

Shutesbury Conservation Commission

Minutes – 12/08/22

Approved – (2/09/23)

*Virtual Meeting*

**Meeting Start:** 7:00pm

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

**Commissioners Absent:** None

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

**Other present:** Terry Bernard (applicant), Matt Kissane (Fuss & O’Neill), April Doroski (Fuss & O’Neill), Emily Stockman (3<sup>rd</sup> Party Reviewer), Rita Farrell (Select Board Chair), Jill Marland, Leslie Luchonok, Ziporah Hildebrandt, Frank McGinn, Chris Volonte (applicant, Kestrel Land Trust), Katie Eagan, Michael Hootstein, Mary Anne Antonellis (applicant, Library Director), Mary Lou Conca, Michael Vinskey, Penny Jaques, Tom Siefert, Walker Korby (Terramor LLC, , contractor), Jim Hemingway, Amanda Alix, Don Wakoluk, Elisabeth Goodman (SCC Counsel), Gregor McGregor (Select Board Counsel), Jon Lawless, Samuel Clay, Susie Mosher, Cailin Reiken, Caroline Smith, Evan Jones, Gail Fleischaker, Joan Hanson, Meryl Mandell, April Stein, Penelope Kim, Becca Wheeler, Craig Martin, Michael DeChiara, Stephen Dallmus, Brad Foster, Mark Protti, Kate Cell, Dale Houle, Catherin Hilton, Emily Bayard, Greg Caulton, Jen Malcolm-Brown, Arleen Read, Lucy Gertz, Steve Bressler, Joyce Braunhut, Jessica Carlson-Belanger, and all other unidentified individuals.

Chair’s Call to Order at 7:00pm

Meeting is being recorded

**375 Locks Pond Road Request for Determination of Applicability (RDA)/Bernard: garage addition**

Bernard: looking to build a two car garage; there is currently a shed in its desired spot which would be removed and the proposed garage (28’ x 32’) to be placed there. They own three lots and the proposed garage would be proposed on Lot 2 which is closest to an intermittent stream. Bernard confirms project will have a dug foundation. DeFant: proposed garage is about 30 from the intermittent stream. DeFant shares the site plan for for SCC to review via screenshare. DeFant: site plan was not professional delineated, intermittent stream runs through the three lots owned by the applicants and into a culvert that runs under Lake Drive and through 14 Lake Drive, ending in Lake Wyola; work is considered within the Buffer Zone. Where would the dumpster be placed? Bernard: the dumpster is marked in brown but the current shed will be demolished and removed from the property. Erosion controls, silt fences, will be placed along the right side of the garage and the back of the garage. DeFant: where will stockpile of materials be located? Bernard: left side of the garage in the driveway. Willson: are cars going to be coming in off of that U shaped driveway to get into the garage? Bernard: Yeah we currently do that now; we park right behind the house between the house and current shed. Willson: Is there going to be any paving at all? Bernard: U shape is now paved but we would be paving to go into the garage. DeFant asks if the paving will be done with asphalt. Bernard confirms. DeFant: I don’t know if

that was on the RDA narrative that it there was going to be paving with asphalt. Bernard confirm that was not included in their narrative. Willson: heading north, between the house and the current shed is that grass or gravel? Bernard states it is gravel. Willson: concerned about stormwater runoff of the asphalt. It will run towards Lake Drive and probably run into the gravel. Do you have problems with drainage right now on your property? Bernard: no. DeFant: Their property, from the driveway down to the corner is all sloping down to that culvert. Bernard: I think, by building this garage this will level out that back portion of the property (smallest slope). DeFant: what is the square footage of the of the asphalt in addition to the current amount of asphalt on the property because of stormwater drainage? Bernard: At this point all the water from the road runs onto their property and into that intermittent stream. Willson: more concerned about the rain that hits the new asphalt which she believes will flow north towards Lake Drive; as long as the new asphalt is a small enough in area it won't be a problem – it'll infiltrate into the gravel. Bernard: it won't be any wider than 28' (size of the garage opening). It's not going be going down along the side of the garage; they are planning to build a [retaining] wall from the corner of their home to the corner of the garage so that water won't run towards Lake Drive – there is a large slope there, so we're going to have to bring grade up and make it level to prevent water running towards the house and Lake Drive. DeFant: This was also not in the narrative. How high will the retaining wall be? Bernard state the retaining wall will be 3'.

Kahan: don't have any concerns, but he would certainly like to defer to the Commissioners who have seen site and can picture what's being described and relationship to what they've seen. Willson: if you're going to build the wall, we may want a little more erosion control to almost connect down to where the houses. Bernard: we're not going to be really be digging – going to be leveling off and bringing the land up on the side of the of the garage to level it out and then adding steps going down to the house. He plans to put drainage in the wall to go around the side of the house. SCC has no further questions. DeFant: she wonders about adding erosion controls while building up that wall because there is going to be some material that you're going to have to be back filling behind the retaining wall. Bernard agrees and confirm they can do that. Applicants plan to start and complete the project in the spring.

DeFant: SCC would prefer to have had the whole scope of the project outlined in the RDA application, including the retaining wall, the steps, and pavement, so does SCC feel like they need this to be revised in order to approve it since it's not in the narrative? SCC agrees the RDA narrative and site plan need to be revised. DeFant: since the construction is not expected until spring, she recommends that SCC continue this Public Hearing to their next meeting in January; asks applicant to come back with a least a revised narrative including all components discussed during this Public Hearing. Bernard agrees.

Jaques: she suggests that SCC consider asking for elevations on the site plan since it sounds like some significant changes are being made in addition to building the garage; to be consistent. Willson: if they're going to be revising the plan anyway, can they add some of the area that they're raising up? DeFant: are we asking for an engineered plan with contours? SCC has to be clear what we mean if asking for elevations. Willson: You can get topographical lines placed on a map by calculating it yourself and putting some elevation lines in; she's not requiring them to get an engineer. DeFant: believe the retaining wall is a good feature; good to be directing some of the water flow away from that culvert because we don't want culvert overloaded with

additional sediments. There are no more public comments. **Motion: Willson moves to continue the Public Hearing for the 375 Locks Pond Rd RDA on January 12<sup>th</sup>, 2023 at 7:00 pm, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

**Public Hearing to Amend Order of Conditions for Ames Pond Trail Maintenance Project/Kestrel Land Trust, DEP File # 286-0291**

DeFant asks Volonte to summarize what was discussed during the last meeting when originally discussing the proposed changes. Volonte experiences some technical difficulties in which her contractor, Walker Korby, summarizes for her. SCC has no further questions. There are no further comments from the public. Korby: the main change was to change the proposed trail, which goes down the west-southwest side of the field and take it around to the northeast/east side of the of the field; keeping it out of the wettest spot of the field - reducing the need to the pressure-treated puncheon. DeFant: this is the accessible trail that was going to be puncheon; the original design was for the parking area to be set back from the road. Volonte rejoins the Public Hearing. Volonte: That is one of 3 changes proposed to that meadow trail; the other 2 are that the two sections that don't pass through the BVW are proposed to be compressed gravel rather than puncheon because of the drier, more gravel substrate. Compressed gravel will be more sustainable over time because puncheon can change because of frost heaves; can become a little uneven, which makes it hard to keep an accessible trail accessible. The other reason we would like the compressed gravel is, if we just use puncheon, then they would not have mowing access to the meadow from the parking area because a tractor can't drive over puncheon, but you can drive it over compressed gravel trail. DeFant: SCC, Volonte and Korby discussed this last meeting and there had been kind of a general agreement that this was a more desirable treatment that has less impact on the Resource Area than the original design. SCC has no further questions.

Frank McGinn (27 South Laurel Drive): the landing platform goes through a natural cranberry bog. Korby is unsure what McGinn is referring. McGinn: it goes straight through the cranberry bog area; all around that sculpture is wild cranberries. His concern is if those wild cranberries are going to be dug up to put the gravel. Korby: in that particular section there is puncheon – that is the one of the reasons to have the puncheon there rather than the gravel in the those BVWs. McGinn: So that long orange strip will be a puncheon that is pressure treated with a plank on top of it, no gravel underneath but the platform will basically take all the sun away and kill all the vegetation underneath. Korby: the construction of the puncheon will start with them digging about 3 inches of the top soil and install a little bit of gravel; presumably underneath there is definitely not going to get as much sunlight. The viewing platform is situated over an existing walkway; probably takes up about a third of the overall volume of what we would be adding onto. They are trying to keep the compaction to a minimum and allow access for people that might not have the ability to get out there. Kahan: where the applicant is going to decide to start using puncheon on the north side of this tract where it transitions from compressed gravel to puncheon; is if there a delineation they're using to decide where that transition will take place? Volonte: they have the GIS data that was provided to them by SWCA who did the wetland delineation. Kahan: the delineated wetland that is based on the geo-referenced will be used in the field to decide where the start of the puncheon in the wetland area? Volonte: yes.

Mary Lou Conca: believes the cranberry bog shouldn't be covered by the puncheon. DeFant: SCC has the jurisdiction to condition this project to protect the Resource Area(s) and the Interests of the Wetlands Production Act (WPA), and our Local Bylaw; SCC has already decided to approve this project and issue an OOC. We are only reviewing the suggested changes, not the entire project. The applicants are coming back to SCC with a change that is less impactful and taking the project out of the wetland Resource Area to some extent. Mary Lou Conca: when SCC first approved this project, was it known that a cranberry bog was there? Hildebrandt: asks if the cranberry plants could be moved. DeFant: That would be up to SCC to consider whether we would want to require that.

**Motion: David moves to close the Public Hearing for the Amended OOC for Ames Pond Trail Maintenance Project, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.** DeFant shares the drafted Amended OOC for SCC to review via screenshare. Edits are considered. SCC gives DeFant permission to sign for them electronically. **Motion: David moves to approve and issue the Amended OOC for Ames Pond Trail Maintenance Project, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

#### **58 Lake Drive Certificate of Compliance Request**

DeFant: project to reconstruct/repair 35' of retaining wall permitted in October. SCC conducted a site visit and deemed the site to be in good condition. Harrington notes she was impressed with the work that had been done. SCC is not requiring an as-built certification. **Motion: Willson moves to approve and issue the COC for 58 Lake Dr OOC, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

#### **Review minutes for 10/13/22 and 10/27/22**

*10/13/22* – **Motion: David moves to approve the 10/13/22 meeting minutes, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

*10/27/22* – **Motion: David moves to approve the 10/27/22 meeting minutes, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Abstain, Kahan- Aye, and Willson- Aye. So moved.**

#### **Stockman and Associates Third-Party Review Updated Proposal for Lot O-32 ANRAD Review**

Emily Stockman gave SCC an updated proposal for her Third-Party Review contract because of the additional site review work that wasn't anticipated. **Motion: David moves to approve the updated proposal for Emily Stock 3<sup>rd</sup> Party Reviewer, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

#### **Continued Public Hearing for Abbreviated Notice of Resource Area Delineation (ANRAD) for 66 Leverett Road/Lot O-32, Town of Shutesbury, DEP File # 286-0297**

DeFant opens the ANRAD Public Hearing for Lot O-32 by the Town of Shutesbury.

Gregor McGregor: I'd like to introduce myself as Counsel for the Select Board and the Library Project Committee, essentially representing the Project on the ORAD, and any other issues. He is

from McGregor, Legere, & Stevens Environmental Lawyers, Land Use, Real Estate and Litigation in Boston. Kissane: he is Matt Kissane from Fuss & O'Neill, the project manager representing the town in this submittal. Doroski: She is April Doroski, a water resources and climate resilience specialist with Fuss & O'Neill and the wetland scientist on this project. Stockman: she is Emily Stockman, a professional wetland scientist and the owner of Stockman Associates; she is here as the Peer Reviewer for SCC. Goodman: she is Elizabeth Goodman, an attorney in the law firm of Cain Hibbard; has been retained by SCC to represent them in this matter.

DeFant: for the benefit of the public, will recap process. This is an application submitted by the Town asking the Commission to review the wetland delineations on Lot O- 32; SCC is charged in general to protect water quality, water quantity and wildlife habitat, and tasked with the enforcement of the WPA and the Shutesbury General Wetland Protection Bylaw. In an ANRAD, an applicant has the right to ask SCC to approve a wetland delineation for a parcel of land so that they have certainty about where the Resource Areas are on the property that are protected by those statutes and they can plan accordingly with any development projects. SCC's job tonight and through this Public Hearing process is to listen to evidence from the scientists who have been looking at this property and from the public, to ask questions, and to gather information in order to make a decision about where to approve wetland lines. SCC is not going to be talking about specific projects tonight; there are no projects proposed at this point.

This is our fourth Hearing, but the first 3 Hearings were continued, and we did not get into any substantive discussions. This is the first night to talk about the specifics of the wetland delineation work. First, the applicant will present the work that they've done. Then SCC will ask questions if they have any. Next, SCC will have our Third Party Reviewer, Stockman, discuss her comments. The Third Party Reviewer is an independent scientist who does an impartial scientific review on behalf of the Commission and advises SCC in their deliberations. Stockman has gone on site visits with the applicants and has been reviewing documents, given written feedback to the applicants; the applicants have had a chance to respond to that written feedback; all written comments are on our Town website.

Doroski: They submitted the ANRAD on September 13<sup>th</sup> and received a response from MassDEP with comments, to which they responded to on October 10<sup>th</sup>. The comments received included updating their cover letter; overall their responses to MassDEP comments included provisions and updates that we would take into consideration for future updates to the maps. They conducted a site visit with the Peer Reviewer, Emily Stockman, members of SCC and Town on October 28<sup>th</sup>. After that site visit, Fuss & O'Neill conducted an additional site investigation on November 11<sup>th</sup>; analyzed the data from that site investigation. They used that site investigation to allow themselves to provide our response to the first round of comments from the Peer Review; those responses to comments were provided on November 22<sup>nd</sup>. After that set of comments there was an additional site visit with the Peer Reviewer on November 28<sup>th</sup>. Stockman provided a second round of comments on December 1<sup>st</sup> and Fuss & O'Neill provided a second round of responses to Peer Review comments. During the site visits and during the additional site investigation, certain boundaries of the wetlands were adjusted and changed in response to comments from Stockman to provide a more comprehensive review and

understanding the site. Many people know that it is an extremely disturbed site with a lot of complicating factors.

Doroski gives a brief description of the wetland delineation map; this is not a finalized map but it is a markup of a previous map, that they had sent to the Commission; sharing to show where we are with the delineation and the changes that have been made. This is essentially the most recent representation of the delineation. The Town will hire a professional Land Surveyor, who will go on site and locate the flags to high accuracy; which is why this map has not been updated. The professional survey map will have all of the flag locations and that will be part of the finalized ORAD submittal.

BVW-1 starts in the forested area, and extends into the field; part of the mowed area; recently as part of the Peer Review process, this wetland boundary was changed; we have now reinstated the original BVW-1 line. DeFant asks Doroski to explain this process. Doroski: during the additional site investigation, 3 soil pits were dug to about 3' deep within this mowed lawn area. When grass is mowed it's difficult to delineate. The first delineation was conducted in August, and this was a drought year, so that adds another complicating factor. Looking back at aerials to the 1930s, this one portion has been cleared. The soil investigation was to further understand the subsoil conditions and gather more information because the initial Hydric Soil Indicator F6 Redox-Dark Surface, observed in this area, had some User Notes in the *USACE Northcentral and Northeast Supplement* indicating how to investigate further to determine if hydrology is coming from the groundwater, or if due to plowing. The reasoning for going back to this area was to try and figure out if this mowed lawn was a wetland because of wetland hydrology or if the source of hydrology was something else. During that soil investigation, she identified that the A Horizon, top horizon of soil, had been plowed it; the boundary was quite clear. Her thought process for re-delineating this area was that because of mowed area's plowing and mowing history, the redoximorphic soil features that were observed were due to compaction, and not a wetland hydrology from the groundwater. That line, however, was adjusted again. After an additional site visit and comments, this wetland boundary, initially delineated in August, will be the boundary that we provide for the survey or to locate the flags for.

Doroski: BVW-2 area is another area that, during the peer review process, slightly changed. The very first submittal of the ANRAD included this as an IVW area, but there is a small inlet structure behind this abutting house with water that would have likely flown from this wetland to the inlet structure which had a pipe to the abutters' pond which is also connected to another BVW. This IVW was updated to a BVW area. During that additional investigation, a soil pit was dug to the left of this BVW Area; the Peer Reviewer recommended investigating this further; resulting in the wetland boundary extending approximately 12' out around the base of the access road slope. This line also was adjusted to include a debris pile that was observed in this BVW.

The the access route road down through the property during the initial ANRAD submittal delineated IVW-4. During the peer review process, Stockman mentioned there were Isolated uplands within this IVW itself. During that additional investigation, Doroski reviewed this area to delineate it with more accuracy; she agreed there is an upland island in the middle which turned out to be this IVW-4 could be split into two wetlands. She split it into IVW-4 and

IVW-5. Because of that split, both are less than we 1,000 square feet which are not jurisdictional under the Shutesbury Local Bylaw.

Doroski: During the first site visit on October 28<sup>th</sup> there was a rutted area identified within the access road; this is now IVW-6. During the second site visit, that boundary IVW-6 was made a little bit larger; this IVW is still less than 1,000 square feet but the flags were moved during that November 28<sup>th</sup> site visit. Also, during that site visit, there was an area of inundation off of the access road approximately in this area. There was a rainstorm the night before and she had not observed inundated in this area during her previous site visits before that November site visit; she went back, reviewed it and delineated this area. The inundation essentially matches where the wetland boundary is and there is a distinct change in vegetation between the wetland boundary and upland boundary. This area was approximately 200 square feet; therefore not jurisdictional under the Shutesbury Local Bylaw.

DeFant: Do you want to just touch briefly on BVW-3 as well, the off-site BVW and the No-Contest line that is being proposed? Doroski: this is BVW-3 and it originates off-site; continues and is defined by change in slope. The boundary between these 2 flags (3A-114 and 3A-115) will be left open because there was debris observed in this area, and it's believed that there is a wetland buried underneath; will be represented as such in the finalized ANRAD submittal. In this area the debris is at least 3 feet deep and it's not feasible to dig that by hand to delineate; heavy equipment and machinery would be required to understand where that boundary is. For the submittal, they're proposing to exclude this boundary from SCC's review because this boundary will be identified during restoration activities (which the Town is currently figuring out).

Doroski: the final piece was the No-Contest line which is this shaded green area; a MassDEP mapped wetland exists off-site; during the site visit, wetlands close to the property boundary appear closer than 100' from the boundary; Stockman's comments suggested the option of adding a 100-foot Buffer Zone. The plan will show a No-Contest line 100' into the property to indicate that they did not delineate the any wetlands off-site (on private property). The No-Contest line will be a 100-foot protected Buffer Zones starting from the boundary of the parcel and going into towards the other Resource Areas. DeFant: will that be on both sides of the property, or just on the western side? Doroski: propose having them on both sides of the property; not along the southern and northern boundaries.

David: this 100-foot line is from the boundary of the property? Doroski confirms. DeFant: will final map show topography? Doroski confirms. DeFant: in looking at BVW-3, given that there's fill, it's an odd shape, channels were observed that clearly are anthropomorphic (human-made channels), when you were doing the delineation of those boundaries, how do you know you got below the fill line? How did you determine that those areas that are delineated as uplands are actually uplands and not fill? Doroski: she didn't observe evidence of fill specifically along the boundary that DeFant is speaking of. In the areas that appear to be fill, the trees had smaller diameter trunks, indicative of being newer. The trees generally had larger diameter surrounding the other area, so based on that, she wasn't observing key identifiers that was fill.

Stockman: with the original ANRAD submittal the entire property was being submitted for review. Subsequent to the first peer review site visit on 10/28, there were some questions along

the southern most portion of the property where hydric soils or wetland soils were observed along the westerly property boundary. At the time of the site visits, the property boundaries had not been professionally surveyed or staked in the field; with the assistance of Doroski, they were utilizing GPS to approximate the property line; a concern was that the wetland in that area might encroach into the southernly portion/southwesterly portion. Subsequent to that, Stockman and SCC received a response from Fuss & O'Neill, on behalf of the Town, the ANRAD subject area was being changed and would no longer include the entire property; so the southern portion of the parcel is off of the ANRAD review.

Stockman reviewed the challenges to delineation on the site. We're talking about wetland ecosystems and those that are bordering or touching a pond, a lake, a creek, or stream, are protected under the Massachusetts WPA. IVW under the state regulations are only protected if they're large enough to be considered Isolated Land Subject to Flooding (ILSF). The IVW assessment under this ANRAD based on the size of them being too small to be ILSF was strictly under the Shutesbury Bylaw; it defines a Protected IVW as having at least 1,000 square feet in size.

Stockman: circling back to the BVW, the regulations state the key indicator for identifying this ecosystem is it has to have 50% or greater wetland plant community or hydrophytes. Additionally, the regulations look at indicators of wetland hydrology and in the case of Massachusetts, soils are considered an indicator of hydrology. What changes that methodology is when we have a site that has been disturbed. In that case, soils are typically more closely examined to try to understand the disturbances on the landscape, and how they've affected BVW ecosystem and its boundary. For several of the wetlands within this property, at least a portion have disturbed vegetation but also have impacts to their hydrology, and impacts to their soil; this is undoubtedly a difficult site and a challenging site to assess.

Not only do they have one indicator that's been disturbed, but in several instances we have all three: plants, soils, and hydrology. To further complicate the delineation assessment, when Doroski first went out to the site it was August and an extended drought was present; that factor requires some additional methodology. Continuing with the process, the two site visits that were performed during the peer review were right on the cusp of the growing season ending; on 10/28, they were outside of the growing season and a lot of our indicators when assessing wetlands are tied to the growing season. As a result, a great level of detail that went into the original assessment and the peer review process.

DeFant asks SCC if they have any questions for Stockman. Willson would like to hear Stockman's response to Miriam's previous question about BVW-3. Stockman: looked at history of disturbances based on historic aerials going back to 1938. The area proximal to the IVWs and BVW-3, based on historic aerials, had a history of vegetation removal and earth work - there are several images where you can see exposed soil. When on the site, her read of the landscape was that there was a tremendous amount of both excavation and piling just based on the anthropogenic characteristics of the mounds and depressions in that BVW-3 area. This was further supported by an evaluation of soils which showed a very shallow A Horizon--or surface soil--development overlaying what was previously a C Horizon--or a parent material horizon;



instead of having that standard soil profile development of an A Horizon, a BW subsoil Horizon and then getting into C Horizon parent material, there was evidence that soils had been removed from the area. Furthermore, there is a limitation to scale associated with it, the soil survey for this area does depict the BVW-3 and IVW landscape as a mapped upland soil. The landscape presented to her has been excavated and piled; she would hypothesize that BVW-3 is at least in part is anthropogenic in its origin and believe that it was created by excavation activities. DeFant: if it is anthropogenic, it's still jurisdictional? Stockman: that is correct; it meets the characteristics and definition of a BVW as it exists today. In the Commonwealth of Massachusetts, our regulations protect anthropogenic wetlands; that's why one of the Performance Standards--when an applicant has to alter a wetland--they're allowed to replicate it; that replicated wetland, which is also anthropogenic, is then protected moving forward. DeFant: because there's evidence of piling and removal of material in that BVW-3, it's been a modified. In understanding where the boundaries are, she is concerned about depending only on an estimate based on trees if the depth of fill is unknown. Stockman: based on her assessment of the historic aerials, the disturbance in this area predated both the WPA and Hatch Act; therefore the majority of the clearing and grading excavated that she observed was taking place between 1938 and 1962. Her focus during the peer review was looking for indicators of fill, or alteration after those levels of protection; in the open boundary that is depicted on the ANRAD map, that is where they had more recent indicators of refuse and debris that was young compared to 1972. She also made the same observation as Doroski in the maturity of the trees in that area - younger growth indicating that the area had been more recently disturbed. To the best of her knowledge there have been no soil evaluations by Fuss & O'Neill on those mounds along the BVW 3 with the mature forest.

DeFant: your report stated that it was your understanding that some of this fill is post 1970s? Stockman: yes; that post-1970s fill is in the area of it's the flags between 3A-115 and 3A-114 where that open boundary is; and then extending in the easternly direction; that was the area of concern, in her opinion, during the peer review as far as having a recent alteration of BVW. DeFant: in one of our site visits SCC found some fill that dates to 1972 that was at the base of a bank; maybe about 3 feet tall. Goodman: in this BVW-3, there's a note saying no boundary shown between 3A-114 and 3A-115; are you confident that there is a boundary that can be determined say between 3A-114 and 113, or 113 and 112? Stockman: between 112 and 113 to the south, there were was no exploration in that area and there was no evidence at the ground level that there had been a more recent potential fill event in that area. In the area between 114 and 115 the evidence of potential for more recent fill at ground level was abundant. DeFant: her recollection is that in this area (between 3A-111 and 3A-113) while it looked upland, there was buried and partially buried metal debris. Doroski: she cannot remember that specific area. DeFant: from our site visit, we were unable to determine the depth of fill; didn't investigate that but did notice buried metal.

DeFant: the IVW on the access road, she understands is complicated because it's a compacted area; one of the hypotheses raised was that some of these IVWs are due to compaction from heavy machinery that created a restrictive layer causing some wetland features to emerge. Is it possible that underlying that is a deeper layer of hydrologic soil that perhaps wasn't observed with regular auger testing in the field? Stockman: The IVWs that she observed in the field did not present that way. There are instances where you'll have a naturally occurring series

of IVWs along a hill slope and then heading down gradient a more substantial BVW complex can be seen. In this instance, the IVWs presented to her as anthropogenic in origin; they are along an access road and in areas that were excavated. It presents as perched hydrology that is not well drained because of compaction and changes in wetting front. DeFant: Do you feel that there needs to be any further investigation in BVW-3? Stockman: she is comfortable with the line for BVW-3 – again her read on the landscape which is that it is likely this was a wetland system that was created by excavation and that is why it has it presents with that odd shape; quite linear in areas towards the west. There was originally likely a more natural portion of the wetland because it has shared boundary with a natural BVW system off the property. She understands SCC's concerns, if heard correctly, the corner between maybe 3A-113 and 3A-114. One of the challenges with this area, that Doroski mentioned and was discussed in the field, is that it was observed to be more recently deposited, it is at a depth that would really require a machine to pull back the debris and the fill so that a soil scientist could get in there and evaluate underlying soils. Stockman: If the SCC has concerns in regards to other portions of the boundary beyond 114 and 115, she believe that now during this ANRAD process would be the appropriate time to have that conversation with the applicant if preferred to see an open boundary extended to some degree.

DeFant: there was a tight time schedule and the response cycle which Stockman committed to. Do you need another opportunity to review and give written comments back? Stockman: she has had an opportunity to review the December 5th response and it was her understanding that because the Hearing was taking place this evening, she would have an opportunity this evening to comment; if SCC is seeking a written comment she can provide that.

DeFant pauses the discussion to take public comment. Chair reviews Public Comment policy for Hearings. Meryl Mandell: we all are in agreement that Lot O-32 is a really heavily-used, mowed, lived-on piece of property and it has been used for decades. She asks SCC to keep their requirements in line with the actual land use; not really sure what the purpose of the delineating, re-delineating and splitting hairs to a level that is not productive. The Town as the applicant has bent over backwards to respond to every request that SCC has been making and she would like to see more collaboration, rather than an adversarial approach to this work. She wants to hear from all of the Commission members; they have a lot to offer to this process. She asks SCC to think hard about winding this process down and move it forward. She believes SCC has heard strongly from the Town that they care really much about protecting the wetlands and making sure the Town is protected; at the same time not wanting to spend so much time, and money. Mike Vinsky (391 West Palm Rd): concerned about what is located there on Lot O-32; he appreciate all the work SCC has done; BVW 3 has an undefined boundary, what is the significance of that? DeFant: SCC is not in a position right now to talk about what the significance of it is because there are no projects being proposed at this point; means that SCC cannot approve that wetland line - if there was some activity to be done in that area at some later point, they would need to do some further investigation.

Michael Hootstein: asks if SCC going to make a set of ANRAD findings, under the WPA and a separate set of findings under the Shutesbury Local Bylaw; if you are then he wanted to testify to he observed, when we uncovered the underlying drain and it's at a very different location, it stopped right at a flag of which is very different than the pictures that have been shown by Fuss

& O'Neill. When we opened up three holes and opened up the drain line, before we took samples, they had to break it . . . DeFant: interrupts Hootstein; she believes it's not clear to anybody what he is saying when stating "we took samples." Did he take samples? Hootstein: No, he is talking about what he observed; asks if SCC received his photographic evidence of buried garage drain hydrology; found a subsurface stream that drains from right under the garage all the way to BVW-1. To take soil samples underneath the drain pipe we had to drain it; it drained into the garage and then down to the northwest towards BVW-1. He is hoping that when SCC make findings under the Shutesbury local Bylaw that there exists subsurface stream that flows all the way, from BVW-3 to BVW-1; there's a direct hydraulic connection. Leslie Luchonok: in regard to BVW-3, Stockman made comment in her report that alterations appear to have occurred after 1972, and that unpermitted fill and dumping within protected BVW is a violation of WPA. What is the status of the SCC's efforts to have it cleaned up? DeFant: SCC is not in a position to talk about that tonight. If the Town wants to make a comment, they're welcome to, but they're under no obligation to do so because that's not what this permit hearing is about.

Brad Foster: discussion seems like micromanagement of the two wetlands professionals; would rather that SCC stay at the high level of where there are high-level disagreements. What we really need to know is what is necessary to move this forward. DeFant: to clarify the purpose of the hearing, the determinations are made by the Commission and the wetland delineation to be approved by the Commission has to be based on our review of scientific evidence and testimony; it's SCC's job to question the scientists, query them, investigate the matters to have a full understanding and have an understanding of what the scientific basis is. Then, SCC deliberates and makes determinations; SCC is tasked by the WPA and Shutesbury local Bylaw. Querying and asking questions is our due diligence; not trying to be nitpicky. SCC needs to understand things thoroughly before makes determinations. SCC wants to move forward, and we want to see this ANRAD result in a determination that is appropriate and correct. Chair invites other Commissioners to comment. No comments offered.

Goodman: DeFant is entirely appropriate; result will be in the Order. The applicant has said they are not ready to provide the final map for approval tonight. DeFant: for clarification to the public, with ANRADs the outcome is called an ORAD, Order of Resource Area Delineation, which is an Order that SCC will craft with input from Stockman; it will spell out which wetland lines SCC are approving, which can get very specific. SCC will name the specific flags in that Order; we may seem to be getting down into the weeds, but SCC has to name exactly which flags we are approving and not approving. SCC will issue an ORAD determining what is jurisdictional under the WPA and Bylaw; need to have a final map before these steps. Her understanding would be that there would be a continuation after tonight; is that the understanding of the applicants? Kissane confirms that is their understanding as well; pursuing a professional land survey of the wetland flags, and then submitting that updated map and the other updated elements of the ANRAD.

Michael DeChiara: the undefined space between 3a-114 and 3a1115, which he believes is the place where the debris is buried, in the context of not having a final map, can someone explain how permission can be acquired to pull the debris out to then figure out the map. DeFant: SCC won't approve a line. If the applicant is saying they didn't delineate that line and were not asking

SCC to approve that line, then SCC won't approve it. It'll be an open figure on the map; SCC would probably spell it out in their findings that those two points are not being approved. Goodman: to clarify and take a step back to get the larger picture, the purpose of an ANRAD and/or ORAD defining the Resource Areas is that the jurisdiction under both the state law and Bylaw, if someone comes into a wetland area and alters it, then there is jurisdiction - you need a permit for permission to work in the Buffer Zone of certain wetland resources. The purpose of the ANRAD is to defined boundaries so the applicant can structure their project; everyone has already agreed on the very complicated wetland boundaries; if they don't alter anything within the Buffer Zone of BVW-3, then there is no problem. If they want to work in an area that is subject to protection, they need a permit; this is defining what areas are subject to protection.

Stockman: referring to the most recent submittal from Fuss & O'Neill which is dated 12/5/22. This letter was prepared in response to Stockman's 12/1/22 written comments. Concern was that maps were based on submeter GPS and had some disclaimer language on them. The mapping of wetland boundaries using submeter GPS is a fairly common practice in recent years, but one of the challenges with them is that, although the equipment has the capability of submeter accuracy depending on the collection of the points, it's not always obtained. Fuss & O'Neill went back and discovered that because of tree canopy, some of those points were not at that level of accuracy; they proposed that, upon a consensus delineation and any subsequent flag relocation during the review process, that the applicant was willing to get a professional land survey. Her comment to this was that she agrees with that process and timeline; SCC needs to deliberate on the current locations of the flags to determine if a consensus has been reached.

Goodman: believes Stockman should go through the rest of her written comments because they involve the wetland lines; hearing her review the comments will make for a higher level of comfort for the SCC to then deliberate on whether they want to go ahead.

Stockman agrees and continues going through her comments: on the second page of the 12/5/22 letter, the applicant is stating that they're going to reinstate the original BVW-1 boundary; that is the boundary that was depicted on the conceptual map that was seen earlier on screenshare this evening. That is the boundary that was present in the field during the initial site visit; she walked the upgradient area along that boundary and investigated the soils; at that time, she concurred that the soils were upland and non-hydric. She issued a prior comment stating that she had concurred with that line; it looks like that line is being reinstated. DeFant: she asks Stockman to explain why it got reinstated; isn't sure if it is clear there was further investigations on 11/28/22 site visit; she understood that Stockman looked at soil structure and compared to an exemplar downgradient in a wetland area. Stockman: although she had concurred with the original boundary of BVW-1, Doroski had conveyed that she had some questions about the applicability of the F6 Redox Dark Surface Indicator based on observations she had made of the subsoils during her original delineation. She and Doroski had a general discussion in the field about the indicators under the *US Army Corps of Engineers Northcentral and Northeast Regional Supplement Methodology* and how they include User Notes; how in difficult situations a deeper delve into the boundary of a wetland is required. Subsequent to that, Fuss & O'Neill went out and did some additional assessment within BVW-1 and presented a revised boundary which they reviewed in the field. Based on the observations Stockman made in the field as well as the documentation provided by Fuss & O'Neill from their site investigations, it had been indicated

that there was no a restrictive layer in soil structure which is a characteristic of structure suggestive of compaction. Details about this as well as detailed information on texture was not provided in the submittal, but it was explored during the site investigation; Stockman did not observe any evidence in the soil structure to conclude that there had been a recent compaction event or any residual compaction. The soil structure that they observed ranged from granular to subangular blocky; as opposed to a platy soil structure which would indicate compaction. They took the investigation further into the wetland; one of the standard methodologies for assessing a disturbed site is to try to find a reference area or reference wetland that is less or not disturbed. They went into the woodline and found an area that was dominated by winterberry, and sensitive fern, both of which are wetland indicator species, and investigated two hand-dug soil pits in that location. In that location they also observed the same high chroma subsoils that Doroski had noted in her soil logs for the field. Based on that observation, in her opinion, they were looking at a general problem hydric soil or wetland soil within the BVW-1 complex; it was her opinion that, based on the distribution of the vegetation and the hydrology and the presence of a problematic soil, that additional exploration would be required to overcome the application of that F6 Hydric Soil Indicator. Her recommendation to SCC was that the adjustment to the boundary be further justified and documented; in response to that lengthy comment and summary just now, the applicant is proposing to simply reinstate the original BVW-1 boundary. DeFant asks if Stockman has any more comments she would like to share. Stockman: she believes the rest of the response from Fuss & O'Neill is concurring with her comments and the open items for SCC to discuss this evening are the consensus on the delineation to move forward with the professional land surveyor, and a consensus or feedback on option B: the No-Contest line along the west and east property lines within the subject area for the review. Goodman: to clarify, that's not a wetland line, but a Buffer Zone> Stockman: yes, a No-Contest line to projects the 100-foot Buffer Zone.

DeFant: if there was a project that was going to be proposed in that Buffer Zone, would it have the same sort of jurisdictional protections as an actual Buffer? Goodman: her understanding would be it's a Buffer Zone once you'll establish it. The applicant is saying it'll treat it as a Buffer and SCC would treat it as a Buffer. Stockman: she agrees; she has been involved with instances with the MassDEP, a No-Contest line was agreed upon rather than a formal delineation and then that was utilized to offset the jurisdictional 100-foot Buffer Zone.

***SCC verbally agrees with BVW1, BVW2, IVW(s), BVW3 boundary lines and the No-Contest lines***

Kissane: for the professional land survey, they would survey in the wetland flags have that shown on the map; he understands SCC has mentioned topography. If we were going to show topographic they would either use the recent USGS Topographic Map on a 24,000 scale, or they could overlay mapped lidar on top. He asks SCC if they are requiring a survey of topography in the ANRAD area.

DeFant: SCC hasn't required that in any past ANRAD applications. SCC has wanted a locus map in the past when reviewing large-scale ANRAD application; asks Stockman if she has any recommendations. Stockman: ANRAD site plan doesn't require site-specific topography; would

just be omitted from the professional land survey site plan. SCC has no further questions. There is no public comments.

**Motion: David moves to continue the Public Hearing for the Lot O-32 ANRAD on January 12<sup>th</sup>, 2023 at 7:15, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

### **FY22 Annual report review**

*Discussion has been postponed*

### **Old Peach Orchard CR Monitoring Report**

*Discussion has been postponed*

### **South Brook Conservation Area site visit discussion; unsafe footbridge repair/replacement planning**

DeFant: SCC visited this footbridge back in October that was in need of repairs. She revisited the site recently and believes it is in much worse condition than originally expected; underlying support beams are cracked and could fail. She is concerned for public safety. Evan Jones approached SCC and offered to take responsibility for replacing the bridge; covering the cost and using volunteer labor. She suggests issuing an Emergency Certification rather requiring a permit due to the safety concerns. Jones: he believes he could get the project done within a week or so and it is possible to temporarily close the trail down to ensure safety of the public while fixing the bridge. SCC thanks Jones for his generous offer. DeFant: when she spoke to Jones, he believed he could have the materials brought in using an ATV. Jones confirms that is correct. DeFant: how will the support beams be anchored? Jones: he plans to use about 6 inches of traprock along the edge for about a foot on each side of the bank as suggested by DeFant. DeFant revised a drawn plan by Jones before the meeting that she will share with SCC. DeFant shares the draft conditions for the Emergency Certification for SCC to review via screenshare. Edits are considered.

**Motion: Willson moves to issue an Emergency Certification to replace the footbridge in the South Brook Conservation Area, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye and Willson- Aye. So moved.**

### **Site visit follow-up**

**52 Montague Road/Parkin (shed project)** – SCC did not find any resource areas on site; building permit to be signed.

**2 Wyola Drive/Gould (dredging/bank project)** – Willson: during the site visit she suggested the applicant find a consultant to help plan what the applicant is looking to achieve; once the consultant comes up with a plan then an application could be suggested. DeFant: from her understanding the area the applicant was proposing to dredge would not accomplish boat access as desired; widen a small inlet. The volume of material that has to be removed for a dredging project, will determine some of the permitting requirements; the larger the project the more layers of permitting oversight are required so if it's a relatively small project like if it's under 100 cubic yards of material it's a simpler project to permit but, if it's over a 100, it becomes more complex.

**70 Cooleyville Road septic repair** – DeFant saw that there was a permit application on the agenda for the Board of Health for a septic system review and SCC hadn't been informed of that project. She was able to reach out to the landowner and their contractor and plan a site visit this past Tuesday. She and Harrington conducted the site visit and found hydric soils within 100 feet of where the project area is, but also found some hydric soils within 10 feet of the project area. Landowner is arranging to have Ward Smith delineate the site.

**Site visit scheduling** – *to be determined*

### **Updates**

**Permitting for Town's Lot O-32 cleanup NOI** – *Discussion has been postponed*

**Lot R-15 Conservation Area Acquisition updates** – DeFant: the federal government that gave SCC the grant for this is requiring Title Insurance; Chair had some conversations with Donna MacNicol, Town Counsel, and Kestrel Land Trust; Kestrel Land Trust's attorney is going to be completing the paper for such. Once this is completed, she believes that the only step left is to complete the final deed and transfer paperwork.

**Beaver dam at Lakeview Road culvert** – *Discussed has been postponed*

**Bylaw Regulations revision** – *Discussed has been postponed*

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

**Meeting Close:** 8:35 p.m.

**Next Meeting:** Thursday, January 12, 2023 at 7:00 p.m.

### **Documents Used:**

- 375 Locks Pond Rd RDA
- 375 Locks Pond Rd RDA Site Plan
- Ames Pond Trail Maintenance OOC
- Ames Pond Trail Maintenance Amended OOC Site Plan
- Draft Amended OOC for Ames Pond Trail Maintenance
- Revised Stockman 3<sup>rd</sup> Party Reviewer Contract
- 66 Leverett Rd/ Lot O-32 ANRAD Packet
- 66 Leverett Rd/ Lot O-32 ANRAD Stockman comments (11/3/22 and 12/1/22)
- 66 Leverett Rd/ Lot O-32 ANRAD Fuss & O'Neill comments (10/10/22, 11/22/22, and 12/5/22)
- 66 Leverett Rd/ Lot O-32 ANRAD Revised Delineation Map, 12/5/22
- Draft South Brook Conservation Footbridge Emergency Certification
- *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (Version 2.0)*, US Army Corps of Engineers, January, 2012.

*Respectfully submitted by Carey Marshall, Land Use Clerk, 1/06/23*