

Shutesbury Planning Board Meeting Minutes  
June 20, 2016 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Ralph Armstrong, Jim Aaron, Jeff Lacy, and Steve Bressler

Planning Board members absent: Linda Rotondi and Jon Thompson

Staff present: Linda Avis Scott/Administrative Secretary

Guests: Miriam DeFant/74 Pratt Corner Road, Michael DeChiara/56 Pratt Corner Road, Attorney Michael Pill/representing Lake Street Development, Sarah Kohler/New Salem Planning Board-Historical Commission, Alejo Zacarias/Purepecha-New Salem, Eric Johnson/UMass Archeological Services, Andrea Cummings/69 Pratt Corner Road

Bonnar/Chair calls the meeting to order at 7:36pm.

Archeological Consultant Arrangements: Lacy, to summarize, after the permit was approved and submitted to the Town Clerk for the appeal period; he contacted the applicant regarding retaining a consultant for the archeological survey and arrangements for the Planning Board and their consultant to accompany the applicant's consultant and learned that Lake Street intends to begin the survey prior to the end of the appeal period on Wednesday 6.23.16. Lacy: Attorney Donna MacNicol/Town Counsel was consulted regarding the need for the Planning Board to retain a consultant in order to be ready to accompany the applicant's consultant; subsequently, seeking the services of an entity that had yet to be a party/partisan to the hearing/deliberation, he contacted Eric Johnson/UMass Archeological Services (UMAS) to see if UMAS could begin on 6.23.16. Lacy: the goal tonight, is to determine if UMAS suits the Planning Board's needs; the Board does not have to solicit three bids; if the Board agrees, Bonnar will be asked to contract with UMAS. Lacy continues: over this last weekend, he let Miriam DeFant know of the plan to contract with UMAS; other suggested names were Curtis Hoffman/Anthropology Professor Bridgewater State University, Dan Lynch/UMass Anthropology Professor, and Chris Donta/Shutesbury resident who worked for UMAS for twenty years; per MacNicol, Donta's residency would not, in itself, be a conflict of interest. Lacy: per his conversation earlier today with Donta, his fee, for a similar amount/type of work, would be comparable to Johnson's. Lacy explains that he spoke with Johnson about how to involve a Tribal Historic Preservation Office (THPO) at some point in the review; has yet to discuss this concept with Donta. Lacy: these are the two potential outside consultants; states concern about a statement in Donta's 6.20.16 email: "We (Donta and his wife Jaime) have seen the purported burials as were described as ceremonial but we both feel uncertain as to the validity of these features." Lacy has an affidavit, dated 6.6.16, from Sarah Kohler stating that Christopher and Jamie Donta validated the burial mounds; Kohler's affidavit is in conflict with C. Donta's email from earlier today. Lacy: this raises a concern, as does not want to use a consultant previously used by either side; favors neutrality and the heretofore-uninvolved status of UMAS. Bonnar: the Board needs to make a decision about a consultant tonight. Lacy: if MacNicol were present, he would ask if the Planning Board has the latitude to choose a consultant subsequent to clarification from C. Donta. Bressler: Donta said an archeologist

could do the survey, however, could not assess a culturally sensitive site; if what he said is true, can an archeologist with the credentials in the condition do the work? Bressler refers to Pre-Construction Condition #1: "Prior to any earthwork including tree cutting, the applicant shall have a surface survey conducted that includes an assessment of Traditional Cultural Properties (TCP)"; it is his understanding that Donta said an archeologist could not assess a TCP. Lacy per Johnson and as per the last meeting: even though it is not included in the condition and will not be paid for by the applicant, a THPO may be consulted; the applicant may not allow a THPO to attend on 6.23.16; we have talked about how a THPO can consult via photos, etc., in an "after the fact fashion". Lacy: the Planning Board is in charge of the condition; we are not prohibited from hiring a THPO; the condition gives the Planning Board, the Conservation Commission, and our consultant the ability to go on the site; it does not give others, without the owner's approval, permission to access the site. Bressler: if our consultant is not able to assess a TCP, there is a problem. Bressler reads the credentials in Pre-Construction Condition #1: "The survey shall be conducted by someone who meets or exceeds the Secretary of the Interior's Qualifications for an Archeologist and the survey shall meet the Secretary of the Interior's Standards for the Identification and Evaluation of Historic Properties." – the first sentence of the condition says the surface survey includes a TCP assessment. Lacy: the Planning Board received guidance on the wording of the condition. Bonnar: before the start of the meeting, Miriam DeFant asked for permission to speak about THPOs.

DeFant: her interpretation is that an archeologist has to decide, based on the task, to craft the best assessment based on the situation; a TCP survey involves using the experts, i.e. a THPO; an archeologist can do this survey using the appropriate tools and techniques to assess/collect data and consult the appropriate resources. DeFant explains that she spoke with Doug Harris/Narragansett Deputy THPO who proposed organizing a meeting with the stakeholders: Narragansett, Pequot, Mohican, the Gay Head Aquinnah, consultants, Planning Board representatives, applicants, and perhaps one community member – this would bring all the stakeholders together, the concerns would be considered, communication strategies identified, and would solve the dilemma of a TCP assessment. Lacy: the applicant would need to buy-in to such a meeting; per MacNicol, the applicant can do their survey whenever they want – the Planning Board needs to have an informed presence on-site on 6.23.16. DeFant: it is the purview of the Planning Board to talk to whomever you want. Lacy: the Town has to be willing to pay for a THPO; we can consult with a THPO. DeFant: does not believe this initial meeting would require payment; the Native American stakeholders are very concerned about this site and want to be involved; does not believe such a meeting could happen before 6.23.16. Lacy states he wants to be informed and will attend on 6.23.16; agrees that such a meeting happen subsequent to the survey when there is information to review. DeFant: Harris is willing to coordinate a meeting date; seeks to have an action plan. DeChiara responding to Bressler's question relative to Pre-Construction Condition #1: raised his concern about this language with MacNicol – this condition does not limit the Planning Board from hiring a consultant; the language as written, would limit who the Planning Board hires; per C. Donta, archeologists cannot assess TCPs; the Planning Board's archeologist could consult with a THPO; given this condition, your consultant can attend the survey; if you use UMAS, the scope of service needs to be specific to include consulting a THPO – the

level of confidence will be much higher if the scope is codified. Bressler: we learned tonight that the THPO cannot go onto the site. DeChiara: anyone the Planning Board hires can go on the site. Lacy: this condition was negotiated with the applicant; their interest is that a THPO does not go on the site. Lacy: the Planning Board can hire a consultant that meets the criteria; a THPO may meet these criteria. DeChiara: check with MacNicol, you are not limited by whom you hire; if you are limited to the language, you have to be able to hire an expert in the field – a THPO. Bressler asks Attorney Pill/representing Lake Street if what Lacy said is consistent with Pre-Construction Condition #1 and that what DeChiara and DeFant are saying is not consistent with the condition. Pill: yes, the Planning Board can hire a THPO; once again, the opponents are the mouthpieces for the THPO; despite being requested to do so, the THPOs have not contacted us (the applicant) directly; if they ask directly, access would be considered. Bressler: if our archeologist says it is important for a THPO to accompany the Planning Board consultant, is it possible? Pill: there have been trespass concerns; we would need to be persuaded by the request. Bressler: the reason to have a THPO accompany would be for inquiry. Pill: we are going ahead on 6.23.16; if your archeologist wants to sit down with our consultant, Lake Street, Cinda Jones, and Molly Lockwood, and myself - the THPO would need to demonstrate that they are not out to serve the opponents and that they are interested in neutral inquiry. Lacy: whomever we hire, the Planning Board can engage the services of a THPO(s) gratis or for a fee – does not believe the Planning Board can ask the applicant to pay for a THPO that does not meet the qualifications; this does not mean we cannot consult a THPO. Bonnar recommends the Board consider how to hire a consultant to accompany Lacy on 6.23.16. DeFant: it makes sense to hire an archeologist tonight; suggests an action plan to have a meeting/consultation with the THPOs. Bressler suggests, as a matter of process, the Board hire an archeologist for 6.23.16 then plan a follow-up meeting with the applicant's consultant and perhaps a THPO. Lacy: recommends UMAS; Kohler's affidavit creates concern about Donta and UMAS is neutral. Bressler: can we also say we want a follow-up meeting? Armstrong: we can hire UMAS and specify the scope and we can say our archeologist will have a THPO to consult with. Lacy: that is if the Planning Board can arrange for a THPO. Bressler: can we request the applicant's archeologist to attend such a meeting? Pill is asked if he knows who the applicant's consultant is; Pill states that he does not and hopes that a THPO would have demonstrable evidence. Eric Johnson/UMAS: the applicant's archeologist would want to attend such a meeting; he will provide contact information for THPOs as has connection with the Massachusetts Commission on Indian Affairs. DeChiara agrees with Armstrong's suggestion; contracts are project based – if you say there will be a meeting, it is included in the scope. Lacy states that he spoke with Johnson on how to have a THPO review the data/report – that is what we are contracting. DeChiara seeks an explanation about a report that UMAS “messed up” the Turners Falls site. DeFant acknowledges Johnson and states that she heard that Western Mass archeologists have had concerns about UMass students/interns doing inappropriate activities on the Turners Falls site. DeFant reports seeing a letter drafted by Harris to the Planning Board requesting a consultation with the Board – does not understand the Planning Board's reticence to meet with Harris et al and be more respectful of them – they are a sovereign nation – you are a governmental body. Lacy reports speaking with Harris via phone for a long time; usually people ask to be on the Planning Board agenda

- our job was to complete the special permit statutory process within a specific time period; the Planning Board has listened/allowed the public to speak. Armstrong suggests the Planning Board decide if we are going to have an archeology representative on site and then discuss what other tools the archeologist may need. Armstrong states that he takes offense to DeFant's alleged disrespect. Johnson states he does not know where the story about stealing artifacts came from, however, it is a lie; UMAS is a reputable organization and has been doing studies for more than 30 years; we have an excellent reputation with other archeologists and the Native Americans; we have consulted with Massachusetts Commission on Indian Affairs, Mark Andrews/Tribal Cultural Resource Monitor - Wampanoag of Gay Head, Rae Gould/THPO, and have worked along side Doug Harris many times. Johnson: it is a good idea to have a THPO involved; the meaning of the TCP is very important; archeologists gather physical information however we are not a part of the culture therefore collaboration is important. Lacy moves the Planning Board contract with UMAS to participate on 6.23.16, analyze the follow-up report, and meet with the Planning Board; the cost of these services is not to exceed \$1,300; the contract will have to be augmented if further meetings are needed. Bressler seconds the motion. Bressler: in addition to review of the report, the Planning Board could pay for attendance at an initial meeting. Pill: the applicant will not pay for anything beyond the permit condition; the Planning Board has no legal authorization. Lacy: the Board's consultant is "birddogging" the applicant's consultant; had envisioned THPO guidance to assist the Planning Board consultant. Pill: trusts the Planning Board will consult directly with the THPO. Lacy: the Planning Board will pay for the THPO. Pill: the applicant will not agree with anything beyond the project condition and needs to be very clear the THPO is dealing with facts and is fair minded. Lacy: all that is before the Planning Board is the \$1,300 UMAS contract. Kohler asks the Planning Board to consult with MacNicol; at the last meeting MacNicol made it clear there was nothing barring the Board from bringing a THPO on site to accompany the archeologist and the consultant's archeologist; you can "after the fact" consult with MacNicol. Lacy: MacNicol is not available. DeChiara: to underscore, the Planning Board consultant assists relative to the survey, as per Pre-Construction Condition #1 "includes an assessment of TCPs", - you have to be sure the applicant's consultant is doing all the elements of a TCP assessment. Armstrong: exploring what it means to have our consultant on site 6.23.16, how will the information gathered be shared with a THPO? Lacy: that goes beyond the discrete work we are contracting for tonight; I have been strategizing with Johnson on how to share the information with a THPO(s); perhaps there will be a more collaborative approach in the future. Pill: the report will be public record. Lacy calls for a vote on the motion. The motion passes unanimously.

Bonnar notes the need for some more clarity on THPO involvement. Armstrong suggests that a Planning Board member contact the Massachusetts Bureau of Indian Affairs. Bressler to Johnson: will you make an independent report? Johnson: UMAS will issue a review of the applicant consultant's report; he will take his own photos. Pill suggests plans for where and when to meet and asks if there will be a need for police presence for trespass violations. Lacy: Mickey Marcus/New England Environmental will take the applicant's archeologist to the Pratt Corner access for orientation to the site at 5:30pm 6.22.16; on 6.23.16, Zachary Schulman/Lake Street and their archeologist will begin the assessment at 8:00am. Cummings asks Johnson if they will survey all 20 acres or just

specific areas. Johnson: in this particular case, he has yet to see the site and does not yet know the applicant consultant's approach. Lacy: the survey will include the roadway and the 20 acres for the panels, therefore, about 21 acres; the shade management area will not be surveyed. Johnson: he will be asking the archeologist/applicant if they will be consulting a THPO. DeChiara appreciates Lacy's work and suggests there be a plan for a shared informational meeting about the survey. Lacy will confer with Johnson about contacting and setting up the possible next phase for a meeting with the THPO. Pill states that he is still waiting for Doug Harris to contact the applicant. Lacy asks Pill if he would be open to conferring with Harris? Pill: yes.

Bonnar recommends the Board plan a date for their next meeting. All agree to meet 7.11.16 at 7:30pm. Lacy: there may be a need to schedule a quick meeting prior to the 7.11.16 meeting. DeChiara: according to Pre-Construction Condition #1, the applicant has to conduct an assessment – the Planning Board will have to determine if the assessment is adequate. Lacy: the Special Permit has to have conditions that are actionable; the Planning Board has to decide if the condition is fulfilled; in the end, our judgment is whether to accept the survey; we are in a reactive mode – the applicant can do the survey as soon as they want.

Kohler: if it were possible for Johnson to meet a THPO, and if approved by Pill, could the THPO attend on 6.23.16? Pill agrees to speak with a THPO; will not agree to 6.23.16.

Lacy moves, Bressler seconds, and all agree to adjourn the meeting at 9:10pm.

Documents and Other Items Used at the Meeting:

1. 6.7.16 Special Permit for Case #PB-SP-6/5/15
2. 6.18.16 emails from DeFant forwarding emails from Curtiss Hoffman and Lisa McLoughlin
3. UMAS Draft Scope of Work and Cost Estimate received 6.20.16
4. 6.20.16 email from Dr. Christopher Donta to Jeff Lacy
5. 6.6.16 Affidavit from Sarah Kohler

Respectfully submitted,  
Linda Avis Scott  
Administrative Secretary