter to the Select Board, "Appointment to the Conservation Commission", into the record and confirms that she wrote the letter as an individual not as a member of the Historical or Conservation Commissions.

3. Jeff Lacy appreciates the paving work done by the Highway Department on the end of Baker Road near his home. Lacy notes that he received the Town Announce about the police study group and refers to the 3.19.21 Town Announce by Officer in Charge Kristen Burgess (regarding recent acts of violence against the Asian community around the country) and notes that it did not seem germane to Town Announce and for which he could not tell what its purpose was other than promoting the Shutesbury Police Department or Burgess as a future chief.
4. Susan Rice states that she is horrified by the violence against the Asian community and really appreciated the message from Officer Burgess which validated her own feelings.
5. Leslie Cerier states that she agrees with DeFant's letter and though she does not serve on any committees, she worked with Don Wakoluk in her forest; the Town will be in good hands and be lucky to have someone with forest knowledge on the Commission.
6. DeChiara asks why the Conservation Commission appointment is being postponed. Makepeace-O'Neil: due to the emotional content of the public response after the 3.16.21 meeting, a step back is needed before a more fruitful discussion can occur.

Discussion Topics:

1. Request for Appointment to Conservation Commission: Postponed to 4.13.21
2. Receive Planning Board Proposed Associate Member Bylaw: The Select Board received the Planning Board's 3.8.21 "Associate Member Bylaw" and has no questions at this time.
 - Farrell moves and Stein seconds a motion to accept the Planning Board's proposed "Associate Member Bylaw". Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O'Neil: aye; the motion carries.
3. Police Study Group: Makepeace-O'Neil: because of the orange block warning, the Police Study Group Town Announcement may not have been widely read. Torres is working with Web Committee to see if the orange block can be removed; the goal is to include the announcement in this week's school newsletter, post it on the Town website homepage, and contact Scott Merzbach/*Daily Hampshire Gazette* about publishing a short article about the police study group; flyers may also be posted. Torres will check with Emergency Management Director Walter Tibbetts on the use of the CodeRed General email function, that has about 250-300 email addresses, and the text function to user to the website announcement. The plan is to consider membership for the three community representatives during the 4.13.21 meeting.
4. Review Meeting with DOER: DeChiara, at Makepeace-O'Neil's request, reviews his 3.24.21 "Report to Shutesbury Planning Board regarding DOER call on Public Entity Status": the attendees included six DOER (Department of Energy Resources) staff representing multiple perspectives, Elena Cohen/Senator Comerford's office, Farrell/Select Board, Torres/Town Administrator, Deacon Bonnar/Planning Board Chair and himself/Planning Board. Per DeChiara, the focus of the meeting was to gather information about the public entity program; per DOER the program is intended to help municipalities develop their own solar; they had not envisioned what Amp Energy is proposing. Amp stated, that to be eligible, they would need a MOA (memorandum of

agreement) with the Town; DOER advised that an operations and maintenance agreement will be needed rather than a MOA that only indicates intentionality; there is no precedent for the type of arrangement Amp is proposing.

DeChiara: the benefits of public entity status for the developer include Category 1 siting status and exemption from certain siting requirements, jumping to the “front of the line” for a higher rate of payment; with public entity status, interconnection and local permitting is not required to apply for the SMART (Solar Massachusetts Renewable Target) program and the developer receives funding prior to the local permitting process.

Torres adds: in addition to the “adder” benefit, the application deadlines are looser and the public entity has the ability to qualify and obtain STGU (Solar Tariff Generation Unit) before permitting. Torres continues: it remains unclear whether the interests of Town will be met; they could be met through a PILOT (payment in lieu of taxes) though we want to ensure the permitting process goes through as usual; the SMART regulations are silent on local permitting. Torres: as DeChiara stated, there is a default on local permitting, i.e., projects can be sited on Priority Habitat land; DOER is clear that they will not provide legal advice though are willing to work with the Town on drafts; an agreement does need to be negotiated. Torres: if Amp becomes a public entity with its financial benefits, siting is the concern.

DeChiara: minimally, a project proposal is needed in order to develop a contractual agreement; DOER is clear that they do not get into local zoning. DeFant asks if it becomes a “public project” will it need special permit review or be allowed “by right”.

Torres: as a public entity project in Category 1, the BioMap requirements are less.

DeChiara: in public entity status, building in biologically sensitive areas is allowed; Amp projects would not be public municipal projects. Farrell: the detail of an operations and maintenance agreement is needed for public entity status; DOER will not know if such an agreement is sufficient for public entity status until they review it; a MOA does not get Amp public entity status. Farrell reinforces that DOER’s intent with public entity status is to assist municipalities develop their own power; beyond not having to follow BioMap restrictions, the earlier you get into the SMART program the greater the financial gain and there is looser timing for the application process. Lacy is concerned about entering into the relationship with Amp; it does not seem to be the case that an Amp project would become a permitted municipal facility; local zoning will apply.

Torres: Amp has had only email correspondence with DOER. Stein: it may be helpful to have a joint meeting with DOER and Amp so DOER can see how the regulations result in the kind of partnership Amp is proposing. DeChiara explains that DOER suggested a meeting after he emailed them questions; the Planning Board became aware of the meeting after it was scheduled. Torres clarifies that Shane Bajnoci/Cowls, Inc. and Cowl’s Attorney Tom Reidy asked to be part of the meeting with DOER; they were informed that the meeting was for Town officials; all parties are struggling to determine what is required and allowed; Evan Turner’s suggestion that a MOA will suffice has been ruled out. Farrell: it was important for the meeting to be with Town officials. Stein: it would be good for Amp to hear DOER’s responses. Torres: it may be helpful to have a meeting with Amp, Cowls, the Planning Board and Select Board; the next step is the 4.5.21 in-depth review of the solar bylaw with Town Counsel MacNicol. DeChiara: it

does not feel appropriate to engage with Amp until a proposal is submitted; once received, the Select Board can have a conversation; right now, there is no project to respond to. Torres: the MOA outlines a scope of work; the Select Board is responsible for being knowledgeable in order to consider the options in an open meeting. DeChiara: there are no projects. Stein: however, there is the MOA (previously submitted to the Select Board by Amp).

DeFant: the Historical Commission would like a few minutes to discuss their report on the solar bylaw and the Commission's statutory role during the 4.5.21 meeting. The Select Board agrees for the Historical Commission to be in session during the 4.5.21 meeting in case there is time for the Commission to present. DeFant notes that it is important for the Commission to be present during review of the bylaw paragraphs dealing with preservation and that the report ("Historical Preservation and Solar Development in Shutesbury Massachusetts" dated March 2021) is posted on the Historical Commission webpage. Makepeace-O'Neil: the meeting summaries by DeChiara and Torres will be posted on the Town webpage. DeChiara gives permission for his report to be posted.

- Farrell moves and Stein second a motion to post the reports from the meeting with DOER by DeChiara and Torres on Town website. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O'Neil: aye; the motion carries.

5. Highway Superintendent Contract Negotiations Representative: Torres: Highway Superintendent Tim Hunting will be available for one more year; a Select Board representative is needed for his contract negotiation team. Farrell is willing to serve on the team along with representatives from the Personnel Board and FinCom. Torres: a new Teamsters representative will be present for the police union negotiations. Makepeace-O'Neil is willing to serve as the Select Board representative as she has done so in the past; Melody Chartier/Personnel Board and Bob Groves/FinCom will also serve. Per Torres, Fire Chief Walter Tibbetts has an automatic one-year contract extension after which he will retire.

6. Multiple Items:

a. FY 20 Select Board Annual Report:

- Farrell moves and Stein seconds a motion to approve the FY20 Select Board Annual Report as written by Stein. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O'Neil: aye; the motion carries.

b. FY21 Council on Aging EOEA Grant Contract:

- Stein moves and Farrell seconds a motion to approve the FY21 Council on Aging Executive Officer of Elder Affairs grant contract for \$6,000. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O'Neil: aye; the motion carries.

c. Shutesbury Athletic Club (SAC) Change of Manager: Scott reports that subsequent to the SAC's submission of additional documentation and corrections and the ABCC's reconsideration process, the ABCC issued the Licensing Authority Certification. Per Scott, during their recent meeting, the SAC Board of Directors voted to appoint Mark Olszewski as the new manager; the Select Board as the Local Licensing Authority

will need to approve and sign a new Licensing Authority Certification for “Change of Manager”.

- Stein moves and Farrell seconds a motion to approve and sign the ABCC Licensing Authority Certification for “Change of Manager”. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O’Neil: aye; the motion carries.

d. Letters to the Shutesbury Democratic Party and State Republican Party:

- Stein moves and Farrell seconds a motion to approve and sign the annual letters to the Shutesbury Democratic Party and State Republican Party (in the absence of a local group). These letters request lists of individuals willing to serve as election workers and, in the case of the Republican Party, individuals to serve on the Board of Registrars. Roll call vote: Farrell: aye, Stein: aye and Makepeace-O’Neil: aye; the motion carries.

e. Animal Control Officer Appointment:

- Farrell moves and Stein seconds a motion to appoint Nancy Long as the Animal Control Officer. Per MDAR (Mass Department of Agricultural Resources), the appointment is for the calendar year. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O’Neil: aye; the motion carries.

f. Cultural Council Grant Contract:

- Stein moves and Farrell seconds a motion to approve the \$4,900 Mass Cultural Council grant to the local Cultural Council. Roll call vote: Farrell: aye, Stein: aye and Makepeace-O’Neil: aye; the motion carries.

g. Recycling & Solid Waste Committee Resignation:

- Farrell moves and Stein seconds a motion to accept the resignation of Ezzell Floranina from the Recycling and Solid Waste Committee. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O’Neil: aye; the motion carries.

Administrative Actions:

1. Select Board members will sign vendor warrants totaling \$60,657.94.
2. Select Board members will sign payroll warrants totaling \$95,460.26.
3. Stein moves and Farrell seconds a motion to approve the 3.4.21 meeting minutes. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O’Neil: aye; the 3.4.21 minutes are approved as presented.
4. Stein moves and Farrell seconds a motion to approve the 3.16.21 meeting minutes. DeChiara revisits his request from earlier in the meeting when he noted that the discussion regarding Don Wakoluk as well as Wakoluk’s, DeFant’s and his “no trespass orders” should have been in executive session and should be removed from the open meeting minutes. Makepeace-O’Neil, Farrell, and Stein request Torres to consult with Town Counsel Donna MacNicol on the content of the portion of the 3.16.21 minutes questioned by DeChiara.

Farrell moves and Stein seconds a motion to adjourn the meeting at 6:57pm. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O’Neil: aye; the motion carries.

Documents and Other Items Used at the Meeting:

1. Miriam DeFant's 3.29.21 email letter the Select Board: "Appointment to the Conservation Commission"
2. Planning Board's 3.8.21 proposed "Associate Member Bylaw"
3. DeChiara's 3.24.21 "Report to Shutesbury Planning Board regarding DOER call on Public Entity Status"
4. FY21 Council on Aging Executive Officer of Elder Affairs grant contract
5. ABCC Licensing Authority Certification
6. Letters to the Republican and Democratic parties regarding Board of Registrars and election workers
7. FY21 Cultural Council Mass Cultural Council grant contract
8. 3.30.21 email "RSWC resignation" from Ezzell Floranina

Respectfully submitted,
Linda Avis Scott
Administrative Secretary