

Shutesbury Conservation Commission Meeting Minutes
December 10, 2020 Virtual Meeting Platform

Conservation Commissioners present: Penny Jaques/Chair, Robin Harrington, Miriam DeFant, and Liam Cregan, Mary David

Staff present: Tessa Dowling/ Land Use Clerk

Guests: Matt Boroweic, Mike Petrin, Mark Stinson, Janice Stone, Maria Firstenberg, Emily Stockman, Don Wakoluk, Mary Lou Conca, Richard and Gerri Strangman

Jaques calls the meeting to order at 7:01pm.

Statement relative to conducting virtual meetings following the Governor's restrictions on public meetings is read into the record by Dowling.

At 7:04pm, David moves and Harrington seconds a motion to approve the 11.12.20 meeting minutes. Roll call vote: Cregan: aye, David: aye, DeFant: aye, Harrington: aye, and Jaques: aye; the motion carries.

Site Visit Follow-up:

- Old Peach Orchard CR Monitoring Visit

On November 6, 2020, Dowling, David, Cregan, and Harrington visited the Old Peach Orchard Conservation Restriction, guided by Penny Jaques and Cliff Read, the President of the Old Peach Orchard Homeowners Association.

Dowling has shared a draft of the CR Monitoring Report to the Commission. Jaques had four edits for the report: 1) The garden mentioned in the report is not active and the fence around it has been removed, 2) Mowing of the field within the CR is mowed on a monthly basis during the summer to stop the spread of bittersweet, 3) The sugars maples that might be tapped are located along the field edge, and 4) strike the information about trimming trees along Old Peach Orchard Rd because it is not part of the CR.

Cregan has created a map showing the CR and that track the Commission took walking the property. Dowling saw Cliff Read at the Town hall and Cliff explained that the trails on the CR have been mapped using Strava. Cregan confirms that he can use Strava files and create a map of the trails. Jaques will connect Read and Cregan to discuss creating trail maps.

- 37 Shore Drive/Brooks: Tree cutting request

Commissioners were not able to locate the trees that Brooks wants to cut down. Dowling has been in communication with Brooks asking him to clearly label the trees that he would like removed. The Commission will organize another site visit.

New Items & Updates:

•Kestrel Land Trust Robert Frost Trail Survey

Per Cregan, Kestrel Land Trust are interested in hearing from towns about how they feel around managing the Robert Frost Trail. All Commission Members can fill out the survey. Dowling will forward the email with the Survey link to everyone.

•Changes to Covid-19 Legislation

Per Dowling, Governor Baker has suspended the need to continue or open hearings until after the emergency order was lifted. This legislation was changed so that Conservation Commissions need to continue processing applications as of December 1, 2020.

- Neighborhood Outreach Grant (UMass Extension/Mt Grace Land Trust)

Dowling read the description of the Neighborhood Outreach Grant from UMass Extension's Mass Woods e-newsletter. The grant supports efforts to educate neighbors about land conservation. Dowling checked, on Jaques's request, whether the grant could be used for a pollinator garden on state land, but was told by UMass Extension that that type of project would not be a good fit.

Stone asks who can apply.

Per Dowling, towns or groups of landowners can apply.

- South Brook Conservation Area: intern & mapping

Jaques as submitted a request to use CPC funds to create a trail map for South Brook and post signage indicating what trails are too wet for use by mountain bikers due to erosion concerns.

Per Stone, snowmobiles are interested in using the trails.

Per Jaques, more concerned about impacts from ATVs than snowmobiles.

Jaques updates the Commission that she has been contacted about a request to create a trail specifically for mountain bikers at South Brook but has not seen a written proposal. The Commission should vet the project.

- Top of the Lake Conservation Area: fence installation

The fence has been installed and the DPW has installed stone steps on the bank as a stable canoe launch. UMass students planted pollinator friendly plants on site.

7:30pm Continue Public Hearing for ANRAD at Map 16 Lot H-151/Wightman

Wightman, represented by Nitsche, has submitted an ANRAD for the 18-acre lot H-15. The wetlands were delineated in 2009. Nitsche updated the delineations and revised the plans in October 2020.

Jaques requests that Nitsche update the contact information for the ANRAD to include his information since he delineated the wetlands.

Nitsche focused on the soil hydric indicators due to the drought.

Stinson suggests that if there is a hydrologic connection between the two mapped wetlands that it be flagged. Nitsche will look into this.

Jaques recommends the Commission arrange for a peer-review of the delineation maps.

Per Stone, there may be an error on the third page of the delineation data forms submitted in the ANRAD where the area is marked as upland but also that there is flowing water. Nitsche will check on this possible error. Stone also mentions that there may be a vernal pool in the area.

At 7:52pm, Cregan moves and Harrington seconds a motion to continue the ANRAD hearing to February 11, 2021 at 7:15pm. Roll call vote: Cregan: aye, David: aye, DeFant: aye, Harrington: aye, and Jaques: aye, the motion carries.

- ANRAD procedure/review questions:

1. Can ConCom agree going forward and communicate to applicants with other ANRADs that, should delineations change due to 3rd party reviewer recommendations, applicants will provide updated data sheets and refreshed flagging before the close of the public hearings?

Not addressed during meeting.

2. For remaining ANRADs, can ConCom request full-size site maps, with topography and wetland delineation, for each Commissioner and require that these maps be provided before the close of the public hearings?

Board members appreciate having the large-scale maps and delineation maps with a topographic base layer.

3. Do we want to ask applicants to provide mapping with hydrological connections?

Per Wakoluk, intermittent streams shown on DEP Mass GIS OLIVER on-line map are not present on the ANRAD maps.

Intermittent streams on OLIVER are based on aerial photographs and therefore are not as accurate as field surveys and wetland delineations.

DeFant would be interested in seeing maps with hydrological connections.

Per Stinson, the ORAD form [which is the permit the Commission sends to the applicant in response to an ANRAD] is not perfect. There should be separate sections for state laws and town bylaws.

Stockman has worked with Jaques and Dowling to complete the ORADs. The ORADs will be marked “modified” to show there were revisions to the delineation maps, and an attachment will be added to describe which wetlands fall under state and/or town laws.

8:00pm Continue Public Hearing for ANRAD at ZW-6 (Pratt Corner Road West)

At 8:05pm, Jaques opens the continued hearing for the ANRAD at ZW-6. Firstenberg, an employee of TRC, attends the meeting representing Cowls who owns the property. Jaques explains that purpose of an ANRAD (Abbreviated Notice of Resource Area Delineation) is to map where the wetlands are on a specific property. This ANRAD hearing started in January 2020. There have been multiple site visits by Emily Stockman, the wetland scientist peer-reviewer, and the wetland maps have been revised three times.

Per Firstenberg, TRC changed the color where the map is bank and not high water and added the mean high water label to the legend and the vernal pools that are located outside the study area. W-GR-4 connected to stream so was renamed W-MBF-102.

Jaques asks if there is a connection between two wetlands on the map, S-GR-7 and W-MBF,

Per Firstenberg, there is no connection aboveground. W-MBF-105 is new. W-MBF-103, 104, and 110 are all small wetlands marked with about 5 flags.

Per Stockman, S-GR-5 is Nurse Brook.

Per Firstenberg, on the Riverfront Area on the site was delineated.

Stone asks why wetlands were missed before.

Per Firstenberg, there were two main reasons: 1) Two methodologies were used, one from the Army Corps of Engineers and one from Massachusetts. The Army Corps methodology requires the presence of 3 parameters for determining if an area is a wetland (hydrology, hydric soil, and hydric plants), while the MA methodology has hydric soil as a subset of hydrology and the presence of either hydric soil or hydrology and hydric plants indicates a wetland. The MA methodology also includes hemlock trees as a wetland plant and the Army Corps labels hemlocks as an upland plant. One TRC delineator was not familiar with the MA methodology. 2) The original delineations were done late in the plant-growing season, which makes it difficult to identify the plants.

Per Stockman, the late season and the drought can make a significant difference in how the landscape is read.

Per Firstenberg, late in the season delineators rely more on hydric soils.

Jaques requests that the Commission review the December 3, 2020 Comment letter from Stockman.

Per Stockman, began work in April and there was a site visit in June. The Commission has discussed some of the comments with the previous ANRAD hearing.

Comment #1 The Commission can request documentation that supports the accuracy of the GPS readings.
Comments #2-4 have been addressed
Comment #5 Flag number 11 for S-GR-5 should not be approved.
Comment #6 For clarity, the legend should be revised to indicate the delineated “Bordering Vegetated Wetland” boundary line (rather than simply wetland).
Comment #9 There are vernal pool within resource areas on the property that add value to that area.
Comment #10 It is important to clarify which wetlands are protected under both the state and town laws and which are protected only under the town wetland bylaws. The 100ft buffer zone is a resource area under town bylaws.
Comment #11 Old flags should be removed from the field.

Jaques asks for comments from the Commission.
DeFant asks if the vernal pool depictions as single points are sufficient.
Per Firstenberg, vernal pools mapped outside the subject area do not need to be delineated to their full extent. They are located within wetlands that are off-site.

Jaques asks for comment from the public but there are no public comments.

Dowling screen shares the draft of the ORAD findings submitted by Stockman.
The Commission separates the findings based on whether both the state and town laws protect a resource area or just the town bylaws.
Stinson is not aware of towns having a different ORAD form for wetlands protected by town bylaws.

Stockman requests that TRC changes the legend label “Land Under Water bodies and Waterways” to “Delineated Stream Area.” The lower bank of the stream was not delineated.

TRC will also the following legend corrections:

- Add “NHESP” in front of certified/potential vernal pool
- Change “Potential Vernal Point” to “Potential Vernal Pool”
- Change “Delineated Bordering Vegetated Wetland Boundary Line” associated with the light green fill to “Delineated Bordering Vegetated Wetland Area”

TRC will submit corrected maps as a new revision to the Commission ahead of the January meeting.

At 9:01pm, Jaques moves and DeFant seconds a motion to continue the hearing for ANRAD at ZW-6 (Pratt Corner Rd West) to January 14, 2021 at 7:45pm. Roll call vote: Cregan: aye, David: aye, DeFant: aye, Harrington: aye, and Jaques: aye, the motion carries.

TRC has not sent new revisions for the Montague/Carver ANRAD. TRC needs to submit new contact information for the new ANRADs Leverett Rd and Pratt Corner Rd South that give Cows contact information as they are the applicant, not Evan Turner.

New Items & Updates Continued:

• Chair Discussion

This meeting will be Jaques last on the Commission. Jaques will stay on the Commission through December and complete the Annual Report based on the Commission Activity Log. Once complete, the Commission will review the report. She encourages the Commission to ask a lot of questions of applicants. Stone suggests also staying in touch with Mark Stinson at DEP.

At 9:22pm, Jaques moves and Harrington seconds a motion to appoint Cregan as Chair of the Conservation Commission. Roll call vote: Cregan: abstain, David: aye, DeFant; aye, Harrington: aye, and Jaques: aye, the motion carries.

Cregan is in a Master's conservation program at UMASS and is interning with Kestrel Land Trust. Cregan may leave the Commission after June when he completely his internship with Kestrel.

- Commission Membership

A town announcement that there will be a vacancy on Conservation Commission in 2021 will be sent out. Wakoluk submitted his interest in the position via e-mail on November 14, 2021. Jaques expressed reservations about appointing Wakoluk. Per DeFant, Wakoluk could be a resource and it might be hard to someone with his background.

- Town Budget Requests

At 9:27pm, Jaques moves and David seconds a motion to request level funding for the budget. Roll call vote: Cregan: aye, David: aye, DeFant: aye, Harrington: aye, and Jaques: aye, the motion carries.

- Draft General Wetlands Bylaw

Per Cregan, the revised wetland bylaw would decrease the 100 ft. resource area buffer to 50ft

Per DeFant, there would be a decrease in protection for isolated wetlands.

Per Jaques, DEP has tried to change protections to isolated wetlands.

Dowling is requested to resend the Wetland Bylaw revisions to the Commission.

Per Cregan, the decrease to the Wyola buffer zone is because it has been interpreted loosely and the Commission has not always required a Notice of Intent for buffer zone projects.

Per Stone, there may be other ways to address the issue without changing the bylaw. Do not want to see an increase in paving in buffer zone.

Per Jaques, hard to ask for Notice of Intent for minor projects.

Dowling will send revisions to Stone and Emily Stockman, the Commission's peer-review consultant.

Commission members suggest having a special meeting focused on having a second meeting in January or February focused on the wetland bylaw revisions.

- Site visits to schedule

-31 Lakeview Rd tree cutting

Jaques observed tree cutting at 31 Lakeview Rd within the Lake Wyola buffer zone. Jaques and Dowling composed a violation letter, which was sent to the landowners, Kathleen & Joseph Salvador, on November 27, 2020. Joseph Salvador stopped by the town hall and explained he was open to talking with the Commission about the tree cutting and mitigation measures.

Per Jaques, erosion control straw mats should be used when trees are cut to prevent erosion.

DeFant asks about mitigation options.

Per Jaques, it is a hard time of year to reseed an area.

Per Stone, the Commission can use an Enforcement Order and request a restoration plan. Heavy storms might cause erosion.

Per Jaques, the Commission may want to talk to Mark Stinson from DEP before issuing an Enforcement Order.

Cregan and David will visit the site on December 16, 2020 at 10am.

Unanticipated business not appearing on the agenda

- 16 Wyola Dr./Boroweic: house rebuild, well, and septic system

Michael Petrin attended the meeting as the project engineer. Boroweic is interested in doing a teardown and rebuild of the house as well as installing a new septic system and well. The house is within 50 feet of Lake Wyola. The house rebuild would expand the existing footprint of the building but the new foundation will be on piers, which do not require digging. The well will be in front of the house. The potential septic system is outside the 100 ft. buffer zone. The question to the Commission is whether the project requires a Notice of Intent or a Request for Determination of Applicability.

Jaques asks of trees would be removed.

Per Petrin, trees that would block the rear entrance to the house would be removed.

Boroweic is open to mitigation measures including planting hard wood trees such as maples. The east-side abutter would not mind the installation of new trees.

Stone asked if the expanding footprint would affect setbacks.

Per Petrin, the house is on a nonconforming lot and the project will require a ZBA Special Permit because the project will be within the side-yard setback.

Stinson asks if a dock is part of the plans, as a dock would require a Chapter 91 license, which would be part of the submission to the Conservation Commission.

Jaques suggests that the project is submitted to the ZBA first in case the Special Permit process changes the plans.

Jaques asks about the paving for the driveway and whether it would increase the amount of impervious surface on the property.

Per Petrin, the driveway would be made of gravel.

Per Jaques, the Commission would likely request an increase in vegetation mitigation to compensate for the increase in the house footprint and the loss of resource area.

Jaques says that due to the use of piers, which decrease the amount of excavation the project could submit the project under a Request for Determination of Applicability.

- Commission Rolls

Jaques and Linda Avis Scott, the previous Land Use Clerk, will work together to create a list of tasks/rolls that can be divided between the Commission Members.

- At 9:51pm, Jaques moves and David seconds a motion to adjourn the meeting. Roll call vote: Cregan: aye, Harrington: aye, DeFant: aye, David: aye, and Jaques: aye; the motion carries.

Respectfully submitted,
Tessa Dowling
Land Use Clerk