

Shutesbury Board of Selectmen Meeting Minutes January 30, 2014

Members present: Chairwoman Elaine Puleo and members Al Springer and April Stein.

Members Absent: None.

Remote participation: None.

Staff present: Town Administrator Rebecca Torres, Administrative Secretary Leslie Bracebridge.

Press present: None.

Chairman Puleo opened the meeting at 6:30 P.M. at the Shutesbury Town Hall.

Appointments

Police Chief Harding:

1. February Staffing.
2. Chief Harding has talked with the Finance Committee and will also speak with Personnel Board members about using funds in his payroll line that he previously used to fund Quinn Bill obligations to fund educational incentives. Three considerations were brought up:
 - One: What is written in the union contract. The union contract is up for review next year.
 - Two: What precedence is set for the future.
 - Three: If Shutesbury hires an officer eligible for Quinn benefits, the officer would receive the Quinn match because the town is still bound by the Quinn Bill even though the state match no longer exists.
3. In the presence of Chief Harding and Dog Officer Nancy Long Town Administrator Rebecca Torres briefed the Select Board on dog hearing procedures.
4. At 7:01 PM Chairman Puleo opened the dog hearing and administered the following oath: Do you solemnly state that the testimony that you give in the case now pending before this Board shall be the truth the whole truth and nothing but the truth?: James McNaughton – “yes”, Gail Huntress – “Yes”, Ronald Meck – “Yes”, Dog Officer Nancy Long “Yes”, and Chief Harding “Yes”.

Elaine invited anyone to speak on current complaints.

Ronald “Ron” Meck: Referred to many emails and telephone conversations that he had exchanged with officials over the last 3 to 4 years, as did James. Elaine requested hearing complaints in the present time.

James McNaughton: Does not presently live in the neighborhood.

Elaine: There have been complaints and there has been mitigation. What are the current complaints?

Ron: Describes cycles of barking followed by actions, followed by quiet for a while, but then the barking happens again. It keeps happening and it hasn’t been ultimately resolved in 3 to 4 years.

Elaine: When was the last time the barking resulted in a complaint?

Ron: November 17th. Ron then reads a statement about the “profound detriment to the town....”

April: Questions the reason for this complaint if the last event was in November.

Ron: The point is it always happens again. Ron questions why the noise bylaw fine is not used as a deterrent.

Gail Huntress: Reads the section of the bylaw referencing the \$25 fine for each excessive noise offense.

Becky: Acknowledged it can be used on occasion for a verified complaint. We have officials who go out and monitor the situation and do not hear the dog barking.

James: Back when he lived in the neighborhood, he had ½ dozen officers interview him at various times. The Officers heard the dog and “threw up their hands” that there was nothing they could do. Out of town officers working for Shutesbury, who responded reported having avenues with other towns’ bylaws. James says he put a number of calls in when the dog was left outside while the owner went to work. James (and Gail) moved out of the neighborhood about a year and half ago. James reported it went on for a good solid 3 years with dozens of incidents before he moved away. The topography is such at the Lake that people from across the Lake, told him that they could hear barking. James reported that his calls would get

bumped to the state police. Six to 8 times he stood out and made tape recordings. There were 2 dogs. The larger of the 2 was incessant and agitated the poodle style dog.

Elaine: There's only 1 dog now. We requested the owner keep the dog in when she's not home.

Ron: States he appreciates the effort. The problem is it goes back to the same thing. Landlord reported to Ron that the owner agreed to keep her dog in the crate. Five days later, I'm sitting here listening to the dog outside in the cold barking and she's no where around. How many times has she been fined in these years?

Becky: Clarifies language in a letter to Ron, that when we have had a legal challenge to the noise bylaw, it does not stand up.

Ron: Finds it hard to understand that being kept awake at night by the dog barking isn't an "unreasonable annoyance."

James: Didn't think he could call anyone who could do anything. He states he got turned back with "You're the only one complaining."

Gail: Offers to play a recording.

Elaine: States no, Selectmen have already heard it, and reports having previously been in their position: There was no resolution because our noise bylaw does not have specific decibels. Unfortunately for all of us we do have dogs. That one is not the only one that barks.

Becky: Reports that after James came to Town Hall to complain, she worked continuously with the owner even considering if the dog's vocal chords should be cut. We have spent many hours working and talking with the dog owner. The second dog aggravated the first dog. The dog owner found a good home for the small dog. So the number of incidents has dropped dramatically. We have contacted other neighbors 2 or 3 different times. It is not something we have ignored. I was on the Select Board when Elaine had a problem. We have not heard complaints from others. The state law leaves very little that the Board can do except to work with the owner to ameliorate the situation. Holding a hearing does very little. We went straight hands on.

James: Offers to find a bylaw from another community that would be helpful.

Becky: Suggests to James that if he still lived in the neighborhood, he would have seen improvement. The Massachusetts General Laws define a "nuisance" dog differently from a "dangerous" dog. "Dangerous" is where Selectmen have to put their energy. Selectmen have little authority over "nuisance" dogs.

Ron: Doesn't understand why he is not backed up by the noise bylaw. He re-reads the noise bylaw and questions why that can't stand up in court. "You are listening to 3 extremely annoyed people."

Becky: If the noise bylaw was used to fine excessively, the owner could challenge the noise bylaw and the challenge would win. The statute says the owner of the dog must take action to ameliorate the situation.

April: We could pursue fining people but we really want to hear how to resolve the situation and make things different rather than fining.

April: Requests Chief Harding to speak.

Chief Harding: Ron is correct that this goes way back. The problem for the Police Department is they cannot fine alleged offenses. The majority of the times, when the officer goes down, the dog is not barking. We can't fine someone if we don't find the dog barking. Chief Harding does not doubt that the dog barks. He sent officers down to speak with Ron and to circle around his neighborhood interviewing others 2 times. No one identified this one dog as a problem.

Ron: We complain and it stops and then when no one is looking, it starts again. There's no real enforcement and so the owner goes back to the same thing.

Al: Has stopped by a half dozen times, not at 11 PM, but he has never heard a dog bark. He has talked to people who report barking from Haskins Way only and they don't bark enough to be annoying.

Ron: Has a body of evidence, 100 times it has happened.

Becky: The frequency has been greatly reduced.

Ron: If there was a disincentive, it wouldn't occur at all. After all these years it's an issue.

April: Asks why Ron hasn't talked with the owner?

James: Reports having sat down with the owner and was accused of harassing her.

Becky: Reports trying 2 times to convene a meeting with the owner 2 years ago but Ron did not want to attend. **Elaine:** Reports recently trying to set up a meeting with the owner and Ron. “The complaint right now is between you and the owner” because James and Gail don’t live there they don’t hear the dog now. In historic experience, the only way to resolve the problem is to sit down face to face.

Ron: Describes a September 29 meeting as “very interesting.” Elaine wanted a meeting with Ron, the dog owner, Chief Harding and Elaine. Ron wanted a hearing, he felt a meeting as proposed was inappropriate.

Elaine: Wanted to have the owner know this is a problem. The reason the owner got rid of the 2nd dog and is crating the other is because Becky and Nancy worked with her. “I could probably fine many people for many things, but I would rather sit down and talk with them.”

Ron: The problem would stop for a while. She (the dog owner) openly violated her agreements.

Elaine: She got rid of the first dog, and she is making an attempt to keep the other dog inside. I could keep sending her fines and the dog would continue to bark.

Becky: The crating is for when she’s not there. When she is home, sometimes the dog is outside in a fenced in area. There are bark collars involved. I have yet to hear the dog barking and I have been there multiple times. The point of the hearing is for the Select Board to determine if the dog is a nuisance dog.

Dog Officer Long is invited to speak but declines stating that she has nothing more to add.

Elaine: We understand Ron’s concern, but there are barking dogs in the whole town.

April: Asks, what would be the solution?

Ron: Reads emails from the past.

Becky: We have clearly come a long way.

Chief Harding: Confirms his understanding of Ron’s complaint: There is a cycle. It tapers off when officials get involved. We’re in a lull period right now. James mentioned different language in other towns’ bylaws which would give us more to work with. If we don’t hear barking we can’t fine. If you live there it’s a problem. Tom would like to see a different bylaw. James is happy to do research to see if there is a better bylaw.

Gail: If you or your officers witness a violation will you issue a ticket?

Chief Harding: Yes, and reiterates the time delay to get to the neighborhood.

Ron: To my knowledge that hasn’t happened on many past occasions.

Chief Harding: Goes on record: In the past complaints were referred to the Dog Officer and she has issued the fines. We will now issue fines.

Ron: States he feels awkward now that nothing is happening.

James: Wonders if part time officers don’t know what to do.

Chief Harding: Takes full responsibility if officers have witnessed barking and not written fines. It’s a little bit out of time. Now I will direct officers to issue fines.

Becky: Questions if this policy will be applied across the entire town?

Chief Harding: Yes. There’s room for discretion on the officer’s part. I’m not saying that every time the officer goes there he’s going to write a ticket. The officers will be told they have some discretion.

Ron: Questions what will happen if the dog is barking, the officer is there for 10 minutes and leaves and then the barking goes on for 2 more hours, does the officer write another ticket? Ron states that he doesn’t feel good about calling state police to come up from Belchertown when someone with a more serious problem might need them.

Elaine: That kind of late at night situation assumes that would be a sufficient amount of time.

Chief Harding: The problem is if it’s not happening when the officer arrives.

Ron: The barking used to be continuous. It has become more intermittent. It could be that it could happen before and after they come. The dog barks when it’s lonely and it barks when it’s stimulated by people being around.

April: It has changed incrementally over time. You have not been ignored by officials in this town. We've talked a lot about how we can help. It's not going to be perfect. There are all sorts of dog issues. Basically we can only do so much. What do you want?

Ron: I want the dog to stop barking.

James: A couple of dog meetings were called and cancelled within 2 days of the meetings, going back to within 3 years. We were repeatedly calling out for help and got silence. We didn't know what was being done what was going to happen. When communication breaks down and we're not receiving feedback it gets my Irish up. James is surprised to hear how much was being done. Nancy called back once out of all the times I called. There needs to be a system of more feedback. James was not aware of 1 less dog. If I knew what was happening and that there was a plan of action, I would have been more supportive. We would appreciate more follow-up. James praised Chief Harding for his responses and follow-up.

Elaine: We need better communication.

Becky: Communication falls on me. That was years ago. I'm working with multiple people here – dog owners, police, dog officer, Selectboard and complainants. I couldn't keep up to the constant wave of complaints between James and Ron. My priority was to solve the problem.. Every response doesn't happen overnight. We were down there. There are a number of dogs in the neighborhood. Dangerous dogs are Becky's and Nancy's priority. It's not easy to respond to every barking dog. We have to respond to urgent dog concerns: injured and abandoned dogs; Nancy had an abandoned pregnant dog that gave birth to pups in Nancy's bathtub.

Gail: Feels like we've made progress. If Ron has a complaint the police will respond. Requests that Ron be sent a copy of the memo the officers get regarding fining.

Chief Harding: Ron will have to take my word. Is the noise related to the weather? Even at this time of year would you hear barking?

Ron: Yes. In the summer he closes the windows and he still hears barking. It's not happening.

April: Suggests a mediation session here at town hall. We're all neighbors.

Ron: I can't imagine what I would say that she doesn't know.

Elaine: Maybe she could hear it.

April: Maybe she's afraid that you might be angry with her.

Elaine: Maybe now while the barking is not happening is a good time to say that Ron appreciates the owner's efforts. If she hears that she's done something right, it might encourage her to do right thing.

April: And maybe if she hears what it's like to be kept awake all night...

Ron: A person who leaves her dog out in the dead of winter? I've had lots of communication through the landlord. What more?

April: She knows you're mad at her; we're neighbors to neighbors. It's not going to be perfect.

Ron: OK, thank you.

April: What should we do?

Becky to the Board of Selectmen: You have to decide if the dog is a nuisance at this point in time.

April: Doesn't feel it's a problem at this time.

Al: Hasn't heard the dog in 2 ½ months. Is the dog ok?

Becky: Yes, I saw it recently.

Selectmen unanimously voted that the dog is not a nuisance at this time. Elaine pointed out that the Chief will discuss this with his officers.

Chief Harding: Will be more proactive about speaking with Ron. He doesn't want to see it escalate. The best route in this case is communication. He hates to say it is resolved because the dog will bark, but the dog should not bark for extended periods of time. Communication is the thing. The Police Department has been out of the loop. Sooner or later the dog is going to bark. It's not his concern if the dog barks while the kids are waiting for the bus. We're moving toward a long-term solution.

April: The work done with the dog owner was important.

Chief Harding: Nancy supplied bark collars which were effective for a little while.

Elaine: Invites Chief Harding to keep the Board in the communication loop and we will try to work through this.

Elaine closed the hearing at 7:58 PM.

Elaine: Wishes to go on record for thanking Chief Harding for his method of mediating.

Chief Harding: Speaks the importance of speaking to the dog owner. When the dog is barking, she's not there. So it won't be resolved right away.

Al: The dog hearing seemed to calm everyone down.

Becky: Thinks Ron will continue to complain. It's not clear when there are 6 dogs in the neighborhood which dog is barking.

Elaine: Suggests Becky let the dog owner know what happened at the hearing.

Becky: Will report to the owner that the Chief will make sure that people are appropriately fined. He used to leave the dog ticketing up to the Dog Officer, now Police Officers will charge \$25. That's the shift that happened as a result of the meeting.

Topics

1. Elaine delivered a Regional School District Planning Board (RSDPB) update:

- The RSDPB heard back from DESE (Department of Elementary and Secondary Education) that they are willing to look at the proposed plan. They didn't tell us to stop. The Regional School Committee voted to take it on as an amendment to the regional school agreement and created a sub-committee to study this which is made up of everybody that is on the Regional School District Planning Board.
- Elaine is meeting with the regional school capital budget planning subcommittee tomorrow morning at 7:30 AM at the Regional Middle School Professional Development Room.

2. All Boards Meeting Planning:

- Becky has chocolates from OTO and will bring a coffee urn. Elaine will bake.
- Elaine has heard from some people coming to listen.
- It will be in the gym rather than the library. The gym allows enough room so that parents can come and bring their kids who can play in the back.

3. Becky provided an update from Massachusetts Municipal Association (MMA) Conference:

- All 8 Governor candidates spoke.
- Everyone is deflated with the Governor's Aid numbers. He hadn't been able to make it to the conference, and then showed up at the budget workshop which took place while Becky was in the Broadband Workshop.
- The Governor came to argue for OPEB legislation which doesn't make a lot of changes. Some of the Governor's ideas are different from those of the MMA. The Governor supports teachers unions: The MMA wants teachers to work for 20 years to receive health insurance when they retire. The teacher unions want it after 10 years. The Governor lobbied for support on that issue.
- There are errors in the new flood insurance mapping because they used a Pacific Ocean model rather than the Atlantic Ocean model, making the waves about 9 feet higher than they are on the East coast. Elizabeth Warren and Edward Markey are working on legislation to stop it right now. Flood Insurance rates are going to go up dramatically. People who have never needed it are going to be required to get it. We need to keep our eye on that and notify the folks on the Lake who will be affected.
- The budget is the biggest problem.
- The MMA is pursuing the \$300 million for Chapter 90 funding.
- The February STAM (Small Towns Administrators Meeting) will be on medical marijuana. South Hadley and Deerfield will talk about their projects. Wendell voted it down.

- Becky talked to Martha Coakley briefly about the last mile when she was in Greenfield. Becky reports Attorney General Coakley expressed a willingness to search for funding to help it happen.

Select Board Action Items

1. Selectmen received no minutes to approve.
2. **Selectmen unanimously voted to approve a Chapter 90 reimbursement request for approved expenditures of \$172,215.71.**
3. **Selectmen unanimously voted to approve an agreement with the Franklin County Regional Governments Cooperative Purchasing Program to participate in the Franklin Regional Cooperative Fire Products and Services Bids and Contracts for calendar year 2014 with the option to renew for 2 additional 1-year terms for the purpose of purchasing fire hose and ladder testing services.**
4. Hampshire County Fixed price electricity contract – hold:
 - a. Becky has requested an electricity quote from Constellation and is looking for other quotes.
 - b. At the MMA Conference Becky learned some other towns are not happy with the new fixed price contract from Hampshire Power.
5. **Selectmen unanimously voted to authorize use of the Town Hall for list of Library activities.**
6. **Selectmen signed payroll warrants totaling \$88,466.62.**
7. **Selectmen signed vendor warrants totaling \$141,676.50.**
8. Selectmen received but did not discuss a draft **Broadband Committee Charge**. They did discuss a recent meeting of town citizens seeking alternative methods of getting Broadband held at the Shutesbury Athletic Club. Becky and Al reported:
 - 60 people attended the meeting.
 - Leverett did a great PowerPoint presentation.
 - Leverett is helping Princeton develop model similar to Leverett’s model.
 - Leverett did it in 4 years.
 - They were very clear about the level of commitment of volunteers. Richard Nathorst puts in about 20 hours per week on Leverett’s project.
 - There’s a lot of work and they will use all of the \$3.6 million. They’re in very good shape and should be able to “light up” at the end of the year.
 - Becky presented the Wired West regional system that will be lower cost due to cost efficiencies, economies of scale and will have the benefit of redundancies that don’t exist in a smaller stand alone system.
 - Leverett’s Rob Brooks emphasized the need for a team of people who can work together, “Not a task for the faint of heart.” It takes skill and a strong sense of purpose to work together weekly.
 - Elaine is there a core group in Shutesbury still committed to try? Becky: Yes. Graeme wants the tax burden to vary between taxpayers, somehow using betterments and getting creative. Rob Brooks cautioned that town financing of a project brings with it legal standards to be met.
 - People are really anxious for the service.
 - Rob Brook’s punch line was to do it right would take 3 to 4 years. You can’t rush it.
 - Becky: After Wired West gets the money it will take 3 to 4 years more.
 - Wired West is getting ready for regional meetings where Selectmen will express the appetite for what their towns could afford.
 - The bad news from Capitol Hill is talk that the bond bill will not pass until May, not February.

Topics the Chairman Could Not Reasonably Have Anticipated

1. The next regular Select Board meeting will be Tuesday, February 11 at 8 AM to accommodate a teacher’s union contract negotiation meeting that evening. Al: Morning meetings are Ok on occasion but as a routine they’re not fair to the public that has to get to work.

2. **Selectmen unanimously voted to sign a grant agreement between the Commonwealth and the town for \$500 for a Department of Environmental Protection trash hauling recycling grant**, as they do every year for new composters and things like that.
3. Selectmen received pages from the latest incident status report for the Immediate Response Action (IRA) that contained the new narrative update and new lab reports, that Becky found to be the most relevant pages from the December 26, 2013 report from O'Reilly, Talbot & Okun (OTO) for the soil contamination at the Fire Station. Becky summarized that one more round of testing in the spring should give enough positive results to look for a temporary closure from DEP for the situation at the fire station. The Select board will meet with an OTO representative at that time. Billing adjustments were made reducing the last quote. An estimate is needed for the next round of testing.
4. **April:** The Water Resources Committee (WRC) wants to talk with the Select Board. Member Al Werner has a year-long sabbatical from Mt. Holyoke College next year and has been approved to conduct a year-long study in Shutesbury. The town would pay \$3,000 to install stilling wells to measure the quantity of ground water over a year. April has offered her well as a site. Al Werner wants to test a hypothesis that water quantity on tip of the ridge is diminishing, based on a monitoring well in Pelham. It is important for the town to know if this is true for future development planning, nitrogen loading and amount of people that can be sustained. Al Werner thinks that he can get testing equipment from Mt. Holyoke College, but he would need to have a professional install the stilling wells. Al will also be studying the quantity of run-off. If we went out to buy this study, it would cost \$250,000. He would want separate monitoring wells at costs of \$3,000 to \$6,000 per well. This is such a gift. He has an incredible weather system. Has monitored his own well for years. He hasn't seen anything definitive; he needs more data from a ½ dozen stilling wells along the ridge.
 - The WRC has decided that Lake Wyola doesn't need a septic system at this point.
 - Al Springer asked if Al Werner could get the Department of Conservation and Recreation to put up the money and then share the information with the town. April responded that there would be little incentive because there are already monitoring wells at Lake Wyola.
 - The liability of using private wells is an issue to resolve.
 - Leslie suggested also checking in with the Ethics Commission for use of private wells or if town property should be used.
5. Becky reported that Highway Superintendent Tim Hunting discovered the frame of the 13 year old pick-up truck is rusting out when he had a repair made. The shop told him that they deemed the truck unsafe to be used for plowing anymore. If it can't be used to plow, there will be more phone calls when they get behind on plowing. Tim didn't take a picture when the parts were all off.

List of Documents and Other Exhibits Used at the Meeting:

1. Franklin Regional Council of Governments Cooperative Purchasing Contract for Fire Hose and Ladder Testing Services.
2. Chapter 90 Project Reimbursement Request number 50975.
3. December 26, 2013 Draft Immediate Response Action (IRA) Status Report.
4. Request sheet from Spear Library for activities to be held at the Town Hall.
5. Draft Shutesbury Broadband Committee purpose and attached personal emails between citizens of Shutesbury interested in broadband services.

The Select Board **adjourned at 8:51 P.M.**

Respectfully submitted,

Leslie Bracebridge, Administrative Secretary

140130 Select Board