

Shutesbury Conservation Commission

Minutes – 09/08/22

Approved – (10/27/22)

*Virtual Meeting*

**Meeting Start:** 7:00pm

**Commissioners Present:** Miriam DeFant, Mary David, Robin Harrington, Beth Willson

**Commissioners Absent:** Scott Kahan

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

**Other present:** Janice Stone, Mark Rivers, Carlos Fontes, Hannah Kowalski, Mary Lou Conca, Frank McGinn, Michael Hootstein, Sharon Weizenbaum, Elizabeth Fernandez O'Brien, Chris Stoddard, Amanda Alix, Joel Walker, Steve Sullivan, Tom Kalt, George Abdow, Gail Fleischaker, Dale Houle, Diane Jacoby, Jim Hemingway, Eric Stocker, Jeff Lacy, and all other unidentified individuals.

Chair's Call to Order at 7:03pm

Meeting is being recorded

**Public Hearing for 70 Lake Drive NOI/Rivers, DEP File Number 286-0294**

Stoddard screenshares the site plan for 70 Lake Drive for SCC to review via screenshare.

Stoddard: the project consists of repairing the existing retaining wall that follows along the top of the bank to Lake Wyola – it is highly vegetated in this area; proposing to reconstruct the existing retaining wall without heavy machinery along with an additional lower retaining wall to create a terrace affect. Plan to add more vegetation to fill in the gaps of the current vegetation and raise the grade of the yard by 1 to 2ft to flatten the area to reduce runoff slope and stormwater runoff from entering the lake. The company that will be doing the construction will be doing the work by hand and grade work to be done with wheelbarrows, shovels, and rakes. For erosions control, they are proposing straw wattles and no silt fences because he believes they are not necessary since there will be no heavy machinery used. No existing vegetation will be removed from the site. MassDEP provided some comments to which he made the according corrections – they asked to meet the required Performance Standards and he provided a revised narrative. DeFant: the project is proposed as a bank project instead a buffer zone project – can you explain why? Stoddard: based on the comments made by MassDEP, he does now believe it should be marked as a bank project. In the revised narrative he concluded about many feet of bank area that will be disturbed and the Performance Standards for work on the bank of the lake. DeFant: do they need to resubmit the NOI because they are changing to a different resource impact? Willson: the narrative was revised but was the NOI form revised to include the new impact numbers to bank? Stoddard: no, the NOI form was not revised. Willson: the NOI form should be revised because when SCC issues the OOC, numbers listed within the OOC come from the NOI form – especially if at this point you as the applicant know they are changing and not based on SCC comments. Stoddard agrees to revising the NOI form. DeFant informs Stoddard he can revise the form by using the DEP WPA Form 3 Word Doc and emailing the revised NOI to MassDEP. Due to the NOI having to be resubmitted, SCC can't close the Public Hearing and will have to continue to a further date. DeFant: SCC will wait to hear from you regarding the square footage

of the proposed change to the bank. Stoddard: that number should be 217 s.f. of bank area. They are required to meet the Performance Standards within the work of the bank land underwater. The first standard was the stability of the bank proposed – the project proposed will increase the stability of the bank because the retaining walls will reduce the runoff into the lake along with the additional plantings. The second standard is the water carrying capacity within the existing channel within the bank – the project proposed is on bank of a lake and not a river so the capacity shouldn't be affected by the proposed work. The third standard is groundwater and surface water quality – the proposed project is intended to improve both by reducing the slopes towards Lake Wyola which will result in a reduced runoff rate and allow surface water to be treated/infiltrated within the buffer of the bank. The fourth standard is the capacity of the bank to provide breeding habitat and escape cover, the existing site has a list of diverse plants species located within the bank which is being proposed to stay with additions placed within (provided breeding habitat and escape cover). The fifth standard is that the alteration of less than 10% or 50 feet of length of the bank shall not impair its capacity to provide important wildlife habitat functions (additional alterations above the threshold may be permitted if they have not adverse effects on wildlife habitats). Like the last question, the proposed works includes adding onto the existing vegetation providing breeding habitat and escape cover. DeFant: what time of year was the project planned to be worked on? During the drawdown? Rivers: yes during the drawdown was his intention. Stone: she believes there is a requirement that if altering more than 50 feet of linear bank, the Regulations require a Wildlife Habitat Evaluation – unsure if it is mandatory. Willson believes Stone is correct and it is mandatory. Willson: the distance between the bank and the retaining wall isn't decreasing correct? Rivers: they are proposed adding onto the existing wall and increasing a lower section of the wall higher to create a terrace effect. DeFant: DEP Regulations for Wildlife Habitat Protection if the proposed work includes more than 10% of the bank or more than 50 feet (whichever is less) then a Wildlife Habitat Evaluation is required. Stoddard: the proposed work along the bank is about 100 feet. DeFant: it's almost the entire length of bank of the property so it will require a Wildlife Habitat Evaluation based on the Regulations. Rivers: is the Wildlife Habitat Evaluation for the bank on his property or for the whole lake? There was an NOI for the drawdown of Lake Wyola and there was a Wildlife Habitat Evaluation done in 2019. DeFant: it would be just for the bank on your property so you would not be able to use that 2019 Wildlife Habitat Evaluation for this project. Willson: is this in Bordering Land Subject to Flooding? Stoddard: he doesn't believe it is but he can double check. SCC has no further questions and there is no comments from the public. DeFant adds that there was an email sent to SCC from an abutter with concerns about the project that was shared with the Commission, Stoddard and Rivers. Stoddard: the project doesn't include work along the area of concern raised by the abutter. **Motion: David moves to continue the Public Hearing for 70 Lake Drive NOI for October 13, 2022 at 7 pm, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye.**

### **86 Sand Hill Road NOI/Kalt/Dandelion Energy, DEP File 286-0293**

DeFant: SCC can't open the Public Hearing for 86 Sand Hill Rd due to fee payments having not yet been received. DeFant: there are also some questions and comments from MassDEP. Kowalski: we notified MassDEP that we were withdrawing application and resubmitting with the most recent revised version. DeFant: SCC was not made aware of that. Due to this new resubmission, MassDEP also now has to give the application a new MassDEP file number before we can open as well. Since this will be a new submission, applicant must post a new Legal

Notice, re-send Abutter Notifications, and resubmit payments. SCC agrees that the new Public Hearing date and time for 86 SandHill Rd will be on September 22, 2022 at 8 pm.

**RDA Public Meeting for 674 Wendell Road /May: garage/workshop construction**

DeFant: this RDA application is for a construction project, which includes ground disturbance that has already been completed. Huckle: yes that is correct. He apologizes for not submitting a permit before doing the work. A short summary is that the foundation was put in 15 years ago and it was in a dumbbell shape because it was planned to be a house, garage, and a connector. He decided he did not need a big house (he currently lives in a smaller home off the side on the property) therefore, he wants to repurpose the foundation to be a workshop. When designing it he realized a rectangle shape would be better, so he added foundation walls. When doing the work of reshaping the foundation, he didn't believe he was close to wetlands, because he had good draining gravel on the property, but after review of his property, he found out his project was in the 200-foot Riverfront Area zone. He had placed the concrete by hand. There is no sign of erosion after the concrete has been placed. DeFant: the area of disturbed soil has not fully revegetated; SCC was hoping for some erosion controls around that. Huckle: he placed a silt sock as recommended by the SCC on the site visit. SCC has no further questions. No public comments. **Motion: David moves to close the Public Hearing for 674 Wendell Rd RDA, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye.** DeFant shares the DoA for 674 Wendell Rd for SCC to review via screenshare. SCC gives DeFant permission to sign for them electronically. **Motion: David moves to approve and issue a Negative 3 Determination with Special Conditions DoA, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye.**

**Lot O-32 Enforcement Order (updates from Chair and review of complaint from Michael Hootstein, dated 8/23/22)**

DeFant: since the last meeting, SCC did a preliminary site visit on Saturday, September 3<sup>rd</sup> and received a wetland delineation report produced by Fuss and O'Neil for the Town of Shutesbury on Tuesday, September 6<sup>th</sup>. Photos from 9/3 site visit were not geotagged, so DeFant went back on September 7 to take new ones that were geotagged. Photos are in a Google Drive folder and have been shared it with and MassDEP Circuit Rider, Mary Grover, as she requested; DeFant can share the photos with anyone who asks via email for the link to the Google Drive album. SCC is not in the position to discuss the Fuss and O'Neil wetland delineation – SCC plans to go out to the site with the wetland delineator on Saturday morning, September 10. During the 9/3/22 site visit, SCC came up with some questions about how the delineation was done; should SCC have a preliminary discussion now? Willson: no, SCC should wait until after meeting with the delineator on Saturday. Harrington agrees. Discussion will be deferred.

DeFant: asked Grover (MassDEP) about debris on the property in a wetland area that was observed on site visit; Fuss and O'Neil flagged that area as BVW-3 – something SCC can review later. The question was what can done with debris if SCC believes a clean-up is needed; debris includes tires, broken glass, bits of rusty metal, metal stick out of the ground, trash bags, bottles, etc. It appeared to be a spot where things had been dumped and then cleaned out. From talking to Michael Hootstein, this was the area he was mainly discussing when he had made his complaint – he was concerned there was work in the wetland removing trash. When SCC did their site visit in June, we did not know where he was referring to so we weren't able to find it.

DeFant: debris could be a public safety hazard; she found a medicine bottle full of some liquid and a syringe. She reached out to the Board of Health and is awaiting their input on it. Steve Sullivan: he works for the Shutesbury Highway Department (HWD). The person who originally lived there had diabetes so there were a lot of syringes found on site. HWD filled an entire dumpster with trash bags because that's where that household had dumped their trash. DeFant: when was that done? Sullivan: That was done last August when they had removed the building and removed all the car parts including 200 tires. DeFant: where were the tires located? Sullivan: the biggest spot was where the animal pen would be, right behind the building – probably about 75 there; probably about 40 in that wetland along with the rest scattered around the property. DeFant: there are still some left along with some car parts. Some of the car parts do not appear to be in wetland areas so that is not in SCC's jurisdiction. A question for SCC, since this is new information, what steps does SCC want to take around this? Willson: she believes the first step is to have the wetlands delineated – shouldn't do anything until there is an official and approved delineation for this site visit. Fuss and O'Neil has put something together so SCC needs to review that first.

DeFant: since SCC has issued the Enforcement Order (EO), DEP advised not to approve a final wetland delineation since the submission was not a part of an ANRAD or NOI application; given the requirements of the EO, wondering if SCC can accept a wetland delineation to fulfill the requirement for the Enforcement Order but reserve judgment for any future permitting Willson: she believes SCC needs to stay within the original EO requirement; EO was based on the unpermitted fill brought in; Town Administrator raised questions about where the Buffer Zone was located and whether the SCC had jurisdiction; Fuss and O'Neil hired to answer that question for SCC. Chair is right that SCC can't approve the delineation as the official delineation under an Enforcement Order. It is preliminary guidance for SCC to confirm that the fill identified through the EO was within a Buffer Zone or whether it was in a wetland. DeFant: SCC needs to be clear in the eventual EO dismissal because the EO required that the Town submit a wetland delineation report subject to SCC's approval, make clear approval is not for future permitting purposes. Willson: agree EO needs to be reviewed in terms of what the next steps should be, because once they satisfy EO requirements, EO will be dismissed. David: cleaning up the wetlands, if debris is within the wetlands, remains as a separate issue. DeFant and Willson agree. DeFant: could be a request to the Town; could request that Town submit a permit application for the cleanup within the wetlands. SCC needs to review delineations and provide a written follow-up response to the Town. EO indicated SCC was reserving judgement for future permitting requirements, so SCC can request the Town to submit a permit for a plan to clean up. SCC agrees. BOH could also issue an Emergency Order for clean up if it felt the debris was a public safety hazard.

Penny Jaques (43 Old Orchard Rd): Fuss and O'Neil plans to submit an ANRAD as part of the wetland delineation; is a permit required if people are just lifting tires from a wetland with no excavation? It seems that lifting a tire is very different than excavating debris out of the wetland. DeFant: we don't know the extent of the debris in the wetland. David: SCC needs to look at the extent of the debris before answering that question. Sullivan (Shutesbury Highway Department-HWD): when the HWD was cleaning the debris out, the only thing going through his head the whole time was the Alice's Restaurant song, there is still stuff there but HWD stopped because would create deeper hole if they excavated more. There is no way of removing the rest

of the debris without digging a big hole and trucking everything out. DeFant: agrees. Sullivan: a lot of soil would need to be dug out, not just some. DeFant: she understands and that is why SCC might want to get professional guidance about recommendations because there is embedded material in the soil and SCC doesn't know how deep it goes, need to know if it is just a surficial layer of debris or not; could also be a safety hazard if the public is using trails to get back there. Sullivan: HWD never tried to dig it out; if you speak with some of the older folks in town, some will say there is a lot buried in there; Highway Department didn't want to find out if there was a whole lot more buried down there. DeFant: SCC did see lot of see of material still buried there; saw a lot of car parts buried and scattered around the site, not just tires, and not all in wetland areas (could be a safety hazard if people trip over rusty stuff).

DeFant: had a discussion with the Chair of the Select Board, Rita Farrell. Select Board didn't feel included in the process of issuing the EO and feels the SCC didn't exercise proper due process by including the Select Board first. DeFant communicated to Farrell that the EO was based upon information that SCC gathered at the 7/28/22 meeting from Town Administrator who was representing the Town at that meeting. SCC determined it had enough information at that time to conclude work had been done without a permit in a Protected Resource Area (i.e., a violation under the SCC jurisdiction.) In any other similar circumstances, with private landowners, the SCC has issued EOs once it determined it had enough information. For consistency, SCC decided to issue EO in response to the complaints and the information about a violation received from the Town Administrator in that 7/28/22 meeting. DeFant: never the intention of SCC to be adversarial toward the Town or anyone else- SCC also supports the Town's projects, like the new library project, but SCC had to do its due diligence given the charge of the SCC (to uphold and enforce the WPA and Town Bylaw.) Farrell asked why SCC did not meet with the Select Board first before issuing the EO. DeFant: sent email to Select Board that SCC would be happy to meet for a joint meeting to discuss general communication issues, but if SCC investigating a potential violation by the Town, then SCC has to maintain its independence. If SCC were to be investigating a private landowner who had done work without a permit and the applicant asked to speak privately before issuing the EO, it would be inappropriate; SCC needs to be careful to remain independent and impartial, and not be subject to any influence SCC may feel during a joint meeting. SCC has a regulatory hat on when doing regulatory matters and a partnership hat one when being a partner with other Town boards and departments. Because the Select Board is the Appointing Authority for the SCC, it makes it a challenge to have discussions about an enforcement investigation at a meeting where the SCC is not convening. If SCC goes to a Select Board meeting as a joint meeting with them, SCC is not convening a regulatory meeting-would not have been deliberating or issuing an EO at a joint meeting. From the perspective of the public, there could be questions raised about the SCC's independence. SCC wants to work with the Town to get this resolved.

EO requires a site visit to review wetland delineations and then discuss at 9/8/22 meeting; since report was received on 9/6, no time to set up a site visit before tonight. Select Board offered to meet with SCC to tonight with Fuss and O'Neil, but Chair recommended that best to do the site visit first and then have Fuss and O'Neil scientist come to the meeting with the Select Board on 9/22/22. Joint meeting with Select Board is scheduled for 9/22/22 at 7 pm. Eric Stocker (Select Board): at this time the Select Board has not discussed if a representative will be attending but he is assuming so. DeFant: can you bring that up at your next meeting? Stocker confirms he will.

DeFant has reached out to the Massachusetts Association for Conservation Commissions (MACC) helpline for guidance and will share what she hears back.

Hoostein: he appreciate the due process that SCC has provided to getting the information, making a decision based on the facts of this case. He looked quickly at the delineation and he will be challenging the IVW3 and the IVW4 based on the definition of Isolated Vegetated Wetlands. If there is a hydrologically connected protected resource, it is no longer isolated according to the regulations. He looks forward to seeing the delineations reviewed. There is some new information that has come up in this area – MassDEP has released their findings of PFAS (a chemical contaminant) in the closest well to the east of Lot O-32 (directly related to whether or not these are protected wetlands and where the subsurface streams are and where there are ponds). He appreciates comments from Sullivan and work done by Fuss & O’Neill; wishes to see everyone work together; it is important that every complaint be fairly reviewed, and that SCC makes decisions based on the law and regulations; thanks SCC. DeFant: thanks Sullivan as well for attending the meeting and sharing what he knows.

DeFant: she spoke with the Joe Cerutti, the MassDEP Program director for Underground Injection Control Well Program and confirmed with him that an automotive floor drain is considered to be an Underground Injection Control Well whose removal is subject to MassDEP Regulations. Prior to removal, the floor drain must be registered with MassDEP and a proposal submitted for approval by MassDEP that indicates how the applicant will test soil for contaminants; soil testing supposed to be conducted in stages through the removal process with multiple tests done where the drain is and where the outfall occurs if there is an outlet to it. Because this is an automotive shop floor drain, there is a specific list of soil tests (such as heavy metals) to be done in addition to testing for petroleum byproducts and volatile organic compounds. Cerutti would be coordinating with the Bureau of Waste site Cleanup and would identify steps required for the Town; if the drain was already removed then some post-removal testing would be required as a remedy. Sullivan: they could certainly still test the soils because HWD didn’t remove anything except for the floor itself. The gravel that was underneath the floor is still there. It would be easy enough to find the drain point because the outline of the building is still there too. DeFant: if MassDEP requires further testing, it would be helpful for the Highway Department to help the LSP to locate the drain; SCC has no authority over what would be required; Cerutti told DeFant there was enough evidence in their files to prove was a drain. All of this information has been shared with the Select Board.

### **Minutes for 7/14/22**

7/14/22 draft minutes – SCC has reviewed 7/14/22 minutes. Harrington emailed DeFant a typo correction and DeFant made correction as such. **Motion: David moves to approve the 7/14/22 minutes, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye and Willson- Aye. So moved.**

### **Site Visits Discussion:**

**10 Haskins Way/Salvador (deck)** – DeFant: no evidence of wetlands found; SCC will approve building permit.

**Lot O-32 (wetlands inspection)** – (See above Lot O-32 section above)

**Wheelock Tract Solar Project** – Willson and Chair joined the Planning Board site visit; reviewed repair work that had been completed on the detention basin and driveway. Willson and DeFant did not find evidence of any flooding or releases into a wetland.

**Updates/Follow-Ups:**

**35 Weatherwood Road Emergency Certification** - DeFant: Emergency certification (EC) needs to be ratified. **Motion: Willson moves to ratify the EC for 35 Weatherwood Rd, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye.**

**Dudleyville Dam (beaver dam safety concerns)** DeFant: met with Town Administrator, Becky Torres, Chair of Board of Health, Catherine Hilton, and the owners of the dam, Lois and David Brown. Hilton did not believe it required a BOH order for removal. DeFant learned that David Brow had been working on the dam periodically; DeFant believes SCC should do a site visit to see what work is being done and discuss permit application requirements. DeFant will email SCC and homeowners to schedule site visit.

**Eversource Right-of-Way Permitting** – DeFant: received an email from SWCA consultant, Becky Weissman, and spoke with her. Eversource is still in process of MEPA review. DeFant to attend the next Leverett Conservation Commission meeting to hear about what they are thinking in regards to this permitting. Eversource is reaching out to Conservation Commissions to explore mitigation projects for wetland impacts. Eversource might be willing to give funds for conservation projects as part of mitigation.

**Unanticipated Business**

**56 North Laurel Drive Order of Conditions:** applicant was required to submit a planting plan to be approved. SCC has no comments. **Motion: David moves to approve the planting plan for 56 North Laurel Dr, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye.**

**South Brook Conservation Area /Top of the Lake Conservation Area**

Jaques: was in touch with SCC, Select Board, and the Chief of Police regarding language for a sign being placed at Top of the Lake Conservation Area; will be having the sign made and placed within the next week or so. When working on the site she has observed along the shoreline a large amount of glossy buckthorn and wanted to ask SCC about removal; doesn't know if it can be done under the OOC or what approval needed; shoreline is well vegetated currently with sedges, grasses, and shrubs but there is a huge amount glossy buckthorns – very conspicuous right now because they have their leaves still and covered in berries. SCC agrees that removal of the glossy buckthorn would be a great idea because it is an invasive species. Jaques will do work with volunteers.

Jaques: Liam Cregan was hired to map the wetlands which he had done with detailed maps and photographs last spring; plan was to arrange a site visit to review trail routes and repair work needed; will poll Cregan and SCC for site visit dates. DeFant: did Cregan give an estimate about how much bog bridge repair work is necessary? Jaques is unsure. DeFant: could forward all the maps and the proposal? Had a hard time locating it. Jaques confirms she will send them to SCC.

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

**Meeting Close: 8:50pm**

**Next Meeting: Thursday, September 22nd @ 7 pm**

**Documents Used:**

- Agenda
- 7/14/22 draft minutes
- 70 Lake Drive NOI
- 70 Lake Drive NOI Site Plan
- 86 Sand Hill Rd NOI
- 674 Wendell Rd RDA
- Draft 674 Wendell Rd Determination of Applicability
- Fuss and O'Neil Wetland Delineation and Report, 66 Leverett Road/Lot O-32
- 8/12/22 66 Leverett Road/Lot O-32 Enforcement Order
- Lot O-32 Hoostein complaints
- 9/1/22 emails from Joseph Cerutti, Underground Injection Control Well Program Director, MassDEP
- 9/1/22 email from Chair to Select Board
- 9/6/22 email from Rebecca Weissman (SWCA) regarding Eversource Right of Way WT-11 TRRP wetland mitigation projects request
- 56 North Laurel Dr Order of Conditions Planting Plan
- South Brook Conservation Area suggested signage and trail mapping