

Shutesbury Select Board Meeting Minutes  
May 16, 2017 Shutesbury Town Hall

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

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

Guests: Susan Rice and Susan Millinger/Positive Presence, Fire Chief Walter Tibbetts, Bob Thompson and Mark Rivers/Lake Wyola Advisory Committee, Penny Kim/Town Moderator, Miriam DeFant, Tim Logan, Mary Lou Conca, Rolf Cachat, James Schilling-Cachat, and Susie Mosher/Town Clerk.

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

Agenda Review: No changes.

Public Comment Period: Mike Vinskey acknowledges the recent death of Tom Houston/Shutesbury Tree Warden.

Unanticipated Topic:

1. Fire Chief Walter Tibbetts: a \$500 offer has been received for the old fire truck; he has investigated the use of Municibid, an online government surplus auction: there is no cost to the seller and the buyer pays 8% above the bid. Torres will inquire of the Attorney General's office for guidance on the use of Municibid. The Select Board supports Tibbetts' use of Municibid to auction the old fire truck. Per Tibbetts: the prospective buyer is willing to use Municibid.

**Discussion Topics:**

1. Lake Wyola Advisory Committee (LWAC): Mark Rivers/LWAC Chair has three topics for Select Board consideration: a review of the Committee's scope, adding Emergency Management Director Walter Tibbetts and Dam Keeper Howard Kinder as new members, and the Locks Pond Road culvert. Rivers presents the "Proposed LWAC Scope" and compares it to the original purpose statement dated 7.20.91. Rivers: Tibbetts has been maintaining the biannual inspections of the dam and following up with recommendations; the LWAC has been assisting Tibbetts and Kinder with dam management, therefore, the recommendation to have them become LWAC members. Thompson speaks to the committed work of the Lake Wyola Dam Management Committee (DMC). Vinskey: because of the overlap in membership, it does not make sense to maintain the DMC; if needed it could be reformed in the future. Thompson: the dam operating manual will allow someone to assist in Kinder's absence; we are asking the Select Board to approve the scope and appoint Kinder and Tibbetts. Vinskey recommends the Select Board approve the proposed scope. DeChiara refers to the 5.4.17 Planning Board public hearing on a proposed zoning change relative to height

in the Lake Wyola District and Lacy's observation that the LWAC was formed to assist in managing conflicts. Thompson: as an original member, the LWAC was formed at a time when there was contention and a movement to create a "seasonal only" community; we never considered ourselves a political arm – our scope is water quality and the dam; we are a neutral group.

DeChiara: the bigger the building, the larger the septic system, and the greater the potential effect on water quality; it is not that the LWAC should be arbiters. Miriam DeFant: one of the primary issues voiced at the public hearing was communication. Thompson: the lake community has been growing and, per the Board of Health, the health agents are noticing the effect. Rivers: the person proposing the zoning bylaw amendment sought support from the LWAC; the Committee did not feel comfortable endorsing the amendment as it was outside our area of responsibility. Torres: the two overlapping persons are Hilton and Rivers; with the other members, there would be a ten-member committee; perhaps Paul Lyons, DMC member, would represent the Conservation Commission on the LWAC making an eleven-member committee. The LWAC roster is reviewed. Torres: noting his dam expertise, recommends Rich Brazeau, DMC member, become a LWAC member. Thompson: we are currently operating with a quorum of four. Rivers: Leo Riendeau has retired. Thompson: the LWAC would reach out to Brazeau if needed. Makepeace-O'Neil moves the Select Board approve the "Proposed LWAC Scope"; motion is seconded by DeChiara and passes unanimously. Makepeace-O'Neil moves the Select Board merge the Dam Management Committee into the Lake Wyola Advisory Committee to make a committee of eleven members by adding Howard Kinder, Richard Brazeau of Leverett for his expertise, Walter Tibbetts (Paul Lyons will be asked to serve as ConCom representative to the LWAC); motion seconded by DeChiara and passes unanimously.

Rivers refers to the 5.13.17 LWAC memo to the Select Board about the status of the Locks Pond Road culvert requesting the Select Board assist in driving the process. Torres: a grant application for consultant and engineering services was not awarded; the "Small Bridges" grant application for construction funds will be completed; the 10' culvert falls under the "Small Bridges" grant program. Tibbetts: Morris Root/Root Engineering is contacting Brazeau for guidance and a recommendation for an engineer. Torres also has some recommendations for an engineer. Vinskey, noting the timeliness of the matter, asks Torres about coordination. Torres has been working with Hunting/Highway Superintendent on the project. DeChiara suggests an engineering evaluation to determine the status of the culvert. Vinskey: it is a right step to seek guidance from Brazeau about engineers. Thompson suggests contacting Representative Kulik to ask for a DOT contact person. DeChiara is willing to contact Kulik for guidance on possible State resources. Torres: Hunting was unable to obtain assistance from DOT. DeChiara: we need to know what we are working with in order to determine the next step. Vinskey: the goal will be to have the culvert looked at as soon as possible; the Ames Brook culvert will be replaced in conjunction with the Locks Pond culvert.

2. Civility in Written Communication: Vinskey: this agenda item is in reference to communications received by the Select Board; Attorney Donna MacNicol/Town Counsel has not had the opportunity to advise the Select Board on this topic. The Select Board will postpone this item until guidance from Town Council is received.
  
3. Native American Historical Preservation: Vinskey: Town Counsel MacNicol recommends this item be held from discussion. Miriam DeFant, as an associate member of the Historical Commission (HC), notes that there was discussion during the last Commission meeting about creating a statement which was written by Leslie Bracebridge and read at town meeting; the vote at town meeting on the “Resolution to Preserve Native American Historical Sites and Traditional Cultural Properties” was very close and shows that the matter is of concern for citizens. DeFant recommends the Select Board and HC set up a visioning process to share and create a set of recommendations – perhaps a series of meetings including those with expertise about ceremonial landscapes, i.e. THPOs. DeFant: though they are interested, the HC members feel a little overwhelmed by the topic; one starting point would be to invite the HC and Community Preservation Committee to a meeting. Mary Lou Conca states she is curious to learn why Attorney MacNicol recommended no discussion on the matter this evening; it seems like a gag order; states her disappointment about not being able to discuss the topic with the Select Board. Vinskey: MacNicol’s guidance is relative to a matter of concern; public comments can be taken however the Select Board will not comment or discuss the topic. Cachat confirms the Select Board received his communication for the record (5.16.17 email “Please enter this statement into the minutes of tonight’s meeting” – see attached); there cannot be any segregation of an issue on a racial basis; there is no structure to oversee how a panel votes; cites the United Nation’s statement that Native Americans must have informed consent regarding any matters related to their sacred sites; cites that Goddard and Eliot established that this is Nipmuc territory. DeFant: the HC will have to grapple with this issue and did not feel this would be a disenfranchised working group; at some point we need to find a way to move this process forward. DeChiara: up until MacNicol’s suggestion, we were going to have a discussion, however, we are not having the discussion due to a potential legal issue. DeChiara recognizes the need to have the discussion as DeFant suggested. Torres: perhaps there could be a Select Board meeting including the HC. Vinskey, to the public present: just because the Select Board is not discussing the topic, you have been heard; the Board is not necessarily in agreement with what we have heard. Cachat: does the potential legal concern, unidentified, have the power to supersede the rights of citizens to discuss a subject with the Select Board; is not sure town counsel has the power – does not believe the Select Board has the right to refuse to discuss a matter with citizens; the State has a say in this – the law governing the Select Board in regard to discussing with citizens is from the State – and it is against the

constitution of the State and the United States; the democratic process is not being allowed. DeChiara: the Select Board is committed to community engagement. Makepeace-O'Neil: people who come to speak are allowed to do so. DeFant: how many associate members can there be on the HC? Makepeace-O'Neil: that is up to the HC. DeFant: would the Select Board have an agenda item allowing those who are interested in serving as HC associate members to come forward? Vinskey: although enthusiastic about the conversation, he is adhering to Town Counsel's guidance. DeChiara suggests having future discussion on the topic with Town Counsel present. James Cachat-Schilling: we have been trying to have this conversation for two years; he has wasted time attending meetings when topics will not be discussed. DeChiara acknowledges that Town Counsel's advice was to remove the topic from the agenda and he recommended it be kept on. Conca: what is the reason/law the Town Counsel used to make her recommendation? Vinskey: potential litigation. Conca states she is not asking Vinskey to talk about a topic he is not comfortable talking about; is there some reference we can look up? Vinskey will obtain an answer for Conca by the next meeting; appreciates the comments given and acknowledges the need to have the discussion in an environment where it is safe to do so. DeChiara requests Torres arrange for MacNicol to be present for the next time the topic is posted on the agenda. Vinskey suggests planning for the topic during the 5.30.17 meeting.

At 7:56pm Vinskey moves the Select Board go into executive session for reason #3/PILOT negotiations and return to open session; motion is seconded by Makepeace-O'Neil. Roll call vote: Vinskey: aye, DeChiara: aye, Makepeace-O'Neil: aye.

Open session resumes at 9:00pm.

4. Town Meeting Debrief: Penny Kim/Town Moderator expressed her surprise at seeing the item on the agenda because town meeting is the purview of the Town Clerk and Moderator. Vinskey reports receiving emails about how parts of the town meeting went, i.e. maintaining control; personally, he felt the meeting went fine; during one citizen petition warrant article, some people did not want other people to speak, there was a loss of control and some people felt that someone should have been asked to sit down; folks need to be allowed to speak without heckling. Kim reads from Town Meeting Time: "The particular distinctive part which the selectmen play in a town meeting comes at the very beginning: it is they who set the time and place for the meeting and prepare and issue the warrant pursuant to which it is called. After that it is theoretically possible to dispense with them entirely" and reports that she and Mosher have been talking about how town meeting went and have suggestions for improvement. Vinskey apologizes for being presumptuous. Torres acknowledges that she failed to question the agenda item. Kim: in the past, the Moderator held a joint meeting with the Select Board and the FinCom to plan town meeting; needs to ensure the Select Board look to the

Moderator and Town Clerk regarding town meeting matters. Vinskey appreciates the conversation and opportunity to learn. Mosher: the citizens need to learn that all matters defer to the Moderator, i.e., the presenter does not call on people to speak; we have talked about how to handle the roving microphone; there is a need for decorum and process. Torres: if the screen comes down, the podium needs to be re-established. Makepeace-O'Neil suggests including the pamphlet "The Town of Shutesbury's Annual Town Meeting" in the town meeting mailing. Kim: we have to establish that the Moderator decides who makes a report and whether media will be used. Torres: we might consider use of a small screen set up on the side. DeChiara: given Kim's reading, we need to question the assumption about how town meeting is set up – perhaps the Select Board should be on the floor and the podium set up to the side of the stage. The need for a second roving mike is noted. Makepeace-O'Neil: from the stage, it is hard to distinguish who has their hand up; perhaps we could hold up our voter cards. Vinskey: the Select Board received an email about how annual town meeting was run. Mosher confirms that those holding cards are counted; hands without cards are not counted. DeChiara suggests the Moderator offer reminders about the rules as the meeting proceeds. Mosher: there is a balance point between people needing information and making assumptions that those making the decisions do not know what they are doing. Vinskey: knows for a fact, that folks will not "hand vote" on how they feel for fear of what others will think. Makepeace-O'Neil: turn out may be low because people do not feel comfortable with a hand vote. Mosher notes that Northborough discourages paper balloting. Kim agrees with the need to provide more explanation. DeChiara affirms the importance of town meeting democracy. Kim: we have had town meetings where people are comfortable. Kim notes the need for the necessary public hearings to occur in a timely manner. Mosher and Kim are working on guidelines for citizen petitions.

5. Town Hall Water Update: Torres has consulted with Jim Okun/O'Reilly, Talbot & Okun about the Fire Station; Okun recommended conferring with DEP Water Supply Division for information and guidance on town hall water matters. Torres called DEP Water Supply and had an email exchange with Susan Steenstrup, Shutesbury resident and former Open Space Committee member.
6. June All Boards Meeting: Vinskey suggests an All Chairs meeting on 6.13.17 to learn what committees have been working on during the year, any problems they may be having, and their plans for next year. DeChiara: the Web/Communications Committee is updating the website; should we include the training in the All Boards meeting? Torres questions the timing of holding a June All Chairs meeting and suggests waiting until after the start of the new fiscal year. Appointment data will be ready for 5.30.17. DeChiara cites that Lacy should not be on both the Zoning Board of Appeals and Planning Board as the ZBA has oversight over the zoning matters being appealed; someone

should not be in a place of conflict; this concern came to light during the Planning Board 5.4.17 public hearing. Torres: are you deciding that an elected person cannot be appointed to another committee? DeChiara: only these two committees, a member of the Planning Board has a vested interest in zoning. The ZBA/Planning Board matter will be carried over to a future meeting. The tentative date for an All Chairs and website training is 6.21.17 at 6:30pm.

7. Committee Reports:

LWAC: per Vinskey, other topics included the proper permitting for charging geese.

Emergency Management Team: Vinskey – the topic of concern is the need for firefighters; Tim Logan suggested hiring a second full time staff person; another suggestion is hiring another Highway Department staff person who will also respond to calls; Torres will be doing research.

8. Town Administrator Updates/Torres: Rick Durant, recommended by Graeme Sephton, has been hired as the “MLP Pole Licensing Agent” and the contract has been executed; in the warrant, you will see a request for funding the pole applications; if funding from the state is not available, Voelker/Treasurer will borrow against the bond for the pole applications; Craig Martin is now on the WiredWest executive committee. Vinskey arranged for the old copiers to be taken away. A second meeting with Joe Markarian/FRCOG will be planned. Backing up to Carbonite is in process. The Farm and Forestry Committee will meet on 5.20.17 to consider forming a committee to work on the bylaw; the farmers’ market will open on 5.20.17. The Personnel Board is having difficulty scheduling a meeting due to lack of quorum.

9. Future Agenda Items: A joint meeting with relative committees to consider Cinda Jones’ invitation to provide her with potential uses/locations that Shutesbury suggests should be excluded from the Walter Cows Jones CR is tentatively scheduled for 5.24.17 at 7:00pm. DeChiara: it would be helpful to have an overlay of town-owned parcels. Torres will notify the relevant boards, departments, and committees. Torres: several committees have floated reasons for holding a special fall town meeting though nothing is definite. Vinskey: the 4.13.17 Conservation Commission meeting minutes mentioned the possible state purchase of Lot F105; does the ConCom have funds? Torres: the Commission has a trust fund. Makepeace-O’Neil: the Energy Committee may be interested in an energy saving product from Tesla.

Administrative Actions:

1. Select Board will sign vendor warrants totaling \$215,024.87.
2. Select Board will sign payroll warrants totaling \$95,370.63.
3. Select Board Minutes:  
Makepeace-O’Neil moves and DeChiara seconds a motion to approve the 4.18.17 Select Board minutes as amended; Makepeace-O’Neil and Vinskey pass the motion; DeChiara abstains.

Makepeace-O'Neil moves and DeChiara seconds a motion to approve the 4.21.17 Select Board minutes as amended; motion passes unanimously.

Makepeace-O'Neil moves and DeChiara seconds a motion to approve the 4.24.17 Select Board minutes; motion passes unanimously.

Makepeace-O'Neil moves and DeChiara seconds a motion to approve the 5.3.17 Select Board minutes as amended; motion passes unanimously.

4. Leonard Road First Right of Refusal: Document signing has been completed.
5. Alternative Recycling Systems, LLC Contract: DeChiara moves the Select Board sign the "Shutesbury Solid Waste Hauling Contract" dated 5.16.17 with Alternative Recycling Systems, LLC; Makepeace-O'Neil seconds the motion that passes unanimously.
6. Fuel Bid Review: The request to go out to bid is signed; the vote to participate in the bid process occurred during the 4.4.17 meeting.

The open session is adjourned at 10:20pm.

At 10:29 pm Vinskey moves the Select Board go into executive session for reason #3/Salt issue followed by an executive session for reason #2/non-union contract negotiations and not to re-convene open session; motion is seconded by Makepeace-O'Neil. Roll call vote: Vinskey: aye, DeChiara: aye, and Makepeace-O'Neil: aye.

Documents and Other Items Used at the Meeting:

1. Proposed LWAC Scope
2. 5.13.17 LWAC memo
3. "A Message from the Historical Commission" dated 5.6.17
4. 5.16.17 email from RG Cachat: "Please enter this statement onto the minutes for tonight's meeting"
5. Town Meeting Time: A Handbook of Parliamentary Law; 2001 edition
6. 5.1.17 Shutesbury MLP Pole Licensing Agent Project Agreement
7. 5.16.17 Shutesbury Solid Waste Hauling Contract
8. 5.10.17 email from Andrea Woods/FRCOG regarding fuel bids

Respectfully submitted,  
Linda Avis Scott  
Administrative Secretary