

## Shutesbury Conservation Commission

Minutes – 11/10/22  
Approved – (1/12/23)  
*Virtual Meeting*

**Meeting Start:** 7:00pm

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

**Commissioners Absent:**

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

**Other present:** Leslie Luchonok, Chris Volonte (Kestrel Land Trust Representative), Jill Marland, Frank McGinn, Jim Hemingway, Jennifer Wallace, Walker Korby (Contractor, Terramor, LLC), Amanda Alix, MaryJo Johnson, Mary Lou Conca, Jon Lawless, Susie Mosher, Elaine Puleo, Leslie Cerier, Michael Hootstein, Don Wakoluk (SCC Consultant), Penny Jaques (Library Building Committee), Michael Vinskey, Katherine A. Powers, Kate Cell, Jeannette Stockton, Steve Bressler, Penelope Kim, Rita Farrell (Select Board), Gail Fleischaker, John Buonaccorsi, Joan Hanson, Stephen Dallmus, Brad Foster, Emily Bayard, Greg Caulton, Michele Regan-Ladd, Becca Wheeler, Eric Stocker (Select Board), Mary Anne Antonellis (Library Director), Linda Bills, Catherine Hilton (Board of Health), Arleen Read (Board of Health), Joyce Braunhut, and all other unidentified individuals.

Chair's Call to Order at 7:02 p.m.

Meeting is being recorded

### **Request for Amended Order of Conditions: Ames Pond Trail Maintenance Project, Kestrel Land Trust, 286-0291**

DeFant: when the applicant of an already issued Order of Conditions (OOC) is requesting amendments to those conditions there are two steps: SCC must determine if the request is minor or major change. If major, then the applicant must submit a new NOI application with fees, legal notice, and abutter notification. If minor, then the applicant can proceed with posting a legal notice and sending abutter notification for a public hearing. SCC has reviewed the proposed amended conditions. Volonte notes a new map was sent to SCC this morning; SCC has not reviewed the new map. Volonte shares the new map for SCC to review via screenshare. DeFant: from her understanding, the new proposal includes trail changes that SCC suggested in the first public hearing: to have the proposed trail that was along the bank of the wetland to be moved to the upland area. Volonte: Kestrel had used SWCA to do the planning and permitting for the project which was to occur in two phases; the first phase being the expanding of the parking area, the trail through the meadow and construction of a viewing platform; second phase to be the repairs on the bog boardwalk and other wetland crosses (including stone stabilization). The second phase is to happen next year with MassTrail funding. Having the permitting completed, Kestrel Trust chose to engage with Terramor, LLC for the construction phase of phase one; the contractor Walker Korby recommends these changes. Korby: after examining the original design (not created by him), he was concerned about the trail in the wettest part of the meadow; he proposes removing the trail that was proposed to be along the bank of the wet meadow and moving it to the upland area above the meadow (moving most of it out of the BVW); only using puncheon in spots that cross wetland areas and the remaining of the trail to be compacted stone dust path. He believes it would be better aesthetically to use stone dust rather than a lot of pressure treated wood and it would still allow the trail to be accessible; easier to grade. The newly proposed trail would be slightly longer than original proposed, but it would be more cost-efficient. Volonte: the puncheon as originally designed is more prone to frost heaves making the stone dust trail more accessible and sustainable. The trail proposed along the southwestern edge

of the meadow would prevent a tractor from entering the meadow for mowing because the tractor cannot go over the puncheon.

DeFant: is any change in trail gradient proposed as the trail is supposed to be accessible? Korby: it is similar to the previous proposed trail but small increase in grade; it is comparable. Willson: is it still within delineated wetlands? Korby: yes, the entire project will be within the 200-foot Buffer Zone. Willson: it was stated that the trail was going to be longer than the original, what is the length difference of impact to wetlands? Korby: the original was 370 linear feet; proposed trail is around 410-430 linear feet. Kahan: glad this project came back with this proposal as it was something SCC suggested during the original Public Hearing. DeFant: she believes that request change(s) are minor and doesn't not recommend submitting a new NOI. SCC has no further question. There is no public comment. **Motion: Kahan moves to determine that the requested Amended Order of Conditions changes to the Ames Pond OOC constitute a minor change, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye and Willson- Aye. So moved. The Public Hearing for the Request to Amend Ames Pond's OOC is scheduled for December 8<sup>th</sup>, 2022 at 7:15 p.m.**

#### **45 Shore Drive Certificate of Compliance (COC) Request**

DeFant: this COC is for an OOC from 2008 during the large project that involved lowering Lake Wyola; many homeowners on the lake did projects and bundled it with the large NOI. The OOC was for dredging. DeFant and David conducted a site visit, but there wasn't much to evaluate because the work was done underwater, and the work was completed 14 years ago; she doesn't see have any reasons to deny the COC request and does not recommend requiring an as-built certification. SCC has no further questions/comments. There is no public comment. **Motion: Willson moves to issue the COC for 45 Shore Dr, Harrington seconds. Vote: David- Abstain, DeFant- Aye, Harrington- Aye, Kahan- Aye and Willson- Aye. So moved.**

#### **Emergency Certification for Leverett Road repairs by Highway Department**

DeFant: Willson and DeFant went on a site visit to Leverett Rd. to evaluate erosion that is damaging pavement; Highway Department Superintendent, Tim Hunting, believes it is a safety hazard. Willson and DeFant agree that repairs/improvements are needed including repairs/improvements to manage stormwater to stop continued erosion. There is a natural berm (debris and sediment) that has developed under the guardrail that slopes into a BVW which goes into Roaring Brook (may be in Riverfront but did not measure); natural berm is preventing sheet flow. The plan is to remove the berm, make a new swale out of traprock and then make a stormwater drainage cut above the guardrails (armored with traprock). **Motion: Willson moves to ratify the Emergency Certification for Highway Department to make repairs on Leverett Road, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye and Willson- Aye. So moved.**

#### **Emergency Certification for National Grid hazard tree removal on Pine Drive**

DeFant: There is a damaged tree that is in the right-of-way of Pine Drive; damage caused by beavers. The tree is hazardous because it is at risk of falling onto power lines. DeFant and David did a site visit to confirm the tree was hazardous; Tree Warden, Don Wakoluk, also gave SCC order to have the tree removed. **Motion: David moves to ratify the Emergency Certification for National Grid to remove a hazardous tree on Pine Dr, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye and Willson- Aye. So moved.**

#### **Consider draft minutes for 9/22/22 meetings**

Minutes reviewed with no edits. **Motion: Willson moves to approve the 09/22/22 minutes, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Abstain, Kahan- Abstain, and Willson- Aye. So moved.**

### **Beaver management around Lake Wyola**

DeFant: there were some concern residents have voiced about beaver trapping that occurred near a culvert for Fiske Brook (Lakeview Road) outlet into Lake Wyola; culvert near Pine Brook Camp which is on the Wendell border. DeFant went to a Board of Health (BOH) meeting reviewing this topic; the Energy and Climate Action Committee (ECAC) also discussed this topic as part of a larger discussion about Nature-Based Solutions for climate change and stormwater management. Beaver permits are issued by the BOH; dam breaching or flow control device installations must then be permitted by the SCC, usually by an Emergency Certification. DeFant suggested BOH and SCC have a larger conversation about how decisions are made regarding this culvert; Mike Callahan of Beaver Solutions, a beaver management specialist, evaluated this culvert for the Town several years ago; he shared information with DeFant in a phone conversation that suggested there may be a way to design a flow protection device at this culvert; this would eliminate need for trapping; BOH also mentioned that Town historically has breached beaver dams upstream in the Fiske Pond/Brook watershed, possibly over the Wendell border. Wendell Conservation Commission (WCC) is looking for more information that about what activities are being conducted in Wendell. Willson: every beaver situation is unique and flow control devices are sometimes useable and sometimes not; would like to schedule a site visit. DeFant: WCC has suggested a joint site visit as well and offered SCC to investigate areas in Wendell as well. She would like to schedule a site visit with WCC, BOH, and the Highway Department. SCC agrees.

### **Site Visit Discussion**

**70 Lake Drive Pre-Construction Site Visit** – DeFant and David did a pre-construction site visit as required in the OOC; condition standards were met, and construction will begin soon as the lake level is lowered.

### **Updates:**

**South Brook Conservation Area Site Visit Follow-up:** SCC conducted site visit in October with Penny Jacques and Liam Cregan and looked at a footbridge in bad condition. Jaques: at the visit, it was discussed that they would look at the CPC grant to see if there were sufficient funds to repair footbridge. She believes Willson agreed to put together an application for SCC. DeFant suggested a new CPA grant for trail improvements; CPC would prefer a combined application for all proposed trail improvements.

DeFant: SCC discussed it being not appropriate for the SCC or a Commissioner to write an application which the SCC then also reviews and permits (due to prohibitions against self-dealing in state ethics laws). Willson: it is not appropriate for the SCC to write an application; she only offered to research options and costs for footbridge repair. DeFant suggests asking Open Space Committee or Recreation Committee if they would be willing to submit an application. Jaques: suggests getting the funding first; was not prepared for in-depth discussion. SCC discussion with be revisited at a further time.

### **Updates on Lot O-32 Permitting for Town's Lot O-32: cleanup, recent site visits, resident concerns:**

DeFant: ANRAD Public Hearing for Lot O-32 on November 17<sup>th</sup>; therefore, ANRAD won't be discussed until everyone involved is present. Fuss and O'Neill (Town's environmental consultants) will be conducting more delineation work at the site and Stockman has sent out her initial Third-Party Review Report (TPR) of her findings from the October site visit; there have been email exchanges with feedback regarding plans for further investigations.

A resident emailed SCC with concerns due to seeing heavy equipment on Lot O-32; Chair reached out to the Town to clarify that no unpermitted work was occurring; response clarified that Town was only moving lumber that was being stored on the lot to the Highway Department. Rita Farrell, Chair of Select Board, confirmed expectation that no substantive work would occur until the ANRAD is completed and jurisdiction is clear. When SCC met with the Select Board on September 22, the initial discussion was an agreement to have the BVW clean-up and restoration and the library projects submitted as one bundled NOI; the Town wishes now to separate the two into individual NOIs and complete them as phases. Farrell suggested having a joint meeting to once the ANRAD is completed.

Willson: agrees that a joint meeting with the Select Board to discuss matter would best after the ANRAD is complete. DeFant reached out to Mass DEP for feedback on how to review the NOI for the restoration; spoke with Brian Harrington and John Zeigler; without having details of the testing results, the DEP officials suggested the Town consult with its LSP so they can determine whether more testing is needed due to whatever soil waste is found when investigating the cleanup area. Farrell: the Town has been in close contact with MassDEP; they are aware of Select Board plans to proceed and any issues that are present. DeFant suggested having another site visit with Fuss and O'Neil to identify all locations of where fill had been placed. Farrell: she visited the site for the first time today with Mary Anne Antonellis and understand Antonellis has accompanied Fuss and O'Neil during every site visit. Antonellis: Tim Clinton is the Town's LSP and Matt Kissane is the Project Manager; they looked at BWV 3 on the west side; they have been out the front of the lot and on the access road going all the way to Borehole 9, including looking in the wooded areas to find an alternative route to get to Borehole 9 for the testing. Clinton will not be out on the site again and would have to submit a proposal and be hired to complete any more work, but Kissane will be present during the bore holes testing and UIC investigation; she is aware of the areas concerned and can should Kissane during those times where he will be present. DeFant: DeFant and David walked through the site recently and noted a debris pile in the BVW-2, on the east side, debris piles in BVW-3, debris piles on the southern edge of the cleared area; and various kinds of buried debris around the demolished 3-bay garage (Buffer Zone to a BVW-1 and BVW-2). Debris included cables, buried wires, plastic, and metal, at least one buried tire and wheel; suspect that there may be more debris buried in that area. Antonellis: they may see more debris when the UIC soils testing is conducted; suggests that Antonellis and DeFant do a site walk together and mark where these areas of concern are so that she can share it with Kissane. DeFant agrees.

**Discuss Bylaw Regulation revisions** – *Discussion has been postponed*

### **Pearson Lot R-15 Acquisition**

SCC received a draft Landowner Agreement letter from Kestrel Land Trust coordinating the funds for the Pearson Lot Acquisition; they need SCC to sign for Foreign Legacy Program. The final sale and purchase agreement needs to be coordinated between KLT's attorney and Town Counsel, Donna MacNicol. DeFant reached out to the Select Board and Attorney MacNicol to give them all the information she had regarding this matter. SCC grants permission for DeFant to sign the Pearson Lot Acquisition documents.

**Site Visits Scheduling:** *Discussion has been postponed*

### **Unanticipated business**

**Right of First Refusal** – DeFant: SCC received a First of Right Refusal package about a property off Wendell Road that is being proposed to be taken out of Chapter 61; Town has the right of first refusal. SCC has no comments or concerns; this property is not a priority for

conservation acquisition. SCC gives permission for DeFant to relay this information to the Select Board.

**Budget Revision** – DeFant: Budget requests had to be submitted by the end of October and as discussed at the last meeting DeFant wrote to Finance Committee requesting a 10% increase to the expense budget for FY24, to accommodate postage cost increases. This matter is still pending.

**Public Comment**

**Schoolhouse Rd Forest Cutting Plan-** Leslie Cerier: she is requesting that SCC do a site visit to evaluate the Forest Cutting Plan conducted by her neighbor. She is concerned about possible flooding and drying of wells; the FCP was revised, pushing the forest cut further back into the neighbor's property but she believes the area has been clear cut. DeFant: when Cerier had originally brought up this matter, SCC discussed not having jurisdiction over Forest Cutting Plans enforcement because any local bylaws are preempted by state laws; this legislative exemption allows FCPs to be exempt from local bylaw protection because commercial forestry is considered as agriculture; this position was outlined by the Attorney General's Office in 1996 (case law and legal advisory). DCR enforces forest cutting plans. Town Counsel MacNicol advised the SCC on the same. The Massachusetts Association of Conservation Commissions also shared the same legal opinion. Cerier disagrees and states she has spoken to another lawyer. DeFant: SCC can't go onto private property without permission; SCC would not be enforcing any local bylaws or the Wetlands Protection Act in this matter; therefore do not have jurisdiction. Cerier: SCC visited during the last site visit and the cutting plan was revisited. DeFant: SCC accompanied the site visit with the permission of the landowner and as a courtesy. The cutting plan was not revised by a mandate from SCC because they did not have an enforcing power to exercise in this matter. SCC agrees with DeFant that SCC has no jurisdiction in this matter and will not conduct a site visit; they recommend contacting DCR/ Andrew Rawcliffe.

**Executive Session Announcement:**

Chair notes that a matter has arisen for the SCC review that cannot be discussed in open meeting; an open session would jeopardize the SCC's position; SCC will conclude open meeting and go to Executive Session; will not return to open meeting tonight.

Executive Session is being called for Purposes #3 and #7:

*Executive Session for Purpose Number 3: Exception to the Open Meeting Law (MGL Chapter 30A, Section 21(a)): To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.*

*Purpose Number 7: Exception to the Open Meeting Law (MGL Chapter 30A, Section 21(a)): To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.*

**Motion: DeFant moves to move into Executive Session, to discuss strategy with respect to litigation, and not to reconvene in Open Session, and to comply with the provisions of MGL Chapter 268A, Conflict of Interest Statute and MGL Chapter 214, Section 2B, Right to Privacy Statute, without returning to Open Session.**

**Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye and Willson- Aye. So moved.**

**Public Meeting Closed:** 8:17pm

**Next Meeting:** Thursday, November 17<sup>th</sup>, 7:00 p.m.

**Documents Used:**

- Agenda
- 9/22/22 Draft SCC Minutes
- Ames Pond OOC and Amended OOC Request
- Lot O-32 TPR Report, Emily Stockman, 11/3/22
- Ames Trail Reroute Map and Plan, 11/10/22
- Schoolhouse Road/McLean Forest Cutting Plan
- Draft Landowner Agreement Letter, Lot R-15 Acquisition
- October 2022 Finance Committee Budget Request
- Wendell Road Right of First Refusal documents
- Draft Emergency Certifications for tree removal on Pine Drive and Leverett Road repairs

*Respectfully submitted by Carey Marshall, Land Use Clerk, 1/10/23*