

Shutesbury Select Board Meeting Minutes
March 1, 2021 Virtual Meeting Platform

Select Board members present: Melissa Makepeace-O'Neil/Chair, April Stein, and Rita Farrell
Staff present: Becky Torres/Town Administrator; Linda Avis Scott/Administrative Secretary
Planning Board members present: Deacon Bonnar/Chair, Michael DeChiara, Steven Bressler, Jeff Lacy, Nathan Murphy, Linda Rotondi, and Robert Raymond
Other Town Officials present: Town Counsel Attorney Donna MacNicol, Kevin Rudden/Administrative Assessor, Mary David and Miriam DeFant/Conservation Commission, Janice Stone and Henry Geddes/Historical Commission

Amp Energy Staff/Representatives: Evan Turner, Michael Larkin, Camille Littlefield, Chris McDermott and Attorney Tom Reidy/Bacon & Wilson
Guests: Shane Bajnoci/W. D. Cows, Inc.; Marina Gurman, Mary Lou Conca, Ashleigh Pyecroft, Robert Seletsky, Diane Jacoby, Susie Mosher, Don Wakoluk, Julie Rypysc, Penny Kim, Leslie Cerier and Penny Jaques; other unidentified parties were present.

Makepeace-O'Neil calls the Select Board to order at 5:31pm.
Bonnar calls the Planning Board to order at 5:33pm.

Agenda Review: No changes are made.

Public Comment:

Michael DeChiara speaking as a member of the Planning Board: the Planning Board was not given a heads up that the solar bylaw would be on the Select Board 3.2.21 agenda; this is troubling along with the fact that the Planning Board did not receive enough notice about this meeting; how did these items get on the agenda; the Select Board is addressing Planning Board items of interest without Planning Board participation. DeChiara asks for an answer to his concerns. Torres: it is the Select Board's policy to not answer questions asked during public comment. Town Counsel Donna MacNicol asks Makepeace-O'Neil's permission to address the issues raised by DeChiara. Makepeace-O'Neil grants MacNicol permission to proceed.

MacNicol: it is important to understand that the Select Board has multiple duties relevant to different boards; the Planning Board is the special permit granting authority and will proceed accordingly; given DOER's (Department of Energy Resources) new regulations and issues around solar development, there are significant concerns for the Assessors, Select Board and other Town officials; the Select Board has every right to be involved with talking to developers and to determine if development is good for the community; the Planning Board does not have exclusive jurisdiction over development ,i.e., PILOTs (payment in lieu of tax agreements) and MOUs (memorandum of understanding); there is no reason these matters cannot be moving forward concomitantly and, hopefully, the boards will discuss concerns with each other.

DeChiara: there was no open communication/discussion; in his past experience as a Select Board member, the Board invited the other committees to attend joint meetings; in this case, other parties were invited to attend without the Planning Board. MacNicol: the management issue is distinct from Planning Board jurisdiction. DeChiara notes that he requested the Planning Board be part of this meeting in order to talk about the issues together; the Planning Board has an interest and there should be coordination; the Select Board did not take the lead in engaging

other committees. Deacon Bonnar/Planning Board Chair: Torres did invite the Planning Board to attend this meeting. Torres reports working with Bonnar, as chair of the Planning Board, to ensure he had the date right away; she is not responsible for communicating with the entire Planning Board.

Ashleigh Pyecroft asks if there will be a 3.1.21 Planning Board vote on the public-private partnership. Torres: participating in the partnership will be a Select Board decision followed by a town meeting vote. Stein: the Select Board has not had an opportunity to discuss this topic together. Pyecroft receives confirmation that there are no active solar permits before the Planning Board at this point. Pyecroft asks what the timeline is for the partnership with developers and states that she is not opposed to development however wants to see the bylaws honored. Pyecroft asks if the applicants will be asking for waivers and why; the Town should not to enter into a partnership agreement until the Planning Board special permit process has occurred and the Historical Commission has had time for their review; she is not sure why the partnership has to be considered now; the bylaw revision received resounding support at the annual town meeting; she would want townspeople to have their voice heard and appreciates the Planning Board's work.

Marina Gurman asks that Planning Board members identify themselves. Zoom "names" are adjusted to state the participants' relevant affiliations.

Discussion Topics:

1. Town Administrator Updates: None offered at this time.
2. Discussion with Amp Energy Representatives:

Evan Turner introduces himself as the representative for Amp Energy which has a lease option with W. D. Cowls for five sites in Shutesbury; he works with Amp Energy, the developer, from a site's raw land to full build. Turner receives confirmation that the meeting is being recorded and then begins reviewing the screenshared "Prospective Municipal Partnership for Shutesbury Solar Initiative March 1, 2021" (see attached). Turner introduces the Amp Energy staff present: Chris McDermott is responsible for policy and development, Camille Littlefield and Michael Larkin are part of the development team, Attorney Thomas Reidy/Bacon Wilson represents both Amp Energy and W. D. Cowls; there is also a representative for W. D. Cowls present (Shane Bajnoci). Turner references the summary on the Town website "Letter from the Selectboard about the Solar Proposal from AMP published January 22 2021" and notes that it is mostly accurate, however, the substation utility connection deadline is more than one year away. Per Turner, the five sites present challenges in light of the solar bylaw; with the changes in the State regulations, there is a better way, working cooperatively with the host town to own or operate the site via a "renewable manager" position; doing so gives the developer "HOV" (high occupancy vehicle) lane treatment with the State; the goal is to have a more cooperative design process. Turner: Amp Energy is a Canadian based global developer and is looking to be an owner/operator for 35 years.

Turner continues his review of the screenshared document: There are five sites located in relation to the utility substation in the west of Town – 1. Montague/Carver is a large site of 200+ acres; 2. the Leverett/Montague site is located in the south corner of Paul C. Jones Working Forest; 3. the Pratt East site is adjacent to the Walter Jones Working Forest and within the Wheelock parcel; 4. Pratt West is near the potential new substation and 5. Pratt South has the Poverty Mountain APR (agricultural preservation restriction) to the west; the Baker site was discontinued because the

number of wetlands did not meet the profile. The other project sites are near to one another and are large enough to qualify for the current SMART (Solar Massachusetts Renewable Target) regulations; the goal is to add to 45MW/dc; the more megawatts, the stronger the economics are over time. The financial “Direct Benefits” chart on page 10 is reviewed; environmentally, the proposed plan is effectively ten parts forest to one part solar which overwhelms the spirit of bylaw (4:1 ratio); regarding carbon reduction, the panels are far superior to trees plus the ecology of the pollinator meadows. Shutesbury would have responsibility for local operations; digital operations would be done by Amp Energy or another specialist; the new regulations encourage operations by municipalities; the Town may train a current employee or hire a renewables manager; there is a benefit to having the local town take care of the array. “Operations consist of”, page 13 is reviewed; local staff work would have three components: property, solar, and third party coordination.

Turner’s review continues: the bylaws have a number of features that will be difficult to apply through; these de facto prohibitions could lead to a litigious route as there are a number of things that would not stand up during an appeals process; Amp Energy wants to meet the spirit of the bylaw. Referring to the map on page 16 and the restriction on large-scale solar in the Rural Residential district, “not allowed on the yellow”: in case law, access is a “use” therefore this is a quasi de facto prohibition; a bylaw can reasonably regulate not prohibit. Other issues are access road length (Section 8.6-2) and Section 8.10-3. B carbon mitigation, the Walter Jones Working Forest does above and beyond the requirement for carbon mitigation; regarding habitat impacts (88.,10-7.C), this is private property and pollinators cannot be required; and 88.10-3. J, the limit to one site per area may not be allowed as it is a de facto limit to parcels. Next steps: we are not proposing a vote now; this is an opening to a conversation about how to work together; we would like to side step bylaw issues and come to a tripartite agreement: Cowls’ conservation efforts, Amp Energy, and a municipal partnership; the partnership gives the Town power. Regarding the non-binding MOU, it is up to the Town what they will work with Amp Energy on; there is no change to the Conservation Commission regulations and process. The proposal is to work together on the design process; the HOV lane vs. a litigious process. Turner proposes Planning Board site plan review versus the special permit process; we do not want to get close to litigation; the partnership model is a way to provide the Town with a better economic return; rather than making more pain than benefit, the partnership provides community input that is constructive for a right fit project; the contract may go longer than 20 years; this is an opportunity to build generational revenue and avoid the 2.5% tax levy limit. Shutesbury is 95% forest and for 1% of the Town, solar is a good use of land.

Attorney Thomas Reidy of Bacon and Wilson representing Cowls and Amp Energy: Turner has made a comprehensive presentation; he is excited for the discussion to begin.

Chris McDermott/Amp Energy policy and strategy manager: the public idea is recent and there is no guidance in the regulations about what a public-private partnership will look like; the MOU is needed in order to show DOER how the regulation is being interpreted and to provide initial approval prior to construction; the MOU is needed early on to ensure the partnership is on the right track. Turner: the MOU will show DOER what we have in mind; trailblazing a better way and to give the town an opportunity to have input.

Farrell to MacNicol; the bylaw was passed by the Town and approved by the Attorney General’s office with qualifications in the approval that may need attention. Farrell to Turner: why do you

think you can litigate if the Attorney General's office approved the bylaw? Turner; the Attorney General's approval does mean the bylaw is in concurrence with the Dover Amendment (MGL Chapter 40A §3). Reidy regarding the letter from the Attorney General: the bylaw is superficially okay but needs to be watched as to how it is enforced and that it is not in conflict with Dover, i.e., access; when it is applied there could be issues. Farrell to MacNicol: how strong is the bylaw? MacNicol: it is not as black and white as Reidy and Turner state; the Attorney General's review is to be sure the bylaw is legal and does look at the Dover Amendment which states that towns cannot unreasonably regulate solar installations; Dover is applicable to unreasonable regulation of solar; for instance, there is a footnote, that allows access to the backland or a simple subdivision road could be used because it is not considered a "use" like a driveway is; yes, Shutesbury's bylaw is strict however, it is not black and white that it will be struck down in court. MacNicol asks Turner and Reidy to explain why site plan review is being proposed versus the special permit process as required by the bylaw. Turner: site plan review is an idea to discuss though would require a change to the bylaw; he does not want to go down the appeal route with the special permit process therefore suggests allowing public-private projects to apply by site plan review. MacNicol confirms that Turner is suggesting that part of the partnership would be a change in the bylaw for partnership specific arrays. Turner: yes, it requires a town meeting vote. MacNicol reminds the Select Board that there is a huge waiver provision in the solar bylaw; as long as the concepts are met, almost all the concerns Turner raised in his (2.9.21) email could be waived; there is no guarantee a change the bylaw would pass at annual town meeting; the Planning Board is very good at their process, i.e., how the Wheelock project worked out; there are common goals, forest and money; how do we get there while maintaining the values of the Town.

Stein: change is difficult; one of the proposed sites is in her "backyard"; she is intrigued by the prospect of a significant reduction in the tax rate and more funds for other needs as well as the Town being a large provider of green energy; Cowls has been a good steward of their land and is conservating 5,000 acres of preserved woodlands; this is an opportunity for us. Makepeace-O'Neil agrees that Cowls has been a good neighbor and notes the need to diversify income for the Town. Stein notes the need to consider the greater good. Farrell to Turner regarding his observation about the need for a correction to the summary on Town website: there is no interconnection deadline? Turner: there is no immediate need to pay the utility; the grid continues to push back on their decision dates; the payment noted in the summary is now due in 2022. Turner to MacNicol: as a developer responding to the special permit process, any two Planning Board members could "not want" a project and there would be an appeal; the 1,000 foot driveway length limit cannot be waived and there is concern about needing multiple waivers. MacNicol: with site plan review, the Planning Board has no discretion as they have with a special permit; with a partnership, the Town will have a say in how a project is developed. Stein: regarding operations management, the Town is running our own broadband company; we have the capacity to run things in our town; we are the type of community that could rise to the occasion. DeChiara to Stein: the Town subcontracts with Crocker which comes back to why we are having a meeting now, Turner is building momentum that litigation will cost the town money and the partnership gives the town money; if signed, what implicit commitment is the MOU giving; "Amp is developing" and has the intentionality of developing; Turner's mention of the HOV lane, the partnership is for Amp to have a smoother ride. DeChiara does not see it as public-private partnership, he sees it as a contract; there is an "adder" that could be split with the

Town. MacNicol would want significant changes to the MOU and would make it very clear that it is not binding, then we can talk.

Turner regarding the “HOV” lane: as a public entity, there are some exemptions to the regulations, i.e., not having to wait for an interconnection allocation. DeChiara: Amp would be contracting with Shutesbury. Turner: the Town would pick how to do the work; the contract represents certainty for value; DeChiara’s idea for the “adder” cannot work; more certainty for Amp means we can offer more to the Town; through the public entity, someone benefits; the money stays in Shutesbury where the projects are; this is a better way. DeChiara: broadband is managed through a municipal lighting plant; there are imaginative ways to allow partial ownership. Turner: DOER will not allow a partial ownership process; as solar becomes more prevalent, it will be helpful to have a renewable manager; Amp is interested in supporting the Town. DeChiara asks Turner to email the Planning Board with details about the “HOV” lane. Turner will consider DeChiara’s request. Turner: broadly speaking, there are exemptions from BioMap layers; a public-private partnership is the favored manner. MacNicol: does the “HOV” allow a bypass of the bylaw? Turner: no, it may allow faster allocation. McDermott to Farrell’s question: the schedule is to take the signed MOU to DOER in April where it will be processed for initial DOER approval; DOER will give final approval after construction. McDermott to Farrell’s next question: there are prerequisites before filing with DOER, i.e., the utility interconnection agreement; the reason for the MOU prior to filing (with the Planning Board) is to see if DOER likes the arrangement and, because the MOU is for a public project, Amp can apply for a SMART reservation and reserve the entire tariff sooner than otherwise. Farrell to Turner: the MOU has some design implications. Turner: we want to see if there are “legs”; this will take time and the process could run in parallel; the HOV lane gives more certainty. Bressler to Turner: is what makes this public- private partnership hiring Shutesbury to maintain the site? Turner: yes. Bressler: this is a thin private-public partnership; we are the hired help. Turner: to an extent, there will be more intimacy on the development side; yes, it is an operations contract. Bressler: how is this different from Planning Board special permit conditions? Turner: it offers more flexibility and a more cooperative mindset; better treatment for one another; we will want to do the right project that fits. McDermott: there will be more financial benefit for Shutesbury by Amp taking some of the DOER subsidy and giving it back to the Town.

Stein asks if there are any like projects in existence. McDermott: there is no precedent; Shutesbury is unusual in that there are so many arrays tied to it; there will be enough work to support a full time employee. Turner: there will be more cooperative value for everyone. DeChiara asks MacNicol why a PILOT is being discussed now when for the Wheelock project, the Select Board did not discuss the PILOT until the design was certain. MacNicol: the Select Board is not talking about a PILOT; the MOU is an understanding about working together; there are figure samples in the MOU and in the slides for the operations management contract; we are not close to considering figures for the positions; there are a lot of financial spreadsheets to be done; the estimates are samples; we are not entering into a PILOT discussion until we know the size, etc.; the MOU could be done early as long as we are not pinned down to figures we are not sure about. DeChiara: why would the Town want to look at figures? MacNicol: the Select Board looks at what the potential benefits may be for the Town; it is not premature to think about, it would be premature to agree.

Marina Gurman/resident: a benefit would be more income and potentially lower taxes; there are different sets of information, what happens if taxes are not decreased - the middle class would

get smaller and some residents would move away then there would be fewer humans and the town stays forested; if taxes are lower, there will be more humans and this is how humans deforest our planet. Gurman suggests expanding the questions being asked; raises concern about race and class issues and the fact that she might not be able to stay in Shutesbury if taxes are not lowered. Gurman notes that there are choices and that from a different angle, why should we consider removing trees when the 1% are in control; we need to demand sustainable technologies and not succumb to grief; there are ways to be compassionate.

Kevin Rudden/Administrative Assessor referring to Turner's slide about PILOT values: until we see what is approved, it does not make sense to consider PILOT values and there are questions about how the PILOT numbers were arrived at. Torres: Amp needs to see if the public-private partnership is viable and the Town needs to provide information to residents; we need to sort through the information in order to fully evaluate the partnership proposal. Farrell: what happens if all five arrays do not get approved; there are economies of scale; what would be the impact on SMART participation. Turner: there is not a clear answer; for the larger number, there would be an upgrade to the substation; a small number would use the existing substation; there is probably some threshold; the most dangerous would be if three are approved and we need to rebuild the substation; we would need at least 4 out of 5 sites because the substation costs are substantial; we need to get to at least 40mW, nearing 50mW, more solar on the same footprint. Steve Bressler asks Turner how long he expects to be in his role with Amp Energy. Turner: typically, from bare land to construction; management will be done by Amp Energy who is involved now.

Turner regarding next steps: the Select Board is in a position to work on the MOU; Amp will to cover some of MacNicol's legal costs; he will continue to work with Reidy, McDermott, MacNicol and the Select Board. Stein affirms the need for MacNicol to be involved. Turner: this is the start of the discussion. MacNicol suggests a Select Board executive session to negotiate the contract/MOU. Farrell states she is reserving judgement on the MOU. Stein agrees to an executive session. Penny Kim asks when town meeting will vote on the MOU. MacNicol: the MOU is not sufficiently binding or of a duration to need to go to town meeting; a PILOT agreement would and a contract, if realized, would go to town meeting along with any zoning bylaw amendments; a referendum to see how voters feel could go to an early town meeting. Stein and Farrell agree with Makepeace-O'Neil's suggestion to hold an executive session on 3.16.21. DeChiara asks for transparency as the Select Board develops the MOU and that the Select Board prioritize putting iterations of the MOU on the Town website. DeChiara asks MacNicol about Turner's proposal to contribute to MacNicol's legal fees and whether doing so could be perceived as a conflict of interest. MacNicol: a proposal to contribute happens fairly frequently, i.e., consulting fees; the funds would go into an escrow account and Amp Energy would have no control over how legal time is used. Diane Jacoby/resident asks about the useful life of an array. Turner: 25-30 years; a decommissioning agreement will be needed; in year 20, the panels could probably be reskinned; the Planning Board could ask to have the surety bond reset at some frequency. Rudden: NextEra (Wheelock solar site) has a decommissioning agreement and, in their rental agreement with Cows, there is wording about decommissioning to protect the property owner. Makepeace-O'Neil thanks Turner for his presentation and the other contributors as well as the public for listening and making comments; the public may email other thoughts to the Select Board.

At 7:29 pm, DeChiara moves and Bressler seconds a motion to adjourn the Planning Board. Roll call vote: DeChiara: aye, Rotondi: aye, Murphy: aye, Bonnar: aye, Bressler: aye, and Lacy: aye; the motion carries.

At 7:30 Stein moves and Farrells seconds a motion to adjourn the meeting. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O'Neil: aye; the motion carries.

Documents and Other Items Used at the Meeting:

1. "Prospective Municipal Partnership for Shutesbury Solar Initiative March 1, 2021"
2. "Letter from the Selectboard about the Solar Proposal from AMP published January 22 2021"
3. 2.9.21 Turner email "MOU and revenues for Amp solar development in Shutesbury"

Respectfully submitted,
Linda Avis Scott
Administrative Secretary