

Shutesbury Selectboard Meeting Minutes
March 28, 2023 Virtual Meeting Format

Selectboard members present: Rita Farrell/Chair, Melissa Makepeace-O'Neil and Eric Stocker

Staff present: Becky Torres/Town Administrator, Geneva Bickford/Administrative Secretary

Volunteers & Other Staff present: Chief Burgess, Devon Pelletier, Mary Anne Antonellis, Grace Bannasch, Robert Groves, George Arvanitis, Miriam DeFant

Guests: Leslie Luchonok, Edward Redonnet, Lesley Smith, Rivka Solomon, Mark, Mary Daid, Carlos Fontes, Gail Fleischaker, Ezzell Floranina, Frank McGinn Potter, Renee Richard, Sharon Weizenbaum, Tracy McNaughton, Meryl Mandell, Joseph's Ipad, Jane's Iphone, Michael DeChiara, Jill Buchanan, Tom Siefert, Robert Price, Bob Douglas, Jim Plaza, Susie Mosher, Mary Lou Conca, Micha, Jane Urban, Elizabeth Fernandez O'Brien, Katherine A. Powers, Penelope Kim, Garrett Simonsens, Michael Hootstein, Janice Stone, Kevin Weir, Joyce Braunhut, Jan Rowan, Jill Marland, Karen Tarlo, John Montanari, Joan Hanson, David Buchanan, Jim, Sanford Lewis, Jon Lawless, Stephen Dallmus, Amanda Alix, Allen, K, Claudia Citkovitz, Green Miles Lipton, LLP, Don Wakoluk, Mike Vinsky, Geddes, Lesley Ann Smith, jim Hemingway, Matthew Kissane, Ken Holt, Paul Lyons, Rob Kibler, Christine, Joseph's Iphone, Andy Berg

Farrell calls the meeting to order at 5:30 pm.

Agenda Review: As posted. Farrell makes an opening public statement regarding the Town's Wetland Bylaw and Regulations.

Public Comment: Carlos Fontes comments this is an important issue and would like the SB to increase the time for public comments as five minutes Carlos feels is a symbolic time and doesn't really meet the purpose which is to allow the public to comment and that is not enough time to achieve that purpose if the purpose is to really have public comment. Secondly Carlos states the bylaw is the law in Shutesbury and a lawyer's opinion regardless of how important they are is not the same as the determination of a judge. It is not a legal determination and do not think the Town should proceed to assume that the bylaw is not in effect because it is in effect at this point. It is in effect if and until it is changed or until a judge in a court of law determines this law in effect is inoperable or has serious problems with it. The third point Carlos makes is if there are problems with the bylaw Carlos asks that ConCom be given the resources and the leeway to fix it, which to Carlos' understanding that is not happening. Carlos' understanding is that ConCom has not been given the financial resources to hire legal counsel and get an opinion. Carlos understands this all comes about because of Lot O-32 and this has caused a difference. At the same time it is an unfortunate and intended consequence of all of this that the Town is now putting in jeopardy the law that is at work in Shutesbury, the law that is protecting our water. Gail Fleishaker, 62 West Pelham Road, is concerned with what feels increasingly like a wrestling match between the SB and ConCom over the issues of the Town's wetland bylaw and it's regulations. Speaking as a past commissioner Gail points out it is totally within the pervue of the Commission to draft a revision of the bylaw. The legal process for revising or creating any bylaw requires first that a draft be presented in a public forum for comment and then following the forum that the proposed bylaw be submitted to a Town Meeting for a vote of approval. The chief purpose of the wetlands bylaw is to establish ConCom's jurisdiction and the expressed purpose of the regulations is to clarify and define the provisions of that bylaw. Note that the regulations must by law be consistent with the terms and scope of the bylaw, that is the regulations follow from the bylaw. The regulations are informed by the bylaw not the other way around. A word of caution is warranted here, namely writing regulations to clarify terms in the bylaw does not mean to complicate or encumber terms in the bylaw. Likewise, to define terms that are used in the bylaw does not justify redefining terms as they are used in the bylaw. In short making backdoor amendments to the wetlands regulations is not a legitimate way to change the commissions jurisdiction that is established in and by the wetlands bylaw. Michael DeChiara believes and hopes that there is an agreement in town that everyone wants timely and strong wetland protections for climate resilience, drinking water protections and environmental protection. Michael wrote the SB last week as he was concerned that while not intended the Lot O-32 opinion now can have an impact on how wetlands are treated or the entire town both through big and small projects alike. Michael knows some think the bylaw is flawed while others think the bylaw is strong and legally sound. We are here now and Michael sees two pathways, one is an aggressive push by ConCom with explicit support from the SB

to create an equally strong new wetlands bylaw. Michael personally thinks this would be very challenging and only successful if ConCom can be supported in these efforts especially since it wasn't in their plan. The second path is for ConCom to move forward with the regulations to clarify definitions and procedures which was something that was recommended in the McGregor letter. There is a difference of opinion, those that see the current bylaw as flawed see it as building on a bad foundation and those that recognize the bylaw as sound, although it be outdated, see regulations as a way to fill a need to clarify and provide equitable implementation and to address some of the short comings. In closing if the SB can get behind a strong bylaw by June 13, something equally as strong as what we have now, there is a chance for that option to happen. Michael would be willing to help if able to, if not and an equally good bylaw is not possible by town meeting then Michael believes regulations are the best path forward. The town needs regulations to fill the gap. Bob Douglas, 66 Lake Dr., asks Farrell if he can get a copy of the McGregor brief. The SB will get the report to Bob. Susie Mosher believes it is important that the Town understand the process of government in Shutesbury. There is a distinction between committee meetings and public hearings and open town meeting. That clarifies where and how the public input is appropriate. At committee meetings like this one, committee members are here to meet and work on posted agenda items and those agenda items require a deliberation and action that's informed. These meetings are posted so the public can come and observe the process. It is at the discretion of the chair whether comments are heard. Then there are public forums and public hearings and these are opportunities for committees and elected and appointed officials to present some information and gather the public feedback. Those questions are answered and opinions from the towns people are heard. Then at open town meeting is the time when people can hear presentations, ask questions, state opinions and vote. We need to be able to let committees do their work. Tonight the SB has talked about having a public forum for the questions that are being brought up. Susie does not believe quickly running through a lot of comments is very productive and takes time away from the agenda which has to be covered. Sharon Weizenbaum, 712 Pratt Corner Rd. Sharon thinks it is important to keep in mind that ConCom has already begun work in drafting regulations since last spring at the urging of our Town Counsel. Secondly, Sharon thinks it is important to note that Gregor McGregor, counsel hired by the SB, with this report was very clear that Shutesbury needs regulations in order to activate and implement the bylaw and to make it enforceable. It is the regulations that ConCom is working on that are going to make the current bylaw enforceable. Sharon thinks that not doing the regulations and just waiting till there is a new bylaw makes the Town very vulnerable in the interim and the Town needs those regulations very quickly to be able to implement wetland protections and then create a new and better bylaw. McGregor never said that the current bylaw puts the Town at legal risk or is unenforceable. McGregor stated you need the regulations in order to make it viable. Tracy McNaughton asks Farrell if she was going to ask ConCom to have more discussion on this but did not hear the term public forum. Based on what Susie had to say it sounds like there needs to be a public forum/public meeting on this specifically. Tracy wants to throw that out there to be sure this is done in the right way.

Review of Minutes: Minutes of February 28, 2023 were approved.

VOTE: Makepeace-O'Neil makes a Motion to approve the February 28, 2023 minutes; Stocker seconds. Roll call vote: Makepeace-O'Neil: aye, Stocker: aye, and Farrell: aye; the motion carries

Discussion Topics:

1. ConCom Wetlands Bylaw Update: Farrell would like to have a joint meeting with ConCom. It will be an open meeting and time will be set aside for questions from the public. The SB will extend an invitation to the next SB meeting. The library is having a public forum that evening. The SB will start at 5 pm to be done by 6:45 to have time before the library forum. There will be time set aside to have questions and discussion with ConCom and still conduct business that needs to be conducted. All SB members are in agreement. Michael DeChiara asks when SB cutoff is for adding things to the warrant? Farrell will get answer to Michael's question.
2. Meet w/Board of Health to discuss Opioid Settlements: The state has announced a new round of opioid settlement funds and communities are eligible to opt into the settlements against several pharmacies. In order to receive the settlement funds Shutesbury will need to opt in by April 18. In total the town would be looking

to receive \$135,646 from these settlements across 15 years. The BOH voted unanimously to recommend the SB opt into the agreements.

VOTE: Torres recommends a Motion that the Town of Shutesbury will make application for their portion of the new opioid settlement funds and use the funds to abate the opioid crisis; Makepeace-O'Neil moves, Stocker seconds. Roll call vote: Makepeace-O'Neil: aye, Stocker: aye, and Farrell: aye; the motion carries

3. Franklin Country Retirement Request for Vote on Additional 2% Allocation to Retirees: The state legislature and governor in response to inflation took a vote to allow regional retirement agencies to include an additional 2% above their regular Cola which is 3% this year. Franklin County Retirement needs 2/3rds of the Select Boards with in the Franklin County Retirement system to support the additional 2% for it to move forward and the deadline to report back to Franklin County Retirement is 3/29/23. FinCom was not able to discuss this at their last meeting as they did not receive materials in time. The charge to Shutesbury is \$6,863 that will be added to the assessment Shutesbury has been given so far. The additional 2% Cola would be added to Shutesbury's budget. FinCom calls themselves to order with the appearance of Jim Hemingway and votes to delay the vote until they get a vote of the full committee by a vote of 2 to 1. Stocker will abstain as his wife is a member of the Franklin County Retirement System.

VOTE: Makepeace-O'Neil makes a Motion to that SB recommends accepting the 2% increase to retirees; Farrell seconds. Roll call vote: Makepeace-O'Neil: aye, Stocker: abstain, and Farrell: aye; the motion carries

4. Appointment of Part-time Police Officer: Nicholas Trinqué is being recommended for appointment as a part-time police officer for the Town of Shutesbury. Nicholas did a panel interview as well as a single interview. Nicholas lives in Athol and has a great deal of experience. Currently Nicholas is a part-time police officer in Royalston. Stocker attended the panel interview and supports the appointment.

VOTE: Farrell makes a Motion to appoint Nicholas Trinqué as a part-time police officer for the Town of Shutesbury; Makepeace-O'Neil moves, Stocker seconds. Roll call vote: Makepeace-O'Neil: aye, Stocker: aye, and Farrell: aye; the motion carries

5. Building Committee Presentation of Town Building Inventory Model: The building Committee presents the SB with a building assessment. The committee is interested in getting comments from the SB on the presentation to see if it is what the SB is looking for. (See the attached presentation). The Building Committee has the support of the full SB.
6. PFAS Update: The map has been extended with an additional ten homes, 9 homes along Pelham Hill Rd and 1 home on Leverett Rd. Appointments will be scheduled for next week for these new homes and hope to have results back before the end of April. The most critical thing will be addressing any new problems that come up. The first two homes received filters last week and this week the installer is working on scheduling six more and two more on Saturday. The TA has added the major DEP reports on the website, as well as beginning a fact sheet and a Q&A sheet that will be going up in the next week or so. The town has not heard anything back on the Clean Water Trust Application but TA will check on it.
7. SB Letter to Dept. of Defense (DOD) regarding Lot O32: The LSP has drafted a letter to the DOD regarding the contamination at the back of Lot O-32 where the DOD had a radio tower and there was an underground storage tank removed by the Army Corp of Engineers. The letter is asking the DOD to take responsibility for the clean-up and costs. The DOD acknowledges they are responsible for clean-up but it will be a process. Stocker asks that letter be amended to also copy the Federal Senators.

VOTE: Farrell makes a Motion to approve letter to the DOD regarding Lot O-32 as amended; Makepeace-O'Neil moves, Stocker seconds. Roll call vote: Makepeace-O'Neil: aye, Stocker: aye, and Farrell: aye; the motion carries

8. **Public Involvement Plan (“PIP”) Review:** The PIP is an agreement between the town and the public about how they will share information and how the public will be able to comment on plans for assessment and cleanup. Farrell shares the PIP calendar outlining dates (see attached). Matthew Kissane from Fuss & O’Neill gives a presentation regarding the PIP. Farrell opens the floor up for questions. Robert Kibler asks, Is there any information on how much gasoline entered into the soil? Amanda Alix asks when will the interview process begin and when will you start contacting the petitioners? Amanda’s understanding was that individual petitioners would be contacted by email, phone etc. and people can respond. Farrell states petitioners were contacted and notified about this meeting and petitioners can respond this evening or they can respond separately and may submit comments in writing. Mary Lou Conca, is uncertain what is supposed to be happening this evening. When Matt used the phrase “PIP group” it was very negative and then he went further to talk about how it is to give people the impression it is outdated as he went into detail about 1991. Conca was at the SB meeting when the ARPA funds were distributed to the library director for continuous drilling and questions whether they went through ConCom to receive their ok? Farrell states this doesn’t have a direct connection to the PIP but ConCom does not have jurisdiction over the expenditure of ARPA funds. The SB does and are the ones that have engaged Fuss & O’Neill but have to work with ConCom on any work we are doing on wetlands on the site and the SB is doing that. Mary Anne Antonellis states if people would like to submit comments or concerns outside of tonight’s meeting they can send their questions/comments to pip@shutesbury.org. Robert Kibler in talking with neighbors he has discovered an appalling lack of knowledge around the library and Lot O-32 and thinks the SB needs to reach out to those people to become involved with it and let all town residents know this is an option. Mary Anne Antonellis states a couple of town email announcements went out, one letting residents know about the PIP process and another went out notifying the town about tonight’s meeting and the same will happen for the April 12 public hearing. Paul Lyons asks whether the DEP guidelines actually call for or allow for the formation of a citizen oversight group and if so what is the function of that group vs. the general public input opportunities that are afforded along the way? Farrell states Matt pointed out it is vague and you can go to the DEP website. The SB has followed the guidelines for the process. The PIP at this point is about making sure we have a system about sharing information with the petitioners and the towns people. Matt Kissane adds the DEP always promotes public involvement and the process of any of these sites. The PIP puts it into black and white, how the public input will operate, provides for mandatory review periods and it gives the petitioners the ability to solicit input on that. The primary responsible party (“PRP”) takes that input into account as they move forward. It doesn’t change the fact that it’s an LSP driven process and the LSP will drive the site through the process with input from the PIP being considered in the decision making process. It is a formalized version of what already exists. Paul Lyons states he thought he read on the DEP website that there is such a thing as a remediation oversight group as part of the PIP process but has not been able to find that more recently, is there such a thing as a formal remediation site group as part of this process, and if so what is the role of that official group. Matt states no, the PIP is the only avenue for which a group of concerned citizens can form any sort of involvement with the movement of a site through the MCP. Citizens can get together and make their input heard either through the DEP or directly through the LSP but the only regulatory statute that allows for an officially recognized group to have that input is the PIP process. Jane Urban asks is this whole process that has been discussed is it only centered on Lot O-32 or does it involve any of the wetlands surrounding the lot? Matt states the RTN does not apply to the entirety of the parcel. Mary Lou Conca asks the second round of drilling that Fuss & O’Neill is conducting did you have to reapply to ConCom to work within the wetland boundaries? Matt responds they have not gone back out to do any subsequent work or new well installs and are in ongoing discussions with ConCom relating to that process. Farrell asks the petitioners how they would like the SB to communicate with them. The PIP information will be up on the website. Amanda Alix says email is acceptable. Once the plan is drafted there will be a public meeting and public comment period after that and there will be other opportunities. Farrell states if there are comments people were not comfortable stating tonight the public is encouraged to submit those comments/questions in writing to pip@shutesbury.org. Don Wakoluk was hoping to see a DEP official present tonight and is disappointed. Yet again there is a meeting and discussion about this RTN site and it shouldn’t be any problem at all for a DEP official to be present and inform the public on what the responsibilities and parameters of what this PIP group is going to do.

Makepeace-O'Neil motions to Adjourn (7:26 pm); Stocker seconds. Roll call vote: Makepeace-O'Neil: aye, Stocker: aye, and Farrell: aye; the motion carries.

Administrative Actions:

1. Appointment Letter for Nicholas Trinqu

Documents and Other Items Used at the Meeting:

1. Board of Health Recommendation on Opioid Settlement;
2. PERAC Memo regarding Franklin County Retirement Request on additional 2% allocation to retirees;
3. Shutesbury Building Assessment from Building Committee;
4. Letter to DOD;
5. Public Involvement Plan Timeline;

Respectfully submitted,
Geneva Bickford,
Administrative Secretary

** A full version of the 3/28/23 SB meeting is available to view on the Town of Shutesbury's YouTube page at:
<https://www.youtube.com/channel/UC4ajoOcjNzf5DBgMTZgcJA>