

# Shutesbury Conservation Commission

Minutes – 06/02/2022

(Approved 6/23/2022)

*Virtual Meeting*

**Meeting Start:** 7:00pm

**Commissioners Present:** Miriam DeFant, Mary David, Scott Kahan

**Commissioners Absent:** Beth Willson, Robin Harrington

**Other Staff:** Carey Marshall (Land Use Clerk)

**Other present:** Janice Stone, Don Wakoluk, Sanford Lewis, Jody Shapiro, Anna Mancebo, Michael Stotz, Sharon Weizenbaum, Robert Levine, Jean Meister, Kevin Weir, Cynthia Banfield Weir, Joseph Salvador, Elizabeth Fernandez O'Brien, Nathan Heard, Jake Mitchell (354 Federal Street Unit A, Montague), Joan Hanson, Michael DeChiara, Joe Trapani (692 Pratt Corner Road), Leslie Cerier, and all other unidentified individuals.

Chair's Call to Order at 7:00pm

Meeting is being recorded

## **263-265 West Pelham Road/Levine RDA Public Meeting: swimming pool**

Levine: project is to install an inground pool in his backyard. The backyard area is cleared without needing to cut trees and pool will be placed where it is currently seeded and mulched for a children's playground that will be moved (roughly 14 feet away from the corner of the house). A seasonal vernal pool with a wetland surrounding it is about 60 feet from the pool will end up being above grade and all of the fill will be trucked out. DeFant asks for the dimensions of the pool. Levine: the dimensions of the pool will be 36 feet long by roughly 15 feet at its widest - not a normal shape (mountain shaped pool). Will filling will be trucked out or stockpiled anywhere? Levine: construction will start by digging a hole and then digging/shaping the deep end - next putting up walls that are 42 inches. The walls are then reinforced and gravel will be placed behind the walls and extend 2 feet out – concrete will be poured over that and around the pool. Since the digging goes out two feet past the pool it is filled with gravel for drainage in support of the concrete structure of the pool; 95% of what is dug out will be trucked out. DeFant: What erosion controls being used? Levine: silt fence will be used and placed in similar spot to when house was built – between the project area and the vernal pool. DeFant: clarify that SCC is reviewing his project under the town Bylaw and not the Wetlands Protection Act (WPA); the resource area is protected by Shutesbury local Bylaw because it is an isolated wetland; where will you be storing all the materials such as the gravel? Levine: in the front, which is a higher elevation than the house, in an area where it wouldn't be disturbed. What he has been told by the construction company is that they are frugal with their gravel. They don't dump the gravel – they bring the dump truck full of gravel and scoop up from there. No stock piling of raw material. The construction truck will be moving through an area previously accessed by construction vehicles. DeFant: she will put this in the Determination conditions, but recommends that once the erosion controls are placed then he should take photos of them and send to SCC because they were not shown on the site plan. SCC asks that he keeps the erosion controls in place until the area of work is revegetated and stabilized. If anything happens to the erosion controls during a storm or

etc., he is responsible for fixing them. Levine agrees. **Motion: David moves to closed the Public Meeting for 263-265 West Pelham Road, Kahan seconds. Vote: David – Aye, DeFant- Aye, and Kahan- Aye.** DeFant shares DoA form and Special Conditions with SCC to review via screenshare. **Motion: David moves to approve the Determination of Applicability, Negative Determination #3 with Special Conditions under the Bylaw for 263-265 West Pelham Road as amended, Kahan seconds. Vote: David – Aye, DeFant- Aye, and Kahan- Aye.**

**64 Cushman Road-Heard NOI Public Hearing Continued Public Hearing: Ground-Source Heat Pump System, DEP # 286-0288**

Heard has revised the site plan and shared it with SCC. SCC agrees the site plan looks great and includes features they have requested. **Motion: David moves to close the Public Hearing for 64 Cushman Road, Kahan seconds. Vote: David – Aye, DeFant- Aye, and Kahan- Aye.** DeFant shares the OOC with SCC to review. **Motion David to approve OOC with Special Conditions for 64 Cushman Road, DeFant seconds. Vote: David – Aye, DeFant- Aye, and Kahan- Aye.**

**26 Lake Drive Amended Order of Conditions/Stotz-Mancebo Continued Public Hearing: home demolition/reconstruction, DEP # 286-0280**

Mancebo and Stotz hired Chris Stoddard as their Civil Engineer to revise their site plan. Stoddard needs more time to review and revise; applicants agree to continue Public Hearing to June 23<sup>rd</sup> at 6:00 pm. **Motion: DeFant moves to continue the Public Hearing for 26 Lake Drive Amended Order of Conditions Request to June 23, 2022 at 6:00 pm, David seconds. Vote: David – Aye, DeFant- Aye, and Kahan- Aye.**

**Enforcement Issues:**

**Complaint about wetlands violation at 678 Pratt Corner Road** – DeFant: received a phone call (about 9 am Friday) from resident who lives on Pratt Corner Road complaining about a neighbor, 678 Pratt Corner Road, about unpermitted work. She informed SCC about this and then contacted the homeowner, Thomas Mitchell, at 10 am to set up a site visit for 2 pm with herself, Harrington and Wakoluk. A Cease-and-Desist letter has been sent to the landowners. At the site visit, they observed heavy machinery, a cleared area with evidence of construction activities. The area was very wet, and it appeared a large amount of fill had been added to this area with straw and grass seed placed on top. Area had standing water and evidence of hydric soils present. The area disturbed appears to be over 2,000 sq ft. The landowner said he wanted to dry the area out and had taken some trees and their roots out. The landowner had also buried a perforated pipe in riprap around the perimeter of the property that was daylighting and draining downslope near the property line. Intermittent stream near the disturbed area connected to a BVW. Front of the house is small and has an old septic system that has failed and is not up to code. A BVW and culvert are located at the end of the driveway which is tributary to Adam’s Brook. Jake Mitchell, son of Thomas Mitchell, joined the meeting. DeFant reviews the timeline of the events and adds that she had received photos of erosion controls placed on the property by the landowner as requested by SCC after the site visit. Wakoluk: when Commission arrived, the house was unoccupied, no signs stating no trespassing, and it was not obvious from the front of the property where the work was being done. When he traveled earlier in the week, he noticed there was skid parked off of the driveway and mini-excavator as well. There was also a pile of

fill to the left side of the house. During the site visit, he had identified hydric soils and wetland sensitive fern species. Further upslope was the drain that has been buried and covered with gravel. Beyond that was a wetland and an intermittent stream that was also in close proximity to a neighbor's new driveway. DeFant: she spoke with Mary Grover from MassDEP who recommended SCC issue an Enforcement Order tonight and gave SCC language to use in the Enforcement Order that is open ended enough – allowing SCC to not make a decision tonight about restoration, but to have the homeowner follow a few steps including coming back with a proposal. DeFant: are you renovating this home for your father? Mitchell: no, we are both living there and only planning to fix the paint of the home – mainly cosmetics; father is going to live on main floor and he is going to live in basement. DeFant: have you applied for any permits? Do you plan to have a septic permit? Mitchell: he has not applied to any permits but plans to apply for a septic permit. He has hired Bill Sieruta, PE for the septic design, and brought him to the property to place a perc and begin creating a plan. DeFant: you may run into some issues since the site has a lot of wetlands, SCC would have to come look at the specific spot(s) you are considering. If the septic plan is within the Buffer Zone and  $\leq 50$ ft from the wetland, then you will need to come to SCC with an NOI. If it is  $>50$  ft, then it can be an RDA instead of an NOI. Mitchell understands and agrees. Mitchell: is there wetlands in front of the house or in the back? DeFant: there is a BVW in the front near the culvert/driveway but the area disturbed in the back is part of a larger wetland. Mitchell: is this delineated on a map somewhere? DeFant: no this is from what SCC observed during the site visit, and we determined that area disturbed was a wetland. The area is very wet - was/is a high groundwater saturation which is a wetlands indicator. There was also evidence that there was long-term water saturation on this site so it had been a wetland for a long time. She understands his confusion described in his email because it was not marked on any MassDEP maps, but MassDEP maps are only general and used for planning purposes – not permitting. Wetlands must be determined in person. Mitchell understands. DeFant: this activity is a violation of the Wetlands Protection Act (WPA) and the local Bylaw – these statutes don't allow a resident to alter or change a wetland without a permit from SCC. Do you have other questions? Mitchell: he hopes to have a clear understanding of how he and SCC will be moving forward. Apologizes for the issue and not knowing. DeFant: she appreciates his apology and his efforts in working with SCC to resolve it, if it can be resolved – she cannot guarantee how it can be resolved. SCC needs to gather more information so options can be weighed. She talked with Mary Grover, Shutesbury's contact at MassDEP, who stated if the activity is something that is permissible (capable of being permitted), then the easy way would be to have the applicant apply for a permit - but if it is damaging a wetland (which is not permissible), then the options would be restoration or replication. Grover recommended SCC require the homeowner to place erosion controls, to cease and desist any further activities, and to come back with a professional wetland delineation of the property – the delineation to include information about hydric soils to understand the preexisting wetland boundary to the best extent. Lastly, have the homeowner should come back with a proposal for addressing the issues within a set time window and to provide the professional evaluation so that the SCC has the information needed to decide whether the proposal will work or not. Marshall informs DeFant that time for the next Public Hearing is approaching – DeFant asks Mitchell if he will stay so that they may resume the discussion once the Public Hearing has finished. Mitchell: feels as though he has enough information. DeFant: Stone, is there anything else he should know that she may have missed before he signs off? Stone: not really – SCC will be sending a directive for the homeowner(s) to follow with a deadline, so if they have any questions, they should get back to

SCC. DeFant informs Mitchell that some of these steps will require him to hire professionals and that he will have a deadline, most likely a month with the possibility of an extension depending on the circumstances. Mitchell understands but is concerned about finding professionals. Kahan: to clarify, Mitchell is to not continue any work without a conversation with SCC, correct? DeFant: yes, Mitchell's property is all in the buffer so SCC doesn't want any more ground disturbance without a permit. Mitchell confirms they have stopped all work on the property. SCC thanks him. DeFant: it would be helpful if the SCC could conduct another site visit where all the Commissioners could attend. Mitchell agrees to a site visit but asks for an email from SCC discussing the possible options that they would like to see going forward. DeFant informs him that if SCC cannot conduct a site visit then it would be an issue. Mitchell understands. DeFant will discuss with Commissioners a date for the site visit and will reach out to Mitchell via email to confirm the date and time. Wakoluk recommends Mitchell reach out to a sanitation professional to find out if a septic is possible. SCC pauses this discussion.

DeFant shares the drafted Enforcement Order for 678 Pratt Corner Rd via screenshare. SCC reviews the Enforcement Order Draft. DeFant has reached out to the Board of Health, BOH, with SCC concerns. BOH stated if they receive a septic system application, then SCC will need to conduct a site visit to review the location of the proposed system. **Motion: David moves to approve the Enforcement Order for 678 Pratt Corner Road, Kahan Seconds. Vote: David – Aye, DeFant- Aye, and Kahan- Aye.**

#### **Review complaint about sediment release off of Pratt Corner Road near Nurse Brook –**

Sharon Weizenbaum: sent DeFant an email with photos of a wetland on Pratt Corner Rd heading towards the center of Shutesbury - left side after the first powerline. She noticed there was a large amount of sediment spreading over a large area near/in the wetland. She is familiar with the area and notice it has been getting worse over the past few years. She is concerned about the clearcut from logging that is located above it. She researched the slope of the clearcut location using Mass GIS – noted a 300' slope in the direction of the sedimentation found. Some of the sedimentation goes into a perennial stream that connects to Nurse Brook. She is concerned that due to the clearcut it is causing water runoff to travel faster and collect more sedimentation from the road – pushing it through the culvert. DeFant thanks Weizenbaum for bringing them to SCC's attention. There are two pieces here; 1. Is there an issue with the forest cutting plan? And 2. what is happening on the road – that part may not have to do with Cows, but with the Highway Department. She went out after Weizenbaum's email to look at the area discussed. There is a stream that goes under the road there is a storm cut done but the Highway Department – it is all silted up and the erosion is discharging into the brook. Weizenbaum: no, the area she is describing is downhill from Nurse Brook. There is a house near that area that has a culvert going under their driveway then goes along the ditch on the side of the road connecting to another culvert that goes under Pratt Corner Rd. DeFant: may have not been looking at the right culvert and this may be unrelated, but SCC has been concerned with the storm water management on roads and how it affects the resource areas – this is similar to another area on Wendall Rd. Wakoluk: he visited the site Weizenbaum had showed him. He drove by and stayed in the right-of-way allowing him to see siltation covering a large portion of the wetland Weizenbaum had described. He was able to identify the wetland through wetland vegetation and evidence of hydric soils. DeFant: SCC has jurisdiction when looking at storm water management in the right-of-way area if there are wetlands. Unsure if they saw the same culvert but the one she saw

needed maintenance from erosion. She is unsure, if there was a change in runoff due to forest cutting that led to sediment discharge, does SCC have jurisdiction or is this up to DCR and their management of forest cutting plans? Wakoluk: in the case that happened in Williamsburg, DCR and DEP were able to determine who was responsible for the sediment deposit – ended up with the landowner who had done the forest cutting. In this case SCC does not have pre-study of what the water flow was off of this property – have to go by current conditions. He believes this is a matter for DEP and DCR to discuss. DeFant: that was her question. She knows that SCC does not have much or any jurisdiction about forest cutting plans as exempted by state law – which gives it to DEP and DCR over SCC. Weizenbaum offers to meet DeFant at the area of concern. DeFant: they would need to work with the landowner for consent and notify DCR to have the DCR Forester attend as well. Could you see this area from the road? Weizenbaum: yes, in May but now that the vegetation has grown it is harder to see from the road. DeFant: she would be able to do a site visit from the road and Weizenbaum could attend if she would like. Wakoluk recommends visiting the area after a rain event.

**Consider Draft OOC for 14 Lake Drive NOI/McCallum, DEP #286-0289: home demolition/reconstruction:** DeFant screenshares the draft Special Conditions for the OOC for 14 Lake Drive for SCC to review. Kahan and David give DeFant permission to sign their names on their behalf electronically. **Motion: David moves to approve the OOC with Special Conditions for 14 Lake Drive as amended and reviewed, Kahan seconds. Vote: David – Aye, DeFant- Aye, and Kahan- Aye.**

**Consider draft minutes for 4/28/22 and 5/12/22**  
SCC has reviewed the minutes for 04/28/22 meeting. **Motion: moves to approve the 04/28/22 minutes, Kahan seconds. Vote: David – Aye, DeFant- Aye, and Kahan- Aye.**

5/12/22 minutes have not been finished. SCC will review them next meeting.

**Public Comment:**

**Joe Trapani (692 Pratt Corner Rd):** joined to see the discussion about the wetlands violation at 678 Pratt Corner Rd – wasn't sure what time it would be discussed and apologizes for missing it. He had taken photos of 678 Pratt Corner Rd from his property and sent them to the Chair – wants to clarify it was an inquiry and not a complaint. He was driven to do so because he had friends interested in the property but who decided not to purchase because they were under the impression the backyard shouldn't be dug or changed in any way due to wetlands. Once he saw that an excavator was used on the property over a few days, he was curious as to what the status was. DeFant: did you notice any fill or loam that was used or added onto the property? Trapani: there was a change in the way the backyard looked – he viewed it from his property line; it started as a 'fenny area with nice earth showing' which stayed like that for two days. After that, it was covered in straw similar to when someone places down grass seed. There was a pile of something in the front yard (he noticed it walking down the street to bring kids to and from the bus stop) that seemed to be used in the front yard over the driveway. He said he observed the activity in the backyard and that earth was overturned; when his friend was looking into the property, he was told there was a failed septic system. He asks if he will be informed if there will be a new septic system being placed. DeFant: currently there is no application for a new septic system – if one is submitted, the SCC will review the application.

**LWAC Meeting:**

DeFant: she and David went to LWAC meeting last Saturday May 28, 2022 and heard that the LWA Annual Meeting is coming up. SCC in the past has handed out a 1-page flyer detailing permitting requirements on the lake. She reviewed the previous one made by previous Land Use Clerk, Tessa Dowling, and corrected a few errors. She had Carey Marshall, Land Use Clerk, print out copies to give to Catherine Hilton to hand out at the LWA Annual Meeting. She asked LWAC if the SCC could also provide a handout to educate homeowners on Lake Wyola about eco-friendly lakeshore landscaping. She will put together something; if any Commissioners have any suggestions they can email her. SCC agrees this is a good idea.

**Motion to Adjourn: David moves to adjourn, DeFant seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye.**

**Meeting Close: 9:30 pm**

**Next Meeting: Thursday, June 16 @ 7 pm**

**Documents Used:**

- 263 West Pelham Road Levine RDA 2022
- 263 West Pelham Road RDA Site Plan 2022
- Draft Determination of Applicability and Special Conditions for 263 West Pelham Road
- Complaint emails regarding 678 Pratt Corner Rd
- Chair email(s) to 678 Pratt Corner Rd landowners
- Cease-and-Desist Letter to 678 Pratt Corner Rd
- Chair email(s) with Mary Grover regarding 678 Pratt Corner Rd
- 678 Pratt Corner Rd Enforcement Order Draft
- 64 Cushman Rd Update 4 Site Plan 2022
- 64 Cushman NOI 2022
- Draft Order of Conditions for 64 Cushman Road
- Chair emails for 26 Lake Drive regarding Public Hearing continuation
- Weizenbaum email(s) to SCC regarding Nurse Brook concerns
- SCC handout on permitting requirements for Lake Wyola

*Respectfully submitted by Miriam DeFant, 7/20/22*