

Planning Board Meeting Minutes  
July 11, 2016 Shutesbury Town Hall

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

Planning Board members absent: Stephen Bressler and Linda Rotondi

Staff present: Linda Avis Scott/Administrative Secretary

Guests: Attorney Michael Pill/representing Lake Street Development, Attorney Thomas Lesser/representing Alliance for Appropriate Development, Eva Gibovic/Leverett-Ceremonial Landscape Research, Miriam DeFant/74 Pratt Corner Road, Rolf and Jim Cachat/229 Leverett Road – Mohawk/Nipmuc and Mohican, C. A. Ezzell/327 Wendell Road, Doug Harris/Charlestown R.I.-Preservationist for Ceremonial Landscapes/Narragansett Indian Tribal Preservation Office/Deputy Tribal Historic Preservation Officer, Loril Moondream/Wendell-White Mountain Apache, Jane Costello/160 Pratt Corner Road – Alliance for Appropriate Development, Sarah Kohler/New Salem-Planning Board/Historical Commission, Alejo Zacarias/New Salem – Purepecha, Sam Lovejoy/Montague, Michael Suter/94 Pratt Corner Road, Bettina Washington/Waltham – Wampanoag Tribe of Gay Head, Andrea Cummings, and Henry Geddes.

Bonnar/Chair opens the meeting at 7:43pm.

Archeological Survey of Wheelock Parcel/Lot ZG2 and Future Review Thereof:

Lacy reports he accompanied the Lake Street's archeologist and Eric Johnson/UMass Archeological Services (UMAS) on the surface survey conducted for five hours on 6.22.16; in attendance for part of the time were Cinda Cows, Shane Bajnoci, Mollye Lockwood, and Zachary Schulman/Lake Street. Per Lacy, Johnson did not notice anything untoward about survey; subsequent to the survey, the Planning Board has yet to receive a report for Johnson to review; the applicant can submit their report at their leisure; as well, there are seven additional pre-construction conditions to be satisfied prior to the start of work. Lacy confirms with Scott that no materials have been submitted to the Planning Board from Lake Street. Lacy: as discussed at the last meeting, Bonnar has signed a contract with UMAS; during the last meeting, the Planning Board explored the benefit of having Johnson consult with a tribal historic preservation officer(s) (THPO). Lacy reads into the record the 6.7.26 email from Doug Harris/Deputy THPO regarding a proposal to the Planning Board for services. Lacy: this email can form the basis for a contract and, per Torres/Town Administrator, the Planning Board has adequate funds in their budget to cover the cost of Harris's consultation; the Board will need to vote on Harris's proposal during tonight's meeting. Because Harris's proposal included a site walk, on 7.7.16 Lacy wrote to the applicant requesting permission for Harris to have access to site; Attorney Pill responded by denying the request and, paraphrasing Pill's response on behalf of the applicant, stated that the applicant has met all the requirements of the permit and the request is beyond what the condition requires therefore access is denied. Lacy to Harris: the Planning Board is hoping to move forward with contracting with you to review the report and subsequently meet with you about the site. Harris: how

is one to review the site through the written word and, how, in an American process, is he able to conduct a review he is skilled at doing without access to site? Lacy: per Attorney Donna MacNicol/Town Counsel, the Planning Board would be overstepping its bounds by creating a condition allowing third party access to the site. Harris: the National Preservation Act specifies that Native Americans possess specific skills in evaluating a site and determining if a site is eligible for historic preservation - is the special permit outside the jurisdiction of law? Lacy states he is unable to argue legalities; Town Counsel can be invited to a future meeting; there is case law in Massachusetts that limits special permit conditions. Lacy: the Planning Board would be happy to negotiate a contract with Harris if he is willing to review evidence, i.e. reports, maps, photos, and meet with the Planning Board archeologist Eric Johnson and the Planning Board. Harris states that his goal, right now, is to seek clarity; Bettina Washington may want to speak to this issue as well. Lacy: it is not appropriate for the Planning Board to consider the matter further without Town Counsel; there is no report to review at present. Lacy: as far as the Planning Board goes, there is a condition allowing the Planning Board, Conservation Commission, and the Planning Board consultant access to the site; the Board has no authority to grant additional access - the applicant has the ability to grant additional access. Armstrong recommends, in fairness to all, once Johnson has completed his report, the Board invite Harris and Town Counsel to a meeting. Bettina Washington: what exactly is trying to be determined? Lacy asks if Washington is familiar with the Pre-Construction Condition #1. Washington states she has read the condition. Lacy: the applicant is trying to fulfill Pre-Construction Condition #1. Washington recommends the Board go to National Park website where it will tell you that you will not get your answer until the tribes are involved; is Johnson a tribal person - no, he is an archeologist. Washington states she is a professional THPO, cites her relatives and relationship to her tribal chief, and notes that there is no piece of paper demonstrating her experience; sometimes law is not the best way to get things done - sometimes we have to sit around the table and consider what has to be done - if a declaration is made, she will want to know who is making the declaration - no one speaks for the tribe except the tribe - due to cultural affiliation, the Wampanoag cover this area; I do not how you will get the answer unless the tribes have involvement; for the most part, tribes are observing over time and through the seasons. Lacy to Harris: where does the Board stand with you - once the surface survey report is received, it will go to our consultant for review. Harris states he will have to bring the document back to his office for guidance on whether he can consult on a report that is excluding tribal people access to the site; he offered what he could - when doing so, he had no idea he and other tribal people would be excluded from the site - what would the ancestors, who may or may not be on the site, decide what is to be done; ground penetrating radar would give us more information about what is in the ground without disturbing the site. Harris states he has someone with the skills needed to perform ground penetrating radar; is hearing prejudice against Native Americans; has to take this back to those higher than himself; the offer still stands - reading the report, walking the site, and writing a report. Lacy: once the surface survey report is received, the Board needs to ensure the report is received by Johnson; whether the surface survey report is a public document will be addressed by Town Counsel; asks for permission from the Board that, once received, the report will be given to Johnson. Armstrong: the report is being done, as required by the Planning Board, therefore it should not be a problem for

the report to be given to Johnson. All Planning Board members agree with this arrangement and that Town Counsel will be relied upon to determine whether the surface survey report is a public document. Armstrong: because it is purchased with town funds, it is not a question whether the document is public - it may be a matter of when. Lacy: MacNicol is concerned about a specific statute. R. Cachat: is there any reason the document would not be subject to subpoena or a Freedom of Information Act request? DeFant: before the deliberations were completed, we were told that the surface survey report would be made public and shared broadly; is concerned that now, sometime later, there are different considerations about release of the report - understands there may be a need to keep burial sites confidential. Lacy and Bonnar: Town Counsel will be consulted. Washington: for the most part, archeological reports are supposed to be public documents, however, looting can be a serious problem therefore caution is needed when releasing the report and there is the potential need to review unmarked burial law; emphasizes that the Planning Board needs to know where the report is kept and implores the Board to think long and hard about access. Attorney Lesser, referring to the Secretary of Interior's standards: to determine if the standards are met, we will have to see the report; these standards note the potential need to redact. Bonnar reaffirms the need to schedule a meeting with Town Counsel. Cummings: didn't we discuss that the Planning Board archeologist could decide whether a THPO is needed? Lacy: Johnson is open to consulting with a THPO. Geddes: Johnson's role is to shadow what is generated by the applicant's archeologist - he has followed the consultant around the site - the applicant's archeologist will write the report - is there a conflict of interest - a distinction to recognize? Lacy: Johnson and I were there for the entire survey; Johnson had an opportunity to ask questions - his job was to monitor the applicant's survey. DeFant: who was specifically hired by SWCA Environmental Consultants to do the survey? Lacy states he does not have this information available at this time; Johnson will apply particular criteria, as per the condition, and, as per Bulletin 38, determine if the assessment is viable and whether it meet the standards. Lacy: that is Johnson's job; the Planning Board is trying to assist Johnson with tribal input as best we can. DeFant: per King/Bulletin 38, there is a pre-investigation phase. Bonnar suggests bringing this portion of the meeting to a close. Lacy, per Harris, is not willing to enter into a contract with Shutesbury at this time; if we receive the report, timing wise, this may not leave us in a good position for obtaining tribal input. Bonnar: can the Board vote on a contract with Harris tonight? Harris: if a contract needs to be signed, it can be done electronically in a matter of hours. Lacy: the Board needs to vote then the contract can be signed. Lacy notes the need for the Board to proceed with their business and moves a motion for Doug Harris/Deputy Preservation Officer of the Narragansett Tribe Historical Preservation Office to be the Planning Board consultant if Torres/Town Administrator and Lacy are able to arrive at an acceptable contract for \$500 to provide services to evaluate the surface survey report. Armstrong seconds the motion. Harris clarifies his qualifications as per his business card received for the record. Lacy, for the purposes of discussion, this gives the Planning Board the authority to act. The motion passes unanimously. Lacy: once received, the surface survey report will be given to Johnson. Bonnar: a future meeting will be scheduled and will include Town Counsel.

Bonnar: in her 6.6.16 email, included in the meeting packet, Town Counsel outlined the procedure for filling the Planning Board vacancy. All members of the Board agree for Bonnar to write a letter to the Select Board acknowledging the vacancy.

Approval of the 5.23.16, 6.7.16, and 6.20.16 Planning Board minutes will occur at a future meeting.

Lacy moves and Armstrong seconds the motion that is unanimously approved to adjourn the meeting at 8:51pm.

Documents and Other Items Used at the Meeting:

1. 7.6.16 Fixed Price Contract with UMass Amherst
2. 6.7.16 email from Doug Harris/Narragansett Deputy Tribal Historic Preservation Officer
3. 7.7.16 email from Attorney Michael Pill/representing Lake Street Development Partners
4. Business card for Doug Harris/Preservationist for Ceremonial Landscapes
5. 6.6.16 email from Attorney Donna MacNicol/Town Counsel

Respectfully submitted,  
Linda Avis Scott  
Administrative Secretary