

Shutesbury Conservation Commission  
Minutes – 1/12/2023  
Approved – (3/9/23)  
*Virtual Meeting*

**Meeting Start:** 7:00pm

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

**Commissioners Absent:** None

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

**Other present:** Terry Bernard (Applicant), Joseph Salvador, Anna Mancebo, Penny Jaques, Susie Mosher, Ziporah Hildebrandt, Penelope Kim, Elaine Puleo, Mary Anne Antonellis (Applicant), Mary Lou Conca, Amanda Alix, Hannah Kowalski (consultant), John Devore, Becca Wheeler, Bridget Likely (Kestrel Land Trust), Tom Kalt, and all other unidentified individuals.

Chair's Call to Order at 7:00 p.m.

Meeting is being recorded

**Continued Public Meeting for 375 Locks Pond Road RDA/Bernard (garage addition)**

DeFant screenshares the updated version of the 375 Locks Pond Rd Addendum via screenshare for SCC to review. Bernard: during the last meeting SCC had concerns about the proposed asphalt driveway and retaining wall; more information needed. The Addendum provides a narrative detailing their proposal to construct a 30' by 38' asphalt driveway that comes off of Locks Pond Rd and abuts the current horseshoe driveway, and to construct a 2'- 4' high and 30' – 40' long retaining wall. The applicant(s) plan to bring in loam and sand to create two levels in the slope where retaining wall will be located. The first level will be up to the height of the retaining wall and the second level will be even with the bottom of the retaining wall; in the middle of the wall will be a small staircase connecting the levels together to allow access from the garage to the back of the home. Once construction is complete the applicants plan to apply conservation seed mix to all disturbed soils on the property which includes to the newly reconstructed levels of land.

DeFant: she notes that the project adds more impervious surface on the property and changes the grade of the property; concerned about the Resource Area at the bottom of the hill. The limit of work from the Resource Area is 30' which makes this project not a minor exempt activity under the Wetlands Protection Act (WPA); she questions if more information is needed to ensure the Resource Area would be protected because there is no stormwater conveyance or management between the driveway and Resource Area. The project area slopes down towards the Resource Area. The intermittent stream is tightly wrapped around the property and shows evidence of being altered over a period of time; not naturally vegetated. The intermittent streams goes downhill to a culvert that crosses under Lake Drive and into a conduit pipe which feeds into Lake Wyola; concerns about stormwater in this direction and stormwater that comes off from the road. Willson notes that there is currently grass on both sides of the proposed asphalt driveway, thus the stormwater will infiltrate through the grass before reaching the intermittent stream; suggests considering asking applicant to slope the driveway in the direction away from the intermittent stream to further prevent overloading the Resource Area of stormwater. David agrees with Willson noting that during their site visit grass was prevalent; the proposal includes adding onto the grass coverage; therefore, she is not concerned about stormwater.

*SCC pauses the continued Public Meeting for 375 Locks Pond Rd to open and continue the Public Hearing for 66 Leverett Road/Lot O-32.*

SCC has no further questions. There is no public comment. **Motion David moves to close the Public Meeting for 375 Locks Pond Rd RDA, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.** DeFant shares the drafted DOA and Special Conditions for 375 Locks Pond Rd for SCC to review via screenshare; minor edits are considered. **Motion: David moves to approve and the Determination of Applicability with a Negative Determination #3 with Special Conditions for 375 Locks Pond Rd RDA as reviewed, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

**Continue Public Hearing for ANRAD for 66 Leverett Road/Lot O-32, Town of Shutesbury, DEP File # 286-0297**

Due to the land survey not being finished in time for Fuss & O'Neill to complete a final map to be reviewed by 3<sup>rd</sup> Party Reviewer Emily Stockman, the applicant Mary Anne Antonellis (Library Director) asks for the Public Hearing to be continued. **Motion: David moves to continue the Public Hearing for 66 Leverett Rd/Lot O-32 ANRAD to February 9, 2023 at 7:30 p.m. Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

**Review minutes for 11/10/22 and 11/17/22**

**11/10/22** – Harrington submitted some spelling corrections; DeFant corrected them as such. **Motion: David moves to approve the 11/10/22 minutes as corrected, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

**11/17/22** – **Motion: David moves to approve the 11/17/22 minutes, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

**FY22 Annual Report review**

SCC confirms they have reviewed the FY 22 Annual Report draft. DeFant: Janice Stone revisited the draft and questioned whether the information about SCC's financials need to be in the report; without providing details about each account, it may create confusion for the public. DeFant doesn't have any strong opinions and is looking for Commissioner feedback. Willson asks if the financials are required to be listed in the report. Stein clarifies they are not required but are encouraged; does not need to be detailed but gives a general summary. DeFant shares the FY22 Annual Report draft via screenshare for Stein to review. Stein believes the information currently drafted is sufficient. **Motion: David moves to approve the FY22 Annual Report as amended, Harrington seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

**Old Peach Orchard CR Monitoring Report**

*Discussion has been postponed*

**Chair Updates:**

**56 North Laurel Drive Dock application** – DeFant: 56 North Laurel Dr's OOC required the applicant to submit a Chapter 91 dock license which they recently submitted; SCC received a notice. Mark Stinson, Mass DEP Circuit Rider, confirmed that Conservation Commissions are responsible for permitting docks, buoys and any structures in the lake with either an OOC or DOA for the protection of wetlands. Chapter 91 license has two separate parts; DEP issues the license but an OOC or DOA from SCC is needed first. DeFant has started doing some research about other towns in Massachusetts that have written regulation on how these permits are handled; Southwick is an example of a town that uses a DEP approved program that still requires a OOC or DOA but a Harbormaster handles the Chapter 91 licenses.

Related to this matter, LWA has been placing buoys in Lake Wyola over the past several years and due to this new information, DeFant suggests that SCC communicate with LWA for future permitting of these buoys and other structures.

*This matter will be revisited in future meetings*

**Select Board MVP Grant Planning** – *see section West Quabbin Woodlands Conservation Area (Lot R-15) and Special Town Meeting Warrant Articles for details.*

**Beaver management at Lake Wyola** – DeFant: The Highway Department, in December, considered submitting a request for to Emergency Certification for the beaver dam material in the culvert located on Lakeview Rd (connecting to Fiske Pond) but decided against it; issue to be revisited in the future. Board of Health is looking into getting consultation for expert advice in how to handle this specific site with its history.

**Wendell Conservation Commission Meeting** – DeFant: she was invited to the latest Wendell Conservation Commission (WCC) meeting to discuss their search for a Conservation Agent. (*see section Shared Conservation Agent section for further details*)

### **Shared Conservation Agent Discussion**

DeFant: FRCOG's planning division recently completed a comprehensive feasibility study looking at several Franklin County towns interested in a shared Conservation Agent position; newly released documents have been shared with the Commission. Conservation Agents differ from Land Use Clerks by having a more regulatory role in addition to the administrative role that Land Use Clerks have. Wendell and Leverett have a shared Conservation Agent but the current Agent is looking to resign in March; both towns are in the process of looking for a new hire and wanted to include Shutesbury since they will be looking for a new Land Use Clerk in the near future – recommends Commission review documents.

DeFant found copy of the job description FRCOG used for their study; revised it and had Stone review it – sent new draft to SCC. There are options for SCC to consider as a result from this meeting; doing a collective recruitment with other Commissions to reduce competition and allow the applicant to choose to work for one or more Commissions or create a shared position requiring a funding mechanism formed by an inter-municipal agreement. To do an inter-municipal agreement, SCC would need to meet with the Personnel Board, the Select Board and Finance Committee to get a job description and budget approved; fund could be formed by taking the Land Use Clerk budget and bifurcating it to keep the Land Use Clerk but remove some weekly hours to the new position. The possible issue is that the other two boards, Planning Board and Zoning Board of Appeals, do not have the same flow projects/activities as SCC; may not be enough to ensure a regular week/office hours. Another option could be hiring a consultant from a private consulting firm for professional Services (similar to Emily Stockman or Patrick Garner); purchase weekly/monthly/yearly hours.

DeFant: she has also been looking into how SCC regulatory activities could support the salary/wages of these positions; need to look at how much SCC collects in fees. She suggests that SCC should examine their given budgets/fee collections and consider restructuring fees to produce more resources. With the help from Marshall, DeFant created and shares an Excel table to show how much in fees SCC has collected from fiscal years 2021, 2022, and 2023 (present) via screenshare for SCC to review (noting some inconsistencies that occurred in some previous years). Based on the table, she believes SCC collects on average about \$1,200; SCC accumulated overall \$6,000 in Wetland Protection Act Funds in recent years, but that was mostly due to the ANRADs submitted in previous years. ANRADs are infrequent and are not a consistent source of fees. Willson asks if Shutesbury has ever held a Conservation Agent position or considered one before. DeFant: last year it was brought up and she discussed hypotheticals

with Town Administrator, Becky Torres, former Chair Penny Jaques when SCC was in the recruitment process for the Land Use Clerk; they were approached by Leverett and Pelham to possibly create an agent position with them. It was decided that the timing was not right and it could be further investigated in the future.

Stein, member of the Personnel Board, explains that the first step in the creation of a new job position would be to create a job description with the Personnel Board which would then have to be approved by the Select Board. The job description would include a list of general duties/responsibilities of the position, qualifications needed/desired, along with wages which is also decided by the Select Board. Hearing the discussion about restructuring fees, she notes she is unsure if that also needs the approval from the Select Board. DeFant clarifies that fees are based on the Bylaw Regulations; SCC promulgates and approves Bylaw Regulations after a public hearing process; Select Board approval is not needed. If SCC were to hire a consultant, then they would not need to go through this process of creating a new job position. Scott agrees with looking into the fee restructuring and notes that, as previously discussed, looking into site visits in a year and which site visits related to minor activities; should look at where SCC is spending most of its time. DeFant: she agrees and adds that now the FY22 Annual Report has been completed they can use that data for review; will present data at next meeting. She believes that when looking into an Agent or consultant, it is important they be utilized for expertly handling the problematic areas of the position; leaning more towards hiring a consultant. David asks if other town's Conservation Agents would be allowed to be hired as consultants; DeFant confirms they could hire other town Conservation Agents by weekly/monthly/hours if an inter-municipal agreement were to be approved by the Select Board. Willson adds that this position should be designed to not only deal with the problematic areas but also handling some of the paperwork workload from the Chair. DeFant agrees. Need to think what is practicable with a 6-8 hours-per-week position. Kahan: plan is to look at how SCC time is spent with minor projects and how to be efficient. DeFant: have been tracking projects for the last year, looking at what meets definition of minor project under WPA (but not Bylaw), breaking data down by # that resulted in education to landowner about wetlands identified on site visit and # that resulted in permits. When wetland delineations occur on site visits, even if the current project is outside of a jurisdictional area, educating landowners can help them plan for future projects, landowners sometimes not aware of where Resource Area boundaries are; need to determine if that activity is serving the community. Kahan agrees. Willson: as a Conservation Agent for Amherst, working 20 hours a week, my role was to go out and do site visits for proposed projects; Commissioners only visited sites that were being permitted; SCC doesn't have the resources for that level of effort with a Conservation Agent, so would have to find a way to shrink the role. DeFant: Chair, Harrington, and David are doing many of the mid-week site visits during the building season. How do Commissioners feel that time is being spent? Harrington and David indicate they find the site visits useful. Discussion to be tabled. SCC agrees to have Chair communicate with the Personnel Board about having a preliminary discussion about this matter at their next meeting.

*Discussion will be discussed further in future meeting*

### **West Quabbin Woodlands Conservation Area (Lot R-15) and Special Town Meeting Warrant Articles**

DeFant: Kestrel Land Trust reviewed the CR last summer and submitted it to the state in September; haven't received anything back due to backlog— the state will either approve it or have some revisions. Once approved all parties will sign it and it will be recorded and attached to the deed. A concern was raised that the Community Preservation Act funds could not be released until the CR was approved; led to long discussions with Bridget Likely, Donna MacNicol (Town Counsel), Rita Farrell, and Matteo Pangallo (CPC Chair). In December, other funding was discussed in order to close; closing date is January 25<sup>th</sup> in order to receive the Forest Legacy Grant Program funds (~\$197,000). The overall conclusion of this discussion was the property can be still acquired; in due course, when the CR is approved, it can be recorded; however, MacNicol believes that the warrant article that was approved last

year during Annual Town Meeting is insufficient. MacNicol stated there needs to be a warrant article to approve the purchase and a separate warrant article to award the CR to Kestrel Land Trust. There will be a Special Town Meeting at 6:00 pm on January 19 where these warrant articles will be addressed in order to proceed. In the meantime, the Select Board approved the contract with the state to receive federal funds; once the purchase is closed the funds will then be released to Kestrel Land Trust as part of the purchase price. Likely notes that Kestrel plans to send out emails to its membership of Shutesbury encouraging to attend the special town meeting.

DeFant informs the public that all the costs of quickly proceeding with the closure of the property are being covered Kestrel Trust; approximately \$36,000 as stated by Likely. DeFant: the funds that are being allocated from CPC are a portion of the funds that CPC already pre-allocated for Open Space Preservation. SCC is contributing \$25,000 from its Conservation Land Trust Fund; account has not been used since 1999/2000 for the South Brook Conservation Area. MacNicol also suggested the original warrant article approved contained an error; the budget was \$45,000 for the purchase and \$5,000 for the construction of a parking lot. The funds allocated for the parking lot were from the CPC designated for recreation; this was not in the original warrant article at the 2022 Annual Town Meeting. MacNicol suggests a new warrant article will be needed to be approved for the parking lot funds.

**86 Sand Hill Road OOC, Kalt, geothermal energy system: request to alter erosion control plan**

DeFant: she spoke with Devore earlier today to discuss some questions about the 86 Sand Hill Rd project plans/OOC. Devore went to the site with their driller and noticed the location of the homeowner's well on the property; homeowner mentioned it functions well producing about 25 gallons of water a minute. With this information, their driller believes that when drilling, they may encounter a large amount of water during the process. He is concerned about their options to mitigate the water while keeping drilling cuttings and sediments out of the Resource Areas. Their new drill rigs have small footprints and are equipped with a system that takes anything being removed from rigs and pumping it into a container. The issue with using this rig and container is if they do experience water during drilling then the water would fill the container quickly. They are proposing to pump the water out from the drilling site to the container which would then go through the output connected to filter socks (a high micron sack that filters sediments from water). Once through the filter sock it would be pumped back up to the drill site to be absorbed over time. DeFant had earlier raised concern that the land is frozen and it could create large dangerous patch(es) of ice; she suggesting having the clean water pumped along a hillside the leads to foliage and small creek thus the clean water would infiltrate through hillside and creek – Devore confirms that is their proposed plan.

DeFant: the erosion controls have also not been placed in yet so she is concerned about the trenching for installing the silt fence; with the new concern of water, it is even more important those erosion controls are adequate. They are also proposing the construction to occur in two phases; phase 1 is to complete the drilling of the wells and phase 2 is to revisit the site at a later time to complete the trenching that would connect the well to the home. Since there is a gap in time between the phase 1 and 2, the homeowner is considered about having the driveway blocked by the silt fencing; looking for an alternative. Kalt clarifies that if the location of the temporary erosion controls currently in place will be the same as the finished erosion controls then it is no longer a concern. He also suggests that the water could be directed to towards the west of his home (right side if looking from the road) versus the left side as discussed. Devore asks Kalt if that is the same direction towards the location of his septic system/tank. Kalt confirms but states that the water shouldn't affect or damage it.

DeFant screenshares 86 Sand Hill Rd site plan via screenshare for SCC to better understand the possible options for directing the clean water. Willson asks if the water being discharged through the outlet will be outside of the silt fence. Devore explains that since they are looking to complete the project in two phases, erosion controls will be moved in and out between the two phases. Willson suggests they would need a

site plan for both phases to accurately represent where the erosion controls will be placed along with the container and other equipment and what will be done during his phase. Devore: for the first phase of drilling the location of the container would stay the same and erosion controls would be placed directly around the borehole and the container; during the drill process the water would be pumped to the container to then be released through an outlet hose that would be directed in the direction deemed best fit by SCC. DeFant agrees with Willson that a revision of the original site plan is needed. Willson notes her concern about the power of the water as it is being discharged and if wondering if they would consider placing a small riprap area or another mechanism to slow down the flow of water. Kalt suggest placing a filter bag at the end of the hose rather than directly on the output to allow the water to spread when discharging; Devore's concern with then method is that if the water breaks the bag then they would have to clean up the bag which could spread down to the resource area.

DeFant asks SCC if the Requested Amendment to the OOC is Minor or Major (Major requiring a new NOI submission). SCC agrees the request is Minor. SCC suggests that in their new plan to have a site plan for each phase of working being done along with a new narrative for the construction phases. SCC has no further questions. DeFant informs Kowalski that instruction and information for submitting an Amended OOC Request can be found on their website; legal and abutter notices are required. There is no public comment. **Motion: Willson moves the SCC establishes the requested amended OOC for 86 Sandhill Rd NOI to be a minor change, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, Kahan- Aye, and Willson- Aye. So moved.**

*Public Hearing for 86 SandHill Rd Amended OOC is scheduled on February 9 2023 at 8:00 p.m.*

**Site visit scheduling:**

**86 Sand Hill Road/Kalt (request to change erosion control plan for OOC) – January 24 at 3:30 p.m.**

**Public Comment**

None

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

**Meeting Close: 9:15 p.m.**

**Next Meeting: Thursday, February 9, 2023 at 7 p.m.**

**Documents Used:**

- Agenda
- Draft minutes for 11/10/22 and 11/17/22
- 375 Locks Pond Rd RDA
- 375 Locks Rd Draft DOA with Special Conditions
- 66 Leverett Rd/ Lot O-32 ANRAD
- Draft FY22 Annual Report
- 56 North Laurel Dr Ch 91 License Notice
- Shared Conservation Agent Job Description Draft
- West Quabbin Woodlands Conservation Area Warrant Article
- 86 Sand Hill Road NOI/OOC

*Respectfully submitted by Carey Marshall, Land Use Clerk, 3/1/23*