

Shutesbury Select Board Meeting Minutes
April 12, 2016 Shutesbury Town Hall

Select Board members present: April Stein/Chair, Mike Vinskey, and Michael DeChiara
Staff present: Becky Torres/Town Administrator; Linda Avis Scott/Administrative Secretary

Guests: Attorney Donna MacNicol/Town Counsel, Mary Anne Antonellis/Spear Library Director, Ken Holmberg/Administrative Assessor, Miriam DeFant and Rob Kibler/74 Pratt Corner Road, Jim and Rolf Cachat/187 Wendell Road, John F. Rowan-Stern/692 Pratt Corner Road, Asha Strazzero-Wild/412 Montague Road-Broadband Committee Co-chair and Roger Tincknell/78 Pratt Corner Road

Stein calls the meeting to order at 5:50pm.

Public Comment Period: Antonellis reports having her request to put a survey link on the Town home webpage denied by Paul Vlach/Web Committee Chair because the link was not a governmental site; Survey Monkey is a non-governmental tool - there is not a governmental tool like it – the goal of the survey is to reach the community and Survey Monkey allows her to do this. Antonellis: Vlach also noted that in a couple of Town Announce postings, she included links to the library’s Facebook page and Twitter as well as the survey link. Antonellis feels she has good judgment about the use of the tool and that it would be unfortunate if she could not use the announce system. Torres: if a request does not fall within the parameters of the Web Committee policy, the Select Board may give permission. Antonellis: the platform options have changed since the web policy was developed; she has not had any complaints about the links used or information posted on behalf of the library. Stein acknowledges that Survey Monkey is a useful tool. Antonellis: there is a marketing side to it, however, the goal is to solicit library-user feedback; we have a responsibility to reach out to the community in all the appropriate ways; in 2010, we used Survey Monkey for the first time and received 60 paper/40 online responses; in 2014: 200 online and 39 paper responses were received; currently, there are 126 online and 1 paper responses within one week; there are paper copies available and residents can use the public computers to complete the survey. Stein sees no problem with Antonellis’ request. Vinskey states he is not sure why this situation does not fit into the policy; would want to hear from Vlach. Antonellis: per Vlach, there is a policy, however, this use does not fit within the policy therefore the procedure is to ask the Select Board. Torres: the web policy was originally written in 2002 and revised in 2005 before social media became heavily used. Torres reads the Purpose and Goal as well as the Webmaster portions of the “Town of Shutesbury Web Site Policy” into the record. Torres: the Links section was created because some commercial links were used early on; the goal is to distribute information to our community. Vinskey: does Survey Monkey data-mine? DeChiara: Amherst Regional Schools uses Survey Monkey; the town is not going to build our own survey tool; it is worth revisiting the policy. Vinskey agrees that Antonellis may put a link to the survey on the website and Town Announce system. Torres recommends and all Board members agree to review the Web Site Policy. DeChiara moves and Vinskey seconds the motion for the Select Board to approve posting the

library survey via Survey Monkey on the Town webpage and continue the ongoing practice of using the Town Announce system as she has been with links to CWMARS, and the library's Facebook, Twitter, etc. Motion passes unanimously. At 6:09 Antonellis leaves the meeting.

MacNicol reminds the Select Board to use separate reasons for executive sessions and keep separate minutes for each reason and review minutes as appropriate.

At 6:10pm, a motion is made by DeChiara and seconded by Vinskey to go into executive session for reason #3/proposed solar installation payment in lieu of tax agreement (PILOT) and to resume open session. DeChiara: aye; Vinskey: aye; and Stein: aye.

Open session is resumed at 7:20pm.

Discussion Topics:

1. Native American Architectural Artifacts, Burial Grounds, MGL 114 and Federal Section 106/Application to Town: Stein: As this is an issue relative to the Planning Board, the topic is being audio recorded.

DeChiara: in the last month, this topic arose in the context of the Planning Board however may also affect the Historical Commission. DeChiara: are there classifications the Town has not made and is there exposure the Town may have relative to MGL 114 Section 17? MacNicol: there are two separate issues – regardless of the legal requirements, the Town's commitment to historical artifacts, particularly Native American sites, and what the Town wants to do proactively – to notify landowners and contact various tribes to see what resources are available - this is an ethical obligation and is something the town should be moving forward on and taking responsibility for assigning the task to various appropriate committees; legally, the questions are what the Town is required to do and even if the Town wants to, what the Town does not have any jurisdiction over; Federal Section 106 is for Federal agencies and any Federal involvement, i.e. Federal grant funds trigger Section 106. MacNicol states she has no information that the solar project falls under Section 106. DeFant: Lake Street Development Partners may have Federal loan guarantees. MacNicol does not know if that would invoke Section 106, the only thing the Town could do is report to the appropriate agency. MacNicol to DeFant: a list of potentially involved agencies could be created and contacted then they would determine if Section 106 applies. DeChiara: using the solar project as an example, the Planning Board has jurisdiction – can the Select Board ask the Planning Board to “pay attention to this matter” for ethical and/or legal reasons? MacNicol: that would be okay for the Select Board to do; the Zoning Board of Appeals and Planning Board generally do not look sufficiently into whether projects have any connection to Federal agencies; in this case, there will be a condition requiring compliance with applicable Federal, State, and local laws; the Native American tribes would be the most likely ones to contact the appropriate Federal agencies, i.e. loan guarantee or tax credit programs, stating that before any tax credits or loans are given, Section 106 compliance must be reviewed. R. Cachat states he has spoken with the Nolumbeka project; has been active in this area of concern for a number of years; the Native American tribes would be the source. MacNicol: the developers will have to comply with Section 106 if it is applicable; Attorney Pill (representing Lake Street) has

acknowledged that Lake Street is responsible for researching this matter. Stein: is there any liability to the Town if this is not thoroughly researched? Regarding Stein's question about liability, MacNicol states she does not believe there is a liability. DeChiara: moving from Federal law to the State - the State statute speaks directly to towns. MacNicol: it is important to understand what the statutes mean; Chapter 114 is essentially the State statute for cemetery regulations and does have specific provisions for ancient burial sites – the statutes need to be read carefully to understand what is being said. MacNicol: Section 17 states “a town shall not alienate or appropriate for any other use than that of a burial ground” – this does not deal with private property, it deals with town owned property and refers to “any tract of land which has been for more than one hundred years used as a burial place.” MacNicol reads Section 18 into the record: “Any town having within its limits an abandoned or neglected burying ground may take charge of the same and keep it in good order, and may appropriate money therefore, but no property rights shall be violated.” R. Cachat: about the next phrase, “no body shall be disinterred”? MacNicol: as a town, are you really going to go and find every ancient burial site and take it by eminent domain, pay for it, and maintain it? MacNicol: there are very important ethical considerations about how we have dealt with ancient burial grounds as a society; supports making this fairer; a survey could be done as well as notifying and educating landowners about the way to properly develop the land if they are going to do so. MacNicol refers to one of the main cases on this issue regarding a private burial ground on land in Sudbury - descendants of the Quakers who had been buried on the site in the 1700s asked the developer to stop work and sued the developer and the Planning Board of the town. MacNicol: the court said these statutes do not give that kind of authority, it basically said “the rights of the descendants in this situation become merged with the right of the public generally; to insist that due respect be paid to the sanctity of human remains and human burial grounds if they should be uncovered inadvertently, a concern that finds expression in Statute” then the decision specifically refers to Section 17; what they are essentially saying is that if you are doing a project and unearth human remains, you stop immediately and seek an archeological evaluation then a determination is made about how the area will be preserved; the town does not have jurisdiction to deny a project outside of requiring compliance with these laws; the Select Board does not have an affirmative obligation – there is the ethical matter; this is private land and more detailed information came in after the public hearing was closed. MacNicol: there is no problem with letting the Wampanoag people that have written to the Town know that the applicant is to comply with Federal and State law and that at the east corner of the project site, there is a mound area that has characteristics of archeological significance; it is important for Mass Historical Commission (MHC) and/or a tribal member to supervise the construction – request developers stay away from the area or ensure that it is not significant. MacNicol: the Town of Shutesbury cannot say to a private property owner that there is a suspicious mound on your property therefore you cannot use your property. DeChiara: overseeing the construction? MacNicol: anyone - the citizens, the Planning Board, and/or the tribes need to go to Lake Street regarding this area – acknowledges that the developer now knows about the area of concern. R. Cachat: in the Greenfield case, when evidence was discovered in 1999, the MHC interceded first and stopped the digging; the property is now preserved. MacNicol: the Native Americans were able to raise enough money to purchase the property; on the Gill town-owned site,

Native Americans identified a very rare ceremonial area – this site is now preserved as open space town-owned property. MacNicol: these statutes do not necessarily stop development – they provide the opportunity for protection. R. Cachat notes a Kinder Morgan site where twenty-six bodies were found – an injunction, based on suspected sites, was obtained; decisions seem to go both ways. MacNicol: if there are significant archeological sites, there are parties, i.e. MHC and/or Native Americans that have the authority and the right to step in and stop the project; these are the people that should be notified and making sure that if statutes are violated, they step in and deal with the situation. DeFant: has been familiarizing herself with this issue; offers for the Select Board to consider broadly for the Town and historical preservation, her understanding is that there have been developments in the last ten years - there has been Federal recognition of the Turners Falls area with a twenty mile radius and Shutesbury falls within in this larger ceremonial zone – the MHC has not taken a strong position documenting the presence of old stone features – there is a schism between the tribes and MHC about this – feels tide is going to change regarding archeological documentation - that said, most of the ceremonial features have not been documented – there are informal data bases that have been kept by the tribes; this creates an opportunity for Shutesbury to document cultural archeological treasures that deserve to be documented even if the town does not have legal authority. DeFant states she has had communication with Joe Graveline/Director of Nolumbeka project, a non-profit based in Turners Falls, that has been instrumental in documentation – he is a local expert willing to talk with the Town as an educational opportunity; some towns have passed statutes respecting ceremonial sites – the Town may want to consider this. Torres: a guest for the Municipal Lighting Plant meeting is present. Stein recommends another ten minutes on the current topic. DeFant: regarding the solar project, a new letter has been submitted from the Narragansetts indicating there may be up to 40 mounds they would like to see investigated. DeFant refers to the Planning Board 4.11.16 meeting on a solar zoning bylaw the Planning Board is going to sponsor: they have agreed to include language requiring future developers to reach out to tribal organizations to obtain survey and/or data about known or suspected archeological sites; the Town may want to obtain information about known or suspected sites – the tribes do not widely share their data bases as they are concerned about making sites public and the need to protect sites from rummaging. MacNicol: it would be great if permits with maps could be sent to the tribal experts for review; the problem with the bylaw wording “known or mapped sites” is that one cannot just look up the sites. DeFant: all the tribes have dedicated Tribal Historic Preservation Officers (THPOs). MacNicol: the information about THPOs could be given to towns. DeFant agrees: developers may not know whom to contact; it is easy to look up whom to contact; there is no federally designated tribe for Shutesbury – that is why guidance, at the Town level, is needed. R. Cachat states he has spoken with tribal experts – Sarah Kohler, Eva Gibovic, and Doug Harris/Narragansett – have experience researching here – it acknowledged in the Town Master Plan that the State archeological data base does not encompass most sites and that knowledge is with avocational archeologists; tribal members do not have access here – it is local people who have documents and photographs – all on public land – except for land he lives on and a small portion of the Wheelock parcel; Kohler and Gibovic estimate there may be sixty sites in the town – notes that he and Jim Cachat have cataloged three sites – of those three sites there are over one hundred traditional ceremonial properties

(TCPs) – there may also be burial sites – they have photographs of stone sites on Town property; these sites may not have been known to anyone before – some can be seen from the road and are not protected. R. Cachat: of note, the Town spent \$340,000 of CPA funds over seven years on Euro-American historic preservation – the Town is deficient in preserving Native American sites. Stein thanks R. Cachat for his information. DeChiara appreciates MacNicol’s guidance on what the town can do that is ethical and right. DeChiara notes there are upcoming slots on the Historic Commission – there are nine members all of whom are Eurocentric – there is a need to have Native American representation; the Town could consider a statute for warrant consideration; the process for proposing a CPC project can be looked at; maybe a blanket zoning acknowledgement of what is known and have a requirement to check whether there are suspected and known sites. MacNicol: the Select Board has just been handed information about suspected sites on town owned land that could be protected; as per DeFant, there will always be the issue between identifying and protecting; getting an overall perspective on what is here and prioritizing the significance of what is present in Shutesbury then consider how to protect without exposing. DeFant: getting different voices involved is important and encourages reaching out to the Nolumbeka project. Kibler thanks MacNicol for her presentation and guidance. Stein asks R. Cachat if he is available for guidance about potential sites. R. Cachat agrees. Stein thanks all residents who attended for this topic. Audio recording is discontinued at this time.

The open session is suspended at 8:08pm for a meeting of the Municipal Lighting Plant Board and resumed at 8:30pm.

2. Personnel Reviews: DeChiara’s “Proposed Annual Job Performance Review Process for Shutesbury Select Board Regarding its Direct Reports” is reviewed. Stein: the goal is to ensure there is at least an annual meeting with department heads. MacNicol: this proposal captures what we talked about relative to the gray area between job performance and evaluations; recommends review of resources that speak to how reviewing job performance is difficult if you are not working with and observing people doing their jobs on a day-day basis; advises the Board to think about how to consider job performance because the Board does not know what department heads do everyday- notes the importance of positive rapport versus evaluation. DeChiara: having an exchange will help him know more about what is going on; this is not a paper evaluation. MacNicol: the Board needs to have more contact than once/year job performance reviews. Stein suggests the role of departmental liaisons. MacNicol: you need basic information about how departments work – think out of the box – what does it mean to be the Board of Directors of a multimillion dollar corporation and your work time is the Select Board meeting; you need more contact; critiques about what is going on are fine in open session; it is a slippery slope – expects the Select Board to be conscientious about their employees privacy and morale – they are doing difficult jobs; it is important for you to put yourself in their shoes. Stein recognizes that Torres performs this function; we have a fabulous group of people who work together very well – to create a negative/hostile environment would be very problematic. MacNicol: most Town Administrators supervise all town hall employees and then some. Torres states she has authority over two positions – custodian and administrative secretary. Rowan-Stern Guest: are there job descriptions

and how are they reviewed? Stein: there are job descriptions that are updated and reviewed and are available. Rowan-Stern: when is the last time the Board has reviewed the job descriptions and performance criteria? Vinskey and DeChiara state they have yet to do so. Stein: the Personnel Board reviewed all the job descriptions in 2013; a new library staff description was created this year. Vinskey: the best thing to do is sit down with the department heads and learn about what they are doing, critiques can occur in the moment if something is not working – the Board has the right to go to any department head about an employee activity. DeChiara: the Select Board has to balance individuals with taxpayers needs. MacNicol emphasizes communication and knowing what is going on; this is a way (DeChiara’s policy) to learn about a department – it gives an employee an opportunity to share. MacNicol: this town hall runs very well; others do not run well and those Select Boards spend about 50% of their time handling employee matters; your job is to continue the atmosphere your employees have with one another. Vinskey recommends the Select Board implement DeChiara’s proposal. DeChiara: we decided we would begin with reviewing the Town Administrator and then figure out how to space the others. Stein suggests beginning reviews after town meeting. Title clarified “Periodic Review Process for Shutesbury Select Board Regarding its Direct Report Employees”. DeChiara moves and Vinskey seconds the motion to approve the policy titled “Periodic Review Process for Shutesbury Select Board Regarding its Direct Report Employees”; motion passes unanimously.

Unanticipated Topic:

1. Planning Board Solar Bylaw: MacNicol: the draft bylaw that goes to the Planning Board public hearing should be, for all intents and purposes, what goes on the town meeting warrant; substantive changes goes to town meeting; the public hearing needs to be held before town meeting votes; if the public hearing is less than 21 days from town meeting, the Planning Board needs to prepare a report as per Chapter 40A Section 5. DeChiara: currently, there is just a reference on the warrant. MacNicol: the purpose of the warrant is to warn the inhabitants what will be voted on at town meeting; all you need in the warrant is the content of the public notice; the Select Board has the right to require the final version before town meeting; a stamped draft can be made available for public review.

Discussion Topics Continued:

3. Soup Night: Plans and publicity are reviewed and finalized for the 4.15.16 event.

Administrative Actions:

1. Shared Police Chief Inquiry: The Select Board signs the letters to the Leverett and Sunderland Select Boards inquiring about their potential interest in a shared police chief arrangement.

2. Select Board Meeting Minutes:

DeChiara moves and Vinskey seconds the motion to approve the 3.22.16 minutes as amended; motion passes unanimously.

DeChiara moves and Vinskey seconds the motion to approve the 3.29.16 amendment of the 2.23.16 minutes; motion passes unanimously.

DeChiara moves and Vinskey seconds the motion to adjourn the meeting at 9:24pm; motion is unanimously approved.

Documents and Other Items Used at the Meeting:

1. Town of Shutesbury Web Site Policy
2. MGL Chapter 114 Sections 10A, 17, 18, 26, 27, & 43
3. Advisory Council on Historic Preservation: Section 106 Regulations Summary
4. Proposed Annual Job Performance Review Process for Shutesbury Select Board Regarding its Direct Reports
5. Nora T. Atkins 2.18.16 “Why Evaluate Performance?” article in *Huffington Post*
6. 4.12.16 letters to the Leverett and Sunderland Select Boards

Respectfully submitted,
Linda Avis Scott
Administrative Secretary