

Shutesbury Select Board Meeting Minutes  
October 30, 2017 Shutesbury Town Hall

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

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

Guests: Police Chief Tom Harding, Sergeant Wendy Masiuk, Tony Torres/Teamsters Union #404, Attorney Brian Mazer/KP Law; Susan Rice and Penny Kim/Positive Presence; Attorney Roger Lipton/representing Lake Street Development

DeChiara calls the meeting to order at 6:15pm.

At 6:15pm DeChiara moves to go into executive session for reason #1/to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual and to reconvene in open session; Logan seconds the motion. Roll call vote: DeChiara: aye and Logan: aye.

Open session reconvenes at 7:05pm.

Public Comment: None offered.

**Discussion Topics:**

1. Shared Police Chief: DeChiara: last week, the Select Board met with the FinCom who agreed to run the numbers relative to a shared chief arrangement; the Board needs to confer then identify next steps. Makepeace-O'Neil: would it be the current Leverett chief or a new chief in the shared chief's position? Torres: a current chief would need to be given a one-year notice; during the initial discussions, hiring a new chief for the shared position did not seem to be where the towns were coming from. Logan: a shared chief does not seem to make sense given how much time Chief Harding spends on the road; the overall cost savings may not be that great. Logan states that his greatest concern is having the Leverett police chief as Shutesbury's default chief. Makepeace-O'Neil: if the cost savings were substantial, a shared arrangement could be explored; if we were to explore going forward, the Board would need to talk with our current police officers. DeChiara: our police department has achieved stability; going into a less stable situation, we would be going backward; there is no leverage if we are renting a chief; the police and how they are perceived is very important; Sergeant Masiuk would be eligible to be the chief in Shutesbury; if we trial a shared chief for a year, we will have less stability and be less likely to have staff that are familiar with the town. The Select Board decides that for interdepartmental reasons, it would be good to have the numbers before making a decision.
2. Wheelock Solar Project Surety Agreement and Rule of Necessity: DeChiara, as recommended by Town Counsel, the Board needs to address the Rule of Necessity. DeChiara states his conflict of interest is that he is an abutter to the Wheelock solar project site. Makepeace-O'Neil states her conflict of interest is that she is an abutter to the Wheelock solar project site. DeChiara: because two members of the Select Board have a conflict of interest, and as Town Counsel recommended, the Select

Board invokes the Rule of Necessity. Both Makepeace-O'Neil and DeChiara state their wish to participate in the Wheelock Solar Project Surety Agreement discussion. DeChiara: the Surety Agreement was reviewed by Donna MacNicol/Town Counsel and signed by the Planning Board, Cowls, and Lake Street; the Planning Board is overseeing the project; the Select Board has limited purview, i.e. the PILOT agreement and signing the Surety Agreement; the Select Board also has responsibility for the integrity of Town processes. DeChiara asks Attorney Roger Lipton if pre-construction condition #6 started. Lipton states that he has an email from MacNicol, dated 10.16.17, stating that if Lipton represented to the Planning Board that her changes to the Surety are acceptable, it would satisfy pre-construction condition #8; the Planning Board signed off on the Surety on 10.16.17. Lipton states that he spoke with MacNicol earlier 10.30.17 about the need for a Select Board signature: if the Surety is invoked in 20 years, the Select Board will have rights under the agreement because the Planning Board cannot delegate their fundamental responsibilities to another board. DeChiara: Section 2 states that the agreement is not effective until all parties have signed the document. Lipton: the Select Board signature is for the future event. DeChiara confirms with Lipton that MacNicol's email approved the document. Lipton acknowledges that some tree cutting did occur. Makepeace-O'Neil: the preconstruction condition (8) does not say the Select Board must signoff. Logan: the town is relying upon the Planning Board to ensure the project goes forward according to the plan. Lipton: the building inspector and Planning Board ensure the project proceeds according to plan. Logan is concerned he is being put between a rock and a hard place; it is possible, there are people who will say the project started "not in good faith"; the Select Board has no jurisdiction over the Planning Board so the only thing the Select Board can do is complain to the building inspector therefore he feels a need to register a complaint with the building inspector; what if the developer violates the plan by doing something else, i.e. use of a herbicide. DeChiara acknowledges Jeff Lacy's/Planning Board arrival and states that the Surety is a matter of interpretation; there was an agreement that the non-physical pre-construction conditions would occur before the physical; #5 was done previous to all the non-physical; there could be an interpretation that bad process occurred. Lacy: the Select Board has had the Surety Agreement document for two weeks; when he saw the item on a prior agenda (10.23.17), he thought the agreement was signed, therefore when he inspected the site on 10.26.17, he did not know the agreement had yet to be signed; work started sometime last week prior to 10.26.17. Lacy: access is via Reed Road, which is allowed at this point in the project; even with the recent rain, the soil was not saturated; work needs to proceed before conditions change. Logan is concerned about the position the Select Board is in. Lacy: there are four layers of communication. Makepeace-O'Neil notes that the Select Board did not let anyone know the document was not signed during the 10.23.17 meeting. Torres: the document, with all three of the other signatures, was delivered within two days after the 10.16.17 Planning Board meeting. DeChiara: rushing due to weather conditions feeds into bad process; it is the responsibility of the Select Board to have the conversation. DeChiara states that he could support a complaint to the building inspector. Makepeace-O'Neil reaffirms that the Select Board did not sign the Surety during the 10.23.17 meeting. DeChiara: because MacNicol was present, we talked about the Rule of Necessity during the 10.23.17. Makepeace-O'Neil: there have been multiple levels of communication that did not work out; she is not necessarily in favor of complaining. Lipton: the building inspector will inspect the site and there is

evidence of non-compliance, the inspector will issue a cease and desist order; if there is no evidence of non-compliance, no action is taken. DeChiara: the Select Board addressed the matter and acknowledging Lipton's apology is important. Torres: when Attorney Michael Pill dropped off the letter within two days of the 10.16.17 Planning Board meeting, she was not able to be clear about when the Select Board would sign document, either the 23<sup>rd</sup> or 30<sup>th</sup>. DeChiara explains to Lacy that the Rule of Necessity was invoked. Logan: Lacy assumed the document was signed based on the dates and Lipton acknowledged that the document was approved by MacNicol if the developer accepted the changes, which they did, and this was reported to the Planning Board. Logan: noting that the practicality made sense, states that he is still a little concerned about the behavior; his concern is whether the Select Board has done its due diligence – do we write a letter of complaint or accept the explanations? Torres: the other party did not have to accept the need for a Select Board signature on the document. Lacy asked that the Select Board be included as a courtesy as it would be better for the life of the document if signed by the Select Board. DeChiara: yes, as a matter of enforcement, the stipulation was for the Select Board to sign the Surety document. Torres: it could be construed that the Select Board delayed signing and that this delay in signing could reflect badly on the Select Board; the Select Board did meet four to five times in the interim between 10.16.17 and 10.30.17. Logan supports sending a file memo to the building inspector – requesting this letter be placed in the file, not at the level of complaint however to be on notice this occurred with a request to be hyper-vigilant. DeChiara acknowledges the need for the building inspector to be hyper-vigilant going forward. Logan moves the Select Board send a letter of concern to the building inspector regarding a miscommunication on the start of the project and that the Select Board would like this information in the file and request the building inspector be hyper-vigilant in monitoring the project; Makepeace-O'Neil seconds the motion that passes unanimously. Makepeace-O'Neil moves the Select Board sign the Town of Shutesbury Surety Agreement for a Solar Site Decommissioning Fund"; Logan seconds the motion that passes unanimously. Lipton notarizes DeChiara's signature. Logan will draft the letter to the building inspector to be reviewed by the Select Board 11.14.17.

3. All Boards Meeting Plans: The plan is to start the meeting at 7:00pm with the 15 minute CPC public hearing followed by brief committee/board reports then dessert and conversation.
4. Select Board letter to Lori Saleem: 10.30.17 draft letter is reviewed. DeChiara moves to approve the letter to Lori Saleem dated 10.30.17 that includes the conditions approved during the 10.23.17 dog hearing. Makepeace-O'Neil seconds the motion. Logan requests Torres let the Select Board know when the camera has been installed. Torres expresses her concern about the Select Board requiring the placement of a surveillance camera that may violate the dog owner's privacy; this is a private garden patio and part of her living space. DeChiara suggests the camera be located at dog height. Torres: could the camera be audio only? Makepeace-O'Neil: the video will confirm whether it is Saleem's dog that is barking and it will be motion sensor camera. Logan moves to amend the prior motion so that the letter be held until MacNicol confirms that placement of the camera is legal. Makepeace-O'Neil seconds the motion that is unanimously approved. The Select Board signs the letter and when confirmed by Town Counsel, the letter will be accurately dated and mailed.

5. Historical Commission Appointment: DeFant has confirmed that Mary Lou Conca is interested in becoming an Associate member of the Historical Commission. Concern is stated that the individual being considered may not understand the roles and limits of municipal boards/committees. Makepeace-O'Neil moves the Select Board appoint Mary Lou Conca as an Associate Member of the Historical Commission for a term ending 6.30.18; Logan seconds the motion that passes unanimously. DeChiara recommends considering a bylaw allowing removal from committee/board membership for reasons such as non-attendance.
  
6. Thank You Dinner for Town Volunteers: The event will be held at the Shutesbury Athletic Club and is tentatively scheduled for 3.2.18. Logan would like to express a sense of solidarity, appreciation, and recognition of individual town employees and committees/boards as a whole. Torres will contact the SAC to reserve the date. Menu: soups, salad, bread, and desserts.
  
7. Committee Reports:
  - A. Master Plan Working Group: per Logan, there were opposing viewpoints and no one could agree on a letter to the Select Board on the topic of fiscal sustainability.
  
8. Town Administrator Updates:
  - A. Torres is acknowledged for purchase and setup of the new microphone system.
  - B. The upstairs bathroom floor is complete; the installation of fixtures is pending.
  - C. As the result of the recent rains, the school roof is leaking badly and in new areas; the roofing contractor will inspect the roof 10.31.17.
  - D. The town hall elevator failed the State inspection in six areas including that the ceiling key lock does not meet requirements, the phone line is dead, and the weight was not balanced; the estimate for these unanticipated repairs is pending. Elevator maintenance is conducted every three months by Associated Elevators and they will do the repairs; fines will be incurred if the repairs are not completed within 60 days. DeChiara: it could be prudent to have a more extensive annual maintenance.
  - E. The DCR farmhouse at Lake Wyola: townspeople, Rita Farrell, Leslie Bracebridge, Elizabeth Fernandez-O'Brien, and Paul Lyons, who have been committed to the project over time and have the highest level of interest, attended the recent open house; they agree that the farmhouse is not a project for the town to take on; one family did express potential interest in the lease program.
  
9. Prior Action Items: Logan recognizes the need for Torres and himself to get together on the topic of internal controls. Torres has feedback from Weiss/ Accountant, McKay/Tax Collector and Voelker/Treasurer. Logan recommends formal internal versus informal controls. Penny Kim: a report on a tax relief program is pending.
  
10. Future Agenda/Action Items: Review conducted.

Administrative Actions:

1. The Select Board will sign vendor warrants totaling \$158,624.59.
2. The Select Board will sign payroll warrants totaling \$96,100.04

3. Review of pending Select Board meeting minutes is carried over to the 11.14.17 meeting.
4. DeChiara re-signs the US Census 2020 registration form, as the previously signed document was not received by the US Census Department.
5. DeChiara moves to approve the 2018 Local Council Grant from Mass Cultural Council Grant for \$4,400; motion is seconded by Makepeace-O'Neil. DeChiara: the Mass Cultural Council is aiming to reach out to municipalities. Motion passes unanimously.

At 9:17pm, DeChiara moves and Logan seconds the motion to adjourn the meeting; motion passes unanimously.

Documents and Other Items Used at the Meeting:

1. State Ethics Commission Advisory 05-05 "Rule of Necessity"
2. DeChiara 10.28.17 email "Request Planning Board & Lake Street at Oct. 30 Select Board meeting"
3. 6.7.16 Town of Shutesbury Planning Board Special Permit for Wheelock Solar Project
4. "Town of Shutesbury Surety Agreement for a Solar Site Decommissioning Fund"
5. 10.30.17 email from Donna MacNicol "Surety Agreement"
6. Select Board letter to Lori Saleem dated 10.30.17.
7. 10.18.17 email from Miriam DeFant "Re: Historical Commission appointment"
8. Mass Cultural Council "Local Cultural Allocation for the Shutesbury Cultural Council"
9. Census 2020 Registration Form "Local Update of Census Addresses Operation"

Respectfully submitted,  
Linda Avis Scott  
Administrative Secretary