

Shutesbury Select Board Meeting Minutes  
March 4, 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  
Other Town Officials present: Police Chief Dan Fernandes, Police Officers Marcus Johansson, Kristin Burgess, and Linda Newcomb; Tessa Dowling/Land Use Clerk, Susie Mosher/Finance Committee, Steve Sullivan/Regional School Committee, Henry Geddes and Mary Lou Conca/Historical Commission, Miriam DeFant/Historical & Conservation Commissions, Grace Bannasch/Town Clerk, Michael DeChiara, Jeff Lacy and Nathan Murphy/Planning Board and Peg Ross/Personnel Board  
Guests: Kate McConnell, Veronica Richter, Elaine Puleo, Taylor Boudreau, Julie Rypysc, Don Wakoluk, Penny Kim, Allen Hanson, Joan Hanson, Robert Seletsky, Marina Gurman, Ziporah Hildebrandt and unidentified participants in attendance

Makepeace-O'Neil calls the meeting to order at 5:33pm.

Agenda Review: No changes made.

Public Comment:

1. Michael DeChiara: during the last year and a half, the Town obtained and worked with a Municipal Vulnerability Preparedness (MVP) planning grant; Planning Board members Nathan Murphy and DeChiara are planning to attend an upcoming MVP action grant workshop and may consider applying for an action grant to hire a consultant to integrate MVP planning into the Master Plan. DeChiara will let Torres know what is learned at the workshop.
2. Elaine Puleo: a group in Town is working on an antiracist platform and wishes to bring forward the need for a more welcoming statement on the Town website and in having information in different languages considered; the group is seeking guidance on next steps. Torres: such a request would need to come before the Select Board as a change of policy may be needed and to determine which languages might be used. Makepeace-O'Neil recommends sending an email with the group's thoughts to the Select Board along with consulting the Web Communications Committee about what might be possible.
3. Steve Sullivan, who joined meeting after the public comment period ended, will email his public comment to the Select Board.

**Discussion Topics:**

1. Police Study Committee Announcement: The "Police Study Committee" announcement is reviewed by Select Board. Makepeace-O'Neil explains the decision to create a charge which includes significant recommendations for the Committee and that the announcement requesting letters of intent from candidates for the at-large positions. Torres will post the announcement on the Town website's homepage with a link to Select Board page where the Committee's charge will be posted. Letters of intent will be due by noon 3.15.21 and are to include pertinent background, relevant experience, and the applicants' interest in the topic.
  - Farrell moves the Select Board approve the "Police Study Group" announcement; Stein seconds the motion. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O'Neil: aye; the motion carries.

2. Candidate for Police Academy: Police Chief Dan Fernandes: over the last 2.5 years, the goal has been to find the right officers to “fit Shutesbury’s mold”; in the search for part-timers last year, the need for female officers was identified however, before applicants were interviewed, it was decided that we could not hire just because of gender. Fernandes: there were two applicants in the pool; when Kristin Burgess was interviewed it was clear she was the person for the job; it was lucky to find someone highly qualified and who has shown through her communication and empathy that community policing is alive and well in Shutesbury.

Per Fernandes, the goal is to have two full-time officers and Officer Burgess is the best person to fill the additional full-time position; he has attended calls with her and has the utmost confidence in her work; overall, there are only 11.6% females in the police force; Burgess and Johansson level each other out and make a great team. Makepeace-O’Neil confirms that Fernandes is requesting that Officer Burgess attend the full-time academy. Fernandes: yes, in the class that starts in September/October of 2021; the new POST (Police Officers Standards and Training) legislation eliminates part-time officers; the Town will need to consider these changes and invest wisely in staff who will hold the best interests of the Town. Fernandes continues: having Burgess at full time will be an asset; right now, she is working 32hours/week and would be moved to 40hours/week; this full-time position is already budgeted so there will be no change to the budget; regarding the Department’s budget, the \$10,000 saved this year (FY21) covers almost all the cost of sending someone to the academy.

Stein: with one less person doing shifts, having an officer at the academy puts an additional stress on the Department plus the cost to Town; Officer Johansson is an example of how well the academy training can work out; the candidate must sign an agreement to work for the Department for five years after graduation, if not, they must pay a prorated portion the academy’s cost to the Town. Burgess states that she is completely humbled by Fernandes’ statements and thankful to be working in a great department and is willing to sign what is needed because she would like to continue her career in Shutesbury. Farrell: understands that the history of sending officers to the academy and then having them leave for a better job is also a FinCom concern; it is good to hear Burgess’ interest in staying in Shutesbury because the Town makes the salary commitment during academy training and, if they leave, the officer’s only obligation is the academy fee; this is a significant Town financial commitment. Burgess adds that she has worked for another department and knows what she has here and is very lucky to be working in Shutesbury.

Torres to Farrell’s question: this is an initial conversation; the Select Board can decide when to vote and will be meeting with the FinCom during the Board’s 3.16.21 meeting. Torres continues: Fernandes will address the hiring of a part-time officer later in the meeting; during the study period, both Burgess and Johansson will be available to cover shifts; Fernandes is looking strategically at how to keep the Department functioning; the application paperwork needs to be processed to meet the goal for Burgess to attend the academy in the fall of 2021 and return to the Department later in the year; the stability of the Department needs to be maintained while the study is being conducted. Fernandes: all along, the goal has been to get Burgess to the full time academy; she has proven herself.

Torres: during a recent Mass Municipal Association legislative update, the POST legislation was discussed including what will happen regarding part-time officers; working groups to

decide how the legislation becomes reality have yet to be formed and may not have guidance until the end of the year; waiting on this guidance is not feasible for Shutesbury therefore she supports having our two principal officers be in good standing. Stein: the level of risk has not always unfolded positively; we will need to take Burgess at her word. Makepeace-O'Neil and Stein support voting during the 3.9.21 meeting. Farrell recommends waiting to preview the decision with the FinCom. Makepeace-O'Neil recommends the item be on the 3.16.21 Select Board agenda to discuss with the FinCom before considering the COLA (cost of living adjustment).

3. AMP Energy Municipal Partnership Follow-up: Makepeace-O'Neil: the 3.1.21 discussion was good and included a lot of information to think about; the partnership sounds beneficial in some ways and in other ways, there are cons. Stein refers to the decision to renovate the elementary school thirty years ago: there is risk in change; what is most fearful to her is whether Shutesbury will be gobbled up by a huge organization or whether this is an opportunity for our community; we would be remiss in not pursuing the next step; the Planning Board will absolutely have their process; this gives Shutesbury an opportunity for income to reduce taxes; she loves the woods and this will definitely change places; we need to move to the next step. Makepeace-O'Neil notes that she has had similar thoughts and that her property abuts the Wheelock parcel (location of the existing solar farm); what other options are there for income, i.e., parking lots, stores; the solar panels will still be surrounded by woodland; we need to see how the next steps play out. Farrell has no comments at this point.

Torres: for clarity, the solar bylaw will be discussed at 7:10pm; there is a lot to learn about how the municipal partnership might work; she will investigate similar numbers and whether it is better to hire our own employees or to subcontract. Torres to Stein's question about Wheelock site management: there has been no maintenance for over one year; the special permit allows for only annual mowing; the growth of wildflower meadows under the solar panels are not flourishing as hoped due to the woodchips laid down to deal with mud; landscaping maintenance depends on the special permit conditions.

Farrell: "partnership" is a misnomer; Turner presented the "partners" as equals and we are by no means equal; Amp Energy is looking to contract with Shutesbury for maintenance; we would be getting paid for services that have to be performed by someone not currently on the payroll; there is no profit sharing therefore it is not really a true partnership; Amp is looking for us to hold hands and give them the streamlined approval process they would like. Farrell continues: as (Town Council) MacNicol mentioned, Amp is looking for the Select Board to execute a MOU (memorandum of understanding) which, according to MacNicol, would be non-binding; there is a process that other Boards need to have and the Select Board should not get too far ahead of the Planning Board.

Stein: not signing a MOU would not preclude Amp from moving forward; she would like to understand the municipal partnership better. Makepeace-O'Neil: per MacNicol, the MOU is non-binding and does not guarantee the partnership. DeChiara: MacNicol would want to create a different document; the Wheelock special permit required annual reports to the Franklin County Cooperative Inspection Program Building Inspector and the Planning Board however, none have been submitted to date. DeChiara to Stein: the Select Board is focused on the MOU; if the Select Board says no, there is no solar; the MOU is about the partnership. DeChiara supports Torres' research; the "partnership" is a spin job; regarding the SMART "adders", the developer gets more for doing certain things; becoming a public entity, the

benefits double as of April; by having a contractual agreement, Amp will be making more money. DeChiara continues: if you negotiate, go in hard and actively negotiate for more money; by having an agreement with the Town, the State provides Amp with more beneficial treatment, i.e., siting; if you go into the agreement, they get a huge benefit; Amp is not being magnanimous. Makepeace-O'Neil: there is more research to be done. Miriam DeFant: the solar industry is highly complex, i.e., the developers use of consultants to shepherd projects; she suggests the Town consider hiring a consultant to assist with research. Torres: consultants have value though, the use of a PILOT consultant in the prior solar round was not of benefit to the Town. Makepeace-O'Neil: as more research is needed, this item will continue to be on the agenda.

4. Appointment Request: Torres: Henry Geddes/Historical Commission Chair requests the appointment of Ezzell Floranina to the Commission. Geddes confirms that the Historical Commission voted in favor of appointing Floranina whose grant writing experience will be helpful in seeking funding for Commission projects and that she has experience in the creative use of educational materials for performances. Miriam DeFant/Historical Commission notes that Floranina wrote the community play for the 250<sup>th</sup> anniversary celebration.
  - Farrell moves and Stein seconds a motion for the Select Board to appoint Ezzell Floranina to the Historical Commission. Roll call vote: Farrell: aye, Stein: aye, and Makepeace-O'Neil: aye; the motion carries.

At 6:30pm, Community Preservation Committee members Rita Farrell, Michael DeChiara, and Linda Avis Scott leave this meeting to attend the Community Preservation Committee public hearing. Torres takes the minutes for agenda items #5 and 6.

5. Part-time Police Officer Appointment: Chief Fernandes requests the Selectboard appoint Taylor Boudreau, from Granby, to a part-time position in the Shutesbury Police Department to work one to two shifts per week. Boudreau has just completed the part-time academy, is interested in community policing and believes that the police are there to help people. Boudreau studied criminal justice for a year and a half at Holyoke Community College and for the last five years she has run her own dog training business.
  - Stein moves and Makepeace-O'Neil seconds a motion to appoint Taylor Boudreau as a part-time Shutesbury police officer. Roll call vote: Stein: aye and Makepeace-O'Neil: aye; the motion carries.
6. Regional Assessment: Torres reports on a conversation with Andy Steinberg/Amherst Town Council during which he asked that the Shutesbury Select Board and Finance Committee accept the 55% statutory assessment method for this year and requested a working group meet over the summer before more advancement toward the statutory method is considered; Steinberg also said that his comments about dissolving the Region did not come from him, even though he made them, but he in fact was representing other Councilors' points of view. The Select Board will join the Finance Committee for a discussion on the regional assessment method prior to the Regional School Committee's vote on 3.16.21. Steve Sullivan, Shutesbury's representative to the Amherst Pelham Regional School Committee said that while Pelham is willing to go to the 65% statutory method, Leverett wants to go backward; it is unlikely that Amherst will agree to anything above the 55% method. It is noted that Amherst's complaints to the Region are about the cuts to the Regional budget, and

the fact that Amherst officials are not willing to go above the 1.5% budget increase requested this year.

At 7:10pm, Farrell, DeChiara, and Scott rejoin the meeting.

7. Attorney General's Response to 2020 Solar Bylaw Amendments: Per Grace Bannasch/Town Clerk, the 11.4.2020 letter from the Attorney General is posted on the Town website ("Shutesbury Annual Town Meeting of June 27, 2020 – Case #9829). Torres: the majority of the Attorney General's (AG's) comments are relative to the solar bylaw (Zoning Bylaw Section 8.10 "Ground-Mounted Solar Electric Installations"). Farrell notes the AG's reference to General Laws Chapter 40A Section 3: "No zoning ordinance or by-law shall prohibit or unreasonable regulate solar energy systems ...": Amp Energy referenced this; does our bylaw, as approved by the AG, unreasonably regulate; can this question be answered or does it wait until a permit decision is appealed? DeChiara, referring to Chp. 40A §3: this applies to all towns with solar bylaws; the original intent was that towns cannot regulate residential rooftop solar; in 2014, DOER came out with a model bylaw and, recently, the Pioneer Valley Planning Commission came out with a handbook and both reference Chap. 40A §3, which states that towns cannot unreasonably regulate solar. DeChiara continues: he has the impression that Evan Turner/consultant for Amp Energy is saying that Shutesbury is doing something out of sorts when any town's solar bylaw is regulatory; just last year, a developer questioned the ability to require a PILOT and the law was revised to allow PILOTs.

Stein: the Attorney General's office never said no, however, recommended that the Town consult with Town Counsel in several places; why would it not be in our best interest to have the bylaw and the AG's letter reviewed by legal counsel. It is noted that Town Counsel MacNicol reviewed the proposed bylaw amendments with the Planning Board. DeChiara: the original 2015 bylaw and the two subsequent sets of amendments have been reviewed by the Attorney General's office; Amp Energy wants the Town to change the bylaw to create a municipal "use", however, there is not enough time to prepare such an amendment before annual town meeting and then there is the time needed for the Attorney General's approval. Farrell wants to know the relevant case law and suggests consulting a land use attorney to research the outcome of any litigation. Torres: per Town Counsel MacNicol, it is normal for the AG to highlight concern for the specific section; the case law is slim and it is not known if these areas will stand up to a challenge; it seems the highlighted sections may be open to challenge. Torres: MacNicol has used the term "onerous" regarding some portions of the bylaw, for example, the use of the term "or suspected" in Section 8.10-4; legal challenges could arise from hinging approval on "suspected"; perhaps MacNicol or, per Stein and Farrell, a land use attorney could review the AG's letter.

DeFant: past discussions noted that there is a provision in the bylaw that allows for flexibility via waiver. DeChiara responds to Torres's question about the waiver provision: the developer must submit a request for a waiver in writing during the public hearing process and which would be considered during the same vote as that required for the special permit, a 2/3rds majority. Scott: the waiver requests are part of the special permit public hearing process and are made while the public hearing remains open which can be continued over a period of several Planning Board meetings. DeChiara: the waiver requests must be made prior to closure of the public hearing. Torres: the developer may not know if the waivers will be granted until they are through the process. DeChiara: towns are risk adverse; as an

alternative, the Select Board could make changes if there is concern about the solar bylaw; the developer wants a change in the bylaw however, changes will not happen on a timeline that satisfies the developer. DeChiara does want to see the bylaw removed however, if the Select Board is concerned about being sued, they could propose removing the bylaw; another choice is to amend though the problem is by whom and the time needed for vetting and a public hearing in time for annual town meeting.

Stein agrees with Farrell's suggestion to have a land use specialist review the AG's letter and the bylaw to further protect the Town. DeChiara: the next logical step would be further amendments and the additional steps toward approval. Stein: the legal review would assist in determining if additional amendments are needed. DeChiara: annual town meeting supported the 2020 amendments; another lawyer may recommend something that is narrow and may not reflect the values of the Town. Torres suggests the Select Board meet with the Planning Board to review the bylaw section by section before requesting an outside legal review. Stein recommends including MacNicol in this meeting. Farrell and Makepeace-O'Neil agree with Torres' suggestion. Makepeace-O'Neil: doing so will ensure the bylaw meets the Town's needs and that the Boards understand any legal risks. DeChiara endorses the idea for a joint meeting and clarifies that what will be discussed does not address what Amp Energy is asking for at this time. Torres: if a joint meeting with the Planning Board is held, it will be to learn the Planning Board's response to that issue if the Select Board wants to do so.

Makepeace-O'Neil: it will be good to hear the Planning Board's response to Amp Energy's requests. Stein: MacNicol's guidance will be helpful. Torres will confer with Deacon Bonnar/Planning Board Chair about the idea for a joint meeting. DeChiara: connecting the MOU and the bylaw may inform about what a municipal solar category might look like. DeChiara to Torres' question: Turner wants a new "use" category for municipal solar; if we were to go in that direction, what would we want it to look like; he is pitching as benefit for Amp however, they are connected conceptually. DeFant: with a provision for municipally owned solar, we could have our own solar "by right". DeChiara: it is not a category in the solar bylaw, it is in the overall zoning bylaw; we do not have the characteristics of municipally owned solar.

Don Wakoluk: a lot of the objections to solar farms are about the taking of forested land; an interesting possibility is that the MOU provides an opportunity for an "ask", i.e., requesting that Cowls set up "pro-forest" land, an opportunity to get something that assuages the division. DeChiara: most people are talking about money; if we had enough money, the Town could have municipal solar; maybe all the energy does not have to be tied into the grid and could be directed to the Town in an emergency; if we do this, what might the offshoot be; we need to know what we want to get out of such an agreement. Marina Gurman notes that she is lacking information however, thinking about her objections to chopping forest for solar, another option, is a question regarding the AG's letter and reference to Chapter 40A Section 3 (No zoning ordinance of by-law shall prohibit or unreasonable regulate...except where necessary to protect the public health, safety or welfare."); at this point, given the information she has, there is a need for further investigation about who determines what public health is; chopping down trees does not seem like it protects public health; what could we get in exchange, i.e., energy coming to the Town. Ziporah Hildebrandt: along the lines of Gurman points, she has questions about the science and the tradeoff between the forest and solar energy; there were no citations in the power point (3.1.21 Select Board meeting); and in Cinda Jones' (W.D. Cowls, Inc) letter in the ecricket (online forum), she stated that solar is

green even with chopping down trees. Stein: carbon sequestration is offset by the gain in solar energy. Hildebrandt: carbon is present in living soil and is moving all the time; what is Amp Energy's science based on. Geddes offers to submit relevant research from *Nature* and the US Forest Service verifying that trees provide just a portion of the carbon sequestration; there is 2-3 times more carbon in the soil and disturbances release this carbon. DeChiara acknowledges that he does not know the science however, if a developer gets public entity status, they get to automatically be in the SMART Category 1 (the best category); even though building on forest land is discouraged, being in Category 1 as a public entity gives them a ticket to develop on forest land. Hildebrandt: what is the environmental impact on neighbors, i.e., electromagnetic, of the substation upgrade? Makepeace-O'Neil: no information on impact is available yet; to carry the load, the system must be upgraded. Farrell: the Select Board does not have this kind of detail. Hildebrandt: how will the mitigation for displacement of habitat be handled; what is the impact of fencing? Farrell to Hildebrandt: these questions cannot be considered by the Select Board. DeChiara: these questions may be asked during the Planning Board public hearings; no applications have yet to be submitted.

Bannasch wishes to ensure the public that when special permit applications are submitted, they are available in the Town Clerk's office for review, however because Town Hall is closed to the public, the applications will be posted on the Town website so they are as accessible as possible.

Continue #6 Regional Assessment Formula: Torres: because there will not be any further four town meetings, the Select Board may wish to write a letter to the Regional School Committee prior to their vote; the Select Board and FinCom could discuss if they want to send a message during their joint discussion of the topic during the 3.9.21 FinCom meeting; the School Committee will also be asked to attend on 3.9.21.

Administrative Actions:

1. Select Board members will sign vendor warrants totaling \$98,577.89.
2. Select Board members will sign payroll warrants totaling \$103,335.30.
3. Consideration of the 2.23.21 minutes will be done at a future meeting.

At 8:07pm, Farrell moves and Stein 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. Police Study Committee Announcement
2. Memorandum of Agreement between Dan Fernandes and the Shutesbury Selectboard
3. 2.1.21 email from Ezzell Floranina "Interest in opening in Historical Commission"
4. 11.4.20 letter from the Office of the Attorney General regarding "Shutesbury Annual Town Meeting of June 27, 2020 – Case #9829"

Respectfully submitted,  
Linda Avis Scott  
Administrative Secretary