

Shutesbury Conservation Commission

Minutes – 2/9/2023

Approved – (3/9/23)

Virtual Meeting

Meeting Start: 7:00pm

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

Commissioners Absent: Scott Kahan

Other Staff: Carey Marshall (Land Use Clerk)

Other present: Tom Kalt (applicant), Hannah Kowalski (consultant), Leslie Luchonok, Jon Lawless, Janice Stone (SCC Consult), Tracy McNaughton, Mary Lou Conca, Ryan Nelson, Anna Mancebo, Amanda Alix, Don Wakoluk, Katie Eagan, Tom Siefert, Mark Rivers (applicant), Jono Neiger, Terry Smith, Eric Stocker, MaryJo Johnson, Robert Kibler, MaryAnne Antonellis, Leslie Cerier, Ziporah Hildebrandt, and all other unidentified individuals.

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

Meeting is being recorded

Public Hearing for Amended Order of Conditions Request, 86 Sand Hill Road/Dandelion Energy: geothermal energy system, DEP File # 286-0293

Kowalski screenshares the new site plan for 86 Sand Hill Road NOI via screenshare for SCC to review. Since she has last spoke to SCC, Dandelion Energy has obtained more Cammachio drill rigs and when they began to mobilize they realized they wanted to change their proposal. The first change is splitting the work into two phases; phase 1 consisting of the drilling work and phase 2 would be the trenching work each phase will have its own erosion control plan (silt fences). The second change is using a Cammachio drill rig instead the sonic drill rig in the original proposal.

For the first phase there will be a metal container on site in front of the home that will collect the drilling spoils water and sediments; once full, the water in the container will be pumped out into a filter bag that will be placed on top of a slope next the road that will dewater slowly over time; the water to discharge and infiltrate into the ground sloping away from the road. When they return to do phase 2 construction the bags will be empty and removed. DeFant asks if there will be silt fence about the drill rig/ borehole site. Kowalski explains they did not believe a silt fence was necessary because of the function of the rig itself (has a diverter that guides drill spoils and other materials to be pumped into a container); proposes that they will place a silt fence on the southeastern portion of the drill site to protect the Resources Areas at the bottom of the sloped area. The silt fence would be tightly around that side if the drill site (in the yard and away from the gravel driveway) where they would remain in place until they returned for phase 2; erosion controls would be adjusted for the trenching construction. DeFant asks if they borehole will be covered or seeded between the phases. Kowalski states the borehole would remain untouched, protected by the silt fence until phase two where it would be connected to the trench leading to the home; the areas can be seeded once complete. Kalt informs SCC that the borehole is located within his driveway thus once completed it would be covered over in gravel. Stone asks why the original erosion controls location would not work for both phases of work? Kowalski clarifies the original location of the erosion control make it harder for the metal container to be moved on and off the site and it blocks off the driveway which concerned the homeowner since there would be a time gap between the phases of work.

Stone asks how long of a gap in time would there be between phases. Kowalski: on average it is about a month between the phases; once the borehole is done and the geothermal tube is placed (leaves the first 4 feet of the hole untouched) the hole would remain open until phase 2. The borehole is left open because if they were to cover it then there would be concern of damaging the tub when trying to uncover it for trenching. Willson: she asks if there with by any erosion controls on the eastern side of the driveway because there is a large slope that directs toward Dean Brook; to protect the Resource Area in case of failure form the drill rig – DeFant agrees and suggests staked erosion socks. Kowalski is amendable to this condition; asks SCC, for the purpose of moving the project forward, if it would be amenable if they use the phase 2 silt plan as their filter sock plan for phase 1 and then in phase 2 they would remove those socks to dig the trench for the silt fence. DeFant agrees and informs Kowalski that SCC requires the erosion socks to be filled with hay instead of straw.

DeFant screenshares the draft Amended OOC for 86 Sand Hill Road for SCC to review via screenshare; edits are considered. SCC has no further questions. There are no public comments. **Motion: David moves to close the Public Hearing for 86 Sand Hill Road Amended OOC at 7:25pm, Harrington seconds. Vote: David -Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye. So moved.** SCC grants DeFant permission to sign for them electronically. **Motion: David moves to approve and send the Amended OOC for 86 Sand Hill Road as edited, Harrington seconds. Vote: David -Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye.**

Order of Conditions Extension Request discussion, Lake Wyola Lowering NOI/Town of Shutesbury (LWAC), DEP File # 286-0272

Rivers: LWAC has been lowering Lake Wyola by 2 feet in the winter time for the past 50 years to mainly prevent any damage to the earthen dam from ice. In 2018, LWAC realized they did not have the correct permit to continue with the lake lowering as pointed out by Mark Stinson at a SCC meeting; Stinson noted the correct permits are required. LWAC corrected the issue and filed the correct permits and they were approved by SCC. During this approval they received an extension from 2018 into 2019 to allow LWAC to have a Wildlife Habitat Evaluation done which was completed 2019. The permit received from SCC was a 5 year permit that is ending October this year; LWAC is looking to continue this lowering practice and is requesting another extension. DeFant: she notes a small correction which is that an extension was not granted in 2018 but instead the permit required LWAC to come back with a completed Wildlife Habitat Evaluation in 2019 which they complied with as Rivers stated.

DeFant: the permit ends within the month of October of this year; Rivers and Chair have been having various email communications; DeFant spoke with state officials and Becky Torres, Town Administrator, as well. The request has been submitted by Mark Rivers, Chair of Lake Wyola Advisory Committee. Has Rivers been authorized by the Town to do so? Rivers: he believes he is authorized because in 2018 he was working with the Select Board and Mass DEP during the 2018 permit. DeFant: were you granted authorization for this current Request to Extend the permit? Rivers confirm he was not. DeFant: SCC needs to determine if the request is actionable since there was no authorization for submission; if not actionable SCC would ask Rivers to withdraw and communicate with the Town; if it is actionable, then SCC would need to determine how they would like to proceed.

DeFant: The applicant has the right to submit an extension request but it is up to SCC to determine if the current permit as written still protects the Interests of the Wetlands Protection Act (WPA) and the Town Bylaw sufficiently enough to extent the permit. If new information was gathered during the interim period or if conditions are unclear/inadequate, then SCC would have to deny the request; Town would either need to submit a new NOI or request and Amended OOC. Mass DEP and Natural Heritage and Endangered Species Program (NHESP) informed her that Lake Wyola had now been classified as Priority Habitat for a rare species since 2018; originally permit was not obligated to notify NHESP since it was not classified as Priority Habitat at the time – any new NOIs must be reviewed by NHESP. If NHESP has any conditions the conditions would be put into the new OOC then SCC would have to wait to close the Public Hearing until those feedback/comments/requests are received. An NHESP official stated to the Chair that they would like to review this project because they know the permit was expiring. Stinson recommended SCC advise the Town to develop a new NOI for a cleaner process rather than an Amended OOC request because those requests are developed for minor changes in OOC.

Willson: she believes this clear but asks if Rivers could present the NOI to explain the overall process of the lowering. DeFant notes that most of the process is explained in the Memorandum of Understanding (MOU) signed in 2020. Rivers: a state agency defines the process for lowering of the lake around the state for fall lowering to prevent dam damage by ice; allows the Dam Keeper to lower the lake 2 inches per day until the lake reaches a certain depth – they follow a more conservative approach to the process by only lowering the lake 3 feet lower overall as detailed in the MOU. It is designed by the state to start November 1st but in the MOU it has been established they can start the lowering a bit earlier with SCC approval if they believed ice would form before the lowering began. In the past they were to notify SCC when the lake lowering started and finished via voicemail, but DeFant has requested that moving forward they communicate this information via email which is agreeable. Once the ice is no longer present then the lake is raised back up. DeFant asks if there was ever any requests to lower the lake earlier than November. Rivers confirms there was never been a request for such.

DeFant notes that Rivers has been collecting water samples of the lake as stated in the MOU; asks for more information about this process. Rivers: there has been questions about the cleanliness of the lake so Bill Elliot

developed a protocol to measure the quality of the lake water such as pH, oxygen levels, conductivity, temperature, and clarity (secchi disk). These tests have been done over the past 20 years and the data from these tests has posted and updated on the LWAC website. DeFant asks if he or Elliot has collected samples, specifically for dissolved O₂, after the lowering has been completed. Rivers answers they have not; not comfortable having the sampling/resting equipment on a canoe.

DeFant wants to ensure that the Amended OOC process is clear; Amended OOC Requests are specifically for minor changes to an OOC, as determined by SCC. If during review of an Amended OOC Request, SCC believes it is a major change, then the request is denied and applicant must submit a new NOI. In this case, because new information are raised about Lake Wyola, that would constitute a major change; Mass DEP and NHESP are advising a new NOI. SCC agrees that a new NOI is needed.

DeFant: in 2019, a Wildlife Habitat Evaluation was completed by Emily Stockman, posted on the SCC webpage, which included some recommendations that were not included in the NOI; SCC may consider adding some of those recommendations into the new OOC. Without Stockman here to present and explain her recommendations/findings, that discussion will come at a later date.

David notes that there has not been a recent/current dam inspection. DeFant: correct there is no current dam inspection on file with the Office of Dam Safety (ODS); this is another issue brought up by Stinson from Mass DEP; he stated there was recent meeting of state officials that review dam licenses; it was noted that there is no Chapter 91 permit to operate the dam at Lake Wyola; an up-to-date safety inspection would be needed to get the Waterways Permit. Only available safety inspection reports were found for 2014 and 2016, none since then. The dam was inspected in 2021 but the report was never filed. The dam is supposed to be inspected every 2 years with a report to the ODS. Stinson noted that it is important for the Town to define the regulatory pathway (rationale) it is relying upon in requesting a permit; for example, when requesting a permit for ice protection, then an ice load analysis should be provided with data that demonstrates the need for the lake lowering; such data would provide insight into how much lowering is needed.

Tracy McNaughton: confused about who is applying for the permit; she has received a document from Torres about the role of LWAC and in it stated that LWAC is to “advise the Select Board in order to preserve, maintain, and enhance recreational use, plan for continued quality maintenance addressed through education and other means, septic disposal, and provide a plan for road maintenance.” She is confused on why LWAC applied. Rivers: back in 2018, LWAC, Select Board, Mass DEP/Mark Stinson, and SCC (Penny Jaques) came together and worked cooperatively to save the Town money by completing the NOI themselves instead of hiring professionals. At the time, LWAC was representing the Town, but on paper it said Town of Shutesbury. David asks if the Select Board supported him in doing so. Rivers confirms Select Board did. Willson: in terms of the NOI, Rivers can be the representative for the Town; it is a matter of having the Select Board approve it for it to be official. DeFant: agrees but questions whether Rivers has the authority to submit this permit extension request without going before the Select Board; because of the 5-year gap, she would like the Select Board to reaffirm River’s role before submitting a request.

Eric Stocker: thanks Rivers for his work in past for this permit and likes his cooperative attitude towards this project that also results in saving the Town money. His view is that this matter needs to go before the Select Board to approve River’s representation for the matter of handling the permit for the lake lowering. The Select Board has not reviewed this permit and they are the body that is legally in charge of the Lake so it makes sense to him that they legally have to point him to handle the permitting work. When it comes to terms such as “ice load analysis,” he is concerned about the cost of having that completed. He believes that what they have been doing for the past 50 years has been done consistently and conservatively; doesn’t think the Town should spend that kind of money; don’t want to get caught dotting “i’s” and crossing “t’s” too much; the next step in this is to bring this to the Select board to approve River’s appointment to this matter.

Terry Smith: he is a member of LWAC; he was appointed by the Select Board and is a professional civil and environmental engineer that has a residence on Lake Wyola. He was asked to serve as in a professional advisory capacity in 2009. DeFant brings up some valid points. LWAC was an instrumental part in the dam repairs in 2008 because the Select Board turned over the charge to LWAC to work with Morris Root, current dam inspecting engineer for the Town; Walter Tibbetts was the Fire Chief and the Emergency Management Coordinator for the

Town. When the dam was reconstructed in 2008, NHESP was involved because every resident that applied for permits needed a Wildlife Habitat Evaluation as a requirement for their permit since the lake was lowered a great amount to allow repairs and residents to work on their water frontage; there was a blanket review allowed by NHESP. It seems to him they are at a turning point in LWAC's involvement; this was handled by professional people whose backgrounds included a licensed scuba diver to keep the outlet structure clean 3 to 4 times a year and Howard Kinder, Dam Keeper. In 2018, LWAC completed the new permit for the lake lowering and other activities that continued after the repair; there is a list of repairs that still need to be completed. Walter has retired from the Town meaning he may no longer be doing the free scuba diving for the outlet cleaning and Root is also retiring. With all this being said, he believes that the \$25,000 – \$30,000 saved by the Town per year from volunteer work and the upcoming budget process overseen by the Select Board should consider the annual dam maintenance. If a new NOI is needed, then it should be completed by a professional and the Town needs to appropriate funds for it. The volunteer work that has been done consistently over the years may become an expense for the Town. He suggests that if SCC is going to require a new NOI, then SCC should extend the current permit for one year to allow the Town the time to come up with the appropriations necessary to support this matter. If there is extensive Wildlife Habitat Evaluation that is completed, it should serve for the dam permit but should be a public document that can be used by the all other residents on the lake.

DeFant: SCC is not prepared tonight to discuss in depth details or make any decisions; SCC doesn't discourage volunteerism or finding cost efficient options. She believes that the benefit of a new NOI is to ensure it is done properly so in future years it can be extended and renewed without requiring a new NOI; there are some issues with some of the conditions as written; OOC does not reflect the current management process (OOO was issued before the MOU was developed and signed). Stinson said that the current permit suggests that it covers the Fall 2023 lowering, but the permit expires in October 17 and the lowering usually occurs in November; OOCs cannot authorize any activity after the expiration date; any lowering after October 17 is not permitted. When speaking to NHESP, the official she spoke to was Misty-Anne Marold who reviewed the 2008 drawdown. DeFant does not know if it is possible to extend the permit for one season, especially as the current permit does not reflect current practice. Don't know if the Town can Amend the OOC and then request a 1-season extension.

Rob Kibler: believes that the dam is technically a rock dam and not an earthen dam; regulations may be different. During, the last dam drawdown project he worked on, the maximum drawdown was not in inches per day but rather cubic ft per second discharge per square mile of drainage area; if you have a catchment area of 10 square miles, it would allow you to discharge twice the amount if you have a catchment area of 5 square miles; that needs to be investigated. He understands that hiring engineers is not desirable because of cost and not providing anything tangible, but it needs to be investigated if 2 inches is enough, maybe more is needed; without an engineering ice load analysis, you are shooting in the dark. If dam safety is an issue that is affected by winter lake level, then he would expect it to be shown in the last several dam reports.

Tom Siefert: thanked SCC for the attention to this matter and all parties who worked together to complete and maintain the 2018 permit. He has been hearing opposing things about money, time, professionals, and doing it right; crossing t's and dotting i's. I am baffled as to why we would never choose to go all the way for transparency and compliance, so we don't have to deal with a future liability that could be more costly than any savings now. He supports doing the new NOI correctly and thoroughly; seems to be a great expenditure of money for a Town with a lake that is one of its landmarks. It is alarming to hear and understanding what is in the current OOC is not the current practice. He brings the question of conflict of interest; anyone who lives on the lake benefits from the lake lowering even if the lowering is ostensibly to protect the dam; should be an investigation as to who applies for these efforts and who is involved; may be either a perceived conflict of interest or an actual one.

Kate Cerow: looking for access to the Wildlife Habitat Evaluation from Emily Stockman. DeFant communicates how to move through the SCC webpage to access this document (committees & boards > active>concom>active projects under concom review). Cerow comments she is surprised that no salamander habitats were found and listed in the project; asks if Stockman interviewed any residents on the lake. DeFant is unsure what her practices were, refers Cerow to the report.

Janice Stone: doesn't agree with the shared narrative that "we have been doing the same thing for 50 years" because she was Chair of SCC in the 80s and 90s; did a few of those lake lowering projects. The permit was first primarily for invasive species control until it was discovered, through volunteer work, they weren't invasive species. Then, the

permit was used for landowner shoreline erosion protection from ice damage and/or for dam repairs; ice on the dam was not mentioned when she was a part of the Commission.

Leslie Luchonok: the circumstances from 2018 have changed because the area is now designated as Priority Habitat meaning there is an NHESP component in the review. New NOI is needed for that reason; Stockman's report included recommendations were not included in the OOC. DeFant clarifies that the OOC is incomplete because the Town was responsible for completing the Wildlife Habitat Evaluation before submitting the NOI application; the SCC accommodated the Town by allowing the permit without a complete application; the evaluation was completed after the OOC; that is an atypical process; thus, Stockman's comments were not listed.

McNaughton: maybe the drawdown should be managed under the SCC instead of LWAC; SCC seems to have more of a handle on it.

Rivers: based on all discussions tonight, he needs to withdraw the extension request and have discussion with the Select Board on how they would like to proceed; suggests SCC should communicate and guide the Select Board about their expectations for a new NOI. ***SCC accepts River's request to withdraw his permit extension request.***

DeFant: a new NOI needs to be submitted; Town needs to make clear what its regulatory pathway is – What is the rationale for this permit? If it is for dam protection from ice damage, then SCC will need information about it; if it for control of invasive species, we need information about that. When submitting a permit application, the activity desired must be explained and applicant must explain the necessity; especially if altering a Resource Area. How or what the NOI should look like is a bigger question to answer; DeFant shared examples of applications developed by consulting firms for other Towns with SCC and Select Board. In recent conversations about the lake, she has noted siltation and runoff have been continually brought up; has heard discussion for the need for parts of the lake to be dredged – wonders when the last bathymetry survey completed; so we can understand how much lake bottom is exposed with drawdowns; if conditions have changed due to the runoff and siltation, then new bathymetry is needed to accurately evaluate the area of impact for the permit; need square feet of impact for the permit; in the original NOI, only Land Under Water was checked off as the impacted Resource Area; she believes that Bank, Buffer Zone and Bordering Vegetated Wetland (BVW) would be impacted in a new NOI, and thus should be checked off. Harrington agrees. SCC agrees with DeFant; Willson would like to see more info about the process; notes that looking at other Towns' standards/ measurements is beneficial; would like to see NOI reference standards and other research. DeFant shared DEP Lake Management Manual with SCC. DeFant: refill rate is based upon the watershed inputs into the lake; model estimates volume from Fiske Brook; unable to see source of that historic model, but it should be reassessed to ensure it is accurate still; watersheds can change over the years, and it may no longer be accurate. OOC should allow the SCC to monitor the lowering process, but we cannot without getting timely notice of the beginning and ending of the lowering and raising. Chair has asked Dam Keeper to provide email notification within 24 hours of beginning the refilling this spring. Some Towns have public notice of drawdowns. Smith recommends to SCC that when the Select Board puts out a Request for Proposal (RFP) for a new dam engineer that they include the NOI proposal with the same consultant.

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.

The Public Hearing will be continued with the Applicant's consent. Antonellis is representing the Town. DeFant confirms Fuss & O' Neill has completed and submitted the new maps to SCC; has forwarded them all involved parties. She will be posting them on SCC's webpage for public access soon. **Motion: Willson moves to continue the Public Hearing for the 66 Leverett Rd/ Lot O-32 ANRAD on March 9, 2023 at 8:00 p.m., David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye. So moved.**

56 North Laurel Drive Chapter 91 License Dock Application

DeFant: as discussed, SCC sent a letter to 56 North Laurel Dr in regards to their Chapter 91 License application for a seasonal dock; SCC recommended they apply for such through either a NOI or RDA. Nelson: he is an associate of R. Levesque (consulting firm hired by George Abdow (applicant), he is aware that Abdow was unable to come tonight but he is here to ask some questions. He has reviewed the meeting minutes from August discussing the NOI from 56 North Laurel; clearly mentions Ch. 91 documentation was acknowledged and requested in the OOC – he is confused and doesn't want to waste the money or time of the applicant for a procedural exercise. DeFant: on the site plan for the NOI, there was an outline of the footprint for the dock but there was no dock design, narrative or

description. The site plan submitted in January shows a stone pad on the floor of the lake that the dock sits on, so there is alteration to a Resource Area. Her recollection from that Public Hearing was that SCC was acknowledging there was an unlicensed dock and was requiring the applicant to submit a Chapter 91 application; the SCC did not approve of a Chapter 91 license application at that time. SCC did not have any information about the dock to approve it; NOI did not provide any information about the dock and how it interfaces with the Bank. Nelson: it is a floating dock, typically for a seasonal dock, with no permanent disturbance; there was a site visit; has been present for multiple generations. DeFant: the dock design was not in the NOI narrative. Nelson: have all previous applications had everything listed in narrative form? DeFant: the applicant is obligated to describe the activities they desire and demonstrate how they're rebutting a presumption of an impact on Resources. If the applicant was thinking of applying for a dock license from SCC, then it was their obligation to provide enough detail for SCC to determine whether it impacts the Resource Area or not; if the applicant believed they were applying for a dock permit, it was their responsibility to provide enough information for us to evaluate it; there was no substantive discussion in that hearing about any other information other than to note the dock was not permitted; the OOC did not say it was permitting the dock, just noted that the dock was unpermitted; asks SCC what their understanding is of what the permit means. David agrees that SCC was requiring the applicant to apply for Chapter 91 license. Nelson states the applicant is in the process for such but it is on hold from Mass DEP because they require a prerequisite of SCC approval which they were under the impression they had. He asks if a new application is needed or if the OOC needs to be amended; this is just a procedural exercise.

DeFant: the regulations state that SCC is obligated to review any structures that are placed in a lake; permanent or temporary. If there are modifications to the Resource Area, including minor, SCC needs to review such through a permit application process; it is not an exercise, it is what we have to do. The policy SCC has developed is we are not going out looking for unpermitted docks; Chapter 91 licenses will be required on any new permit applications for properties with docks; we are adding requirement is placed in the OOC that brings the property into compliance. If the dock was permitted through this OOC, then it would have been written as such. Stone: she supports DeFant's response and how SCC is moving forward with Chapter 91 applications. The part of the process is that Mass DEP waits until there is written of legal approval from SCC as to whether the dock is acceptable or not through an NOI or RDA; everyone knows this; don't know how anyone could misinterpret this permit to mean the dock was approved; the SCC is doing the right thing and following the wetlands regulations. DeFant: we are not looking for a way to deny the applicant's request; we are just looking to regulate the activity appropriately. David agrees that a dock was not approved in the OOC; need the appropriate information and documentation for SCC for approval. Willson agrees; OOC was for other work.

DeFant stated a Request for Amended OOC, as Nelson mentioned, would not be the appropriate pathway because that is for minor changes and not new additional work; she recommends an RDA application; not that challenging. SCC agrees with DeFant's recommendation. Letter has been sent to applicant. Nelson understands and will communicate with Abdow.

Review draft minutes for 11/30/22, 12/8/22, 12/27/22

11/30/22 – Motion: David moves to approved the minutes for 11/30/22, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye. So moved.

12/8/22 – Motion: Willson moves to approved the minutes for 12/8/22, David seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye. So moved.

12/27/22 – Motion: David moves to approved the minutes for 12/27/22, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Abstain, and Willson- Aye. So moved.

Fire Station Environmental Investigations Permitting

DeFant: the Select Board had a discussion about the Fire Station PFAS investigations that are being done; does SCC want the Town to submit any permits for current and future investigation work? This is located only within the Fire Station parcel which have wetlands present; more than likely in Buffer Zone or Resource Area. Some of the work has been completed but unsure if they are planning to do additional work. In the past they submitted RDAs for work on the property due to those Resource Areas. David asks if this work was required by the state. DeFant: yes, it was required, but for the sake of consistency, she wanted to ask SCC. Willson understands there were wells placed in November and asks if there will be additional work. DeFant is unsure. Willson believes if the work has already been

completed, then SCC should not look for an application for such work. DeFant: in the past they submitted RDAs, most recently being for the driveway paving; unsure if the wetlands were delineated professionally but knows there is a large BVW on the property. SCC agrees that for any future work planned that include excavation soil or drilling wells within a 100 feet of a Resource Area, then SCC would want a permit application from the Town. Willson agrees to draft the letter to the Select Board.

2022 Old Peach Orchard CR Monitoring Report

SCC has reviewed the 2022 Old Peach Orchard CR Monitoring Report; there are no edits. Motion: David moves to approve the 2022 Old Peach Orchard CR Monitoring Report, Harrington. **Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye. So moved.**

Conservation Commission staffing

DeFant: Wendell is no longer looking for a Conservation Agent and plans to hire clerk position; Leverett already posted a job position and is interviewing. She believes if SCC were to go through creating a Conservation Agent position, the other two Towns will not be coordinating alongside at this point. Due to this, she doesn't believe the creation of this position should be pursued at this time. She has not had a meeting with Deacon Bonnar, Chair of Planning Board, and Jeff Lacy, Chair of Zoning Board of Appeals, regarding this matter since they would be affected from the new job position if created; doesn't want to leave them understaffed. Willson asks if the Town has considered raising the hours of the Land Use Clerk position. DeFant: any position that is over 20 hours is benefited which the town is not currently prepared for. David recommends that SCC go forward with working on the job description and plan that way in the future is can be pursued if/when the time is right.

David asks what Marshall does for the other boards. Marshall: she explains that for the other boards, similar to SCC, she informs boards of mail/voicemails they received, any emails inquiring about town zoning bylaws and drafting minutes. ZBA requires the least amount of work because they meet on a case bases meaning then they meet when a case is presented; otherwise, could go 3+ months without meeting. When there is a case, she creates a file to collect/record documentations and follow a checklist of steps to follow. Planning Board meets once every month but does not have many cases to review. A majority of her hours are for SCC which includes informing SCC of mail, emails, and voicemails, creating and updating files, and completing minutes. Stone suggests that when Leverett hires someone new, that SCC approach them to see if they are interested in extra hours.

Cerow suggests reaching out to undergrad students who may do intern work for free to build their resume and work skills. DeFant clarifies that SCC job position they are describing is a professional level position where the person would work autonomously and complete independent regulatory work.

West Quabbin Woodlands Conservation Area update

DeFant informs the board that the West Quabbin Woodlans Conservation Area has closed making it finalized/official. She notes that she will be adding to the next agent a discussion about conservation topics and to dos for the new conservation areas; defining next steps and goals for this and next year.

Chair Updates

Lot O-32 consultant/ Elizabeth Goodman – DeFant: when originally contracting her, SCC planned to commit 8 hours of her time for \$2,500 with the hope it would be enough to get through the ORAD permitting and allow her to be present to meet with the Select Board discussion for future permitting; BVW clean-up. Due to circumstances outside the SCC's control, all 8 hours of her time have been mostly used up; not enough for her to be able to attend the continued Public Hearing next meeting. She went to the last Finance Committee meeting to ask for additional funds to complete the scope of work but was not approved. Finance Committee noted that SCC has funds in the Bylaw and WPA fee accounts that could be used towards completing Goodman's scope of work; if any changes were to occur in the future, SCC can revisit them for re-discussion. Due to this and the last public hearing for the ANRAD seeming to be coming to an end, she believes SCC may not need Goodman at the next meeting; don't know what the Town will propose regarding the cleanup of BVW-3; think having counsel present is helpful. Willson: we may want counsel when they file a NOI. DeFant: will we need legal advice for the lake lowering NOI. David believes they should proceed with Goodman using fee account funds as recommended by Finance Committee because they support SCC in needing legal fees but would like to see fee account funds used first. DeFant agrees; it's a legitimate concern; fees are not taxes, they are supposed to be spent on program and not continuously banked. SCC agrees to have Goodman remain involved. **Motion: David moves to allocate \$1,500 from the NOI fee**

account towards Attorney Goodman's services to complete the scope of work for 66 Leverett Lot O-32, Willson seconds. Vote: David- Aye, DeFant- Aye, Harrington- Aye, and Willson- Aye. So moved.

Future Eversource Project/Mitigation Project – DeFant informs SCC that Eversource will soon be submitting their large project to do work along their electrical poles; they are interested in completing a mitigation plan with SCC for the permit. SCC considers possible mitigation plans to suggest to Eversource but no decisions is made. Once permit is submitted, matter will be returned to.

Bylaw Regulations Review updates

DeFant: since the last meeting, she has completed a draft of Regulations for SCC to review; trouble with formatting but is looking to send all Commissioners a copy of the draft within the week. She recommends if any Commissioners have any edits, to email her directly. She would like set up a meeting only focused on discussing the drafted Regulations. The remaining steps after such would to have Town Counsel to review final draft, post the final draft for public access and hold a Public Hearing for public comments and questions. Promulgation of Bylaw Regulations are through the SCC and do not need to be approved by Town Meeting or SB. During the last meeting with Garner and Horsley, they discussed doing a site visit with SCC, pro-bono, to gather a sense of what intermittent streams are like in Shutesbury; she suggesting trying to set up a site visit in March. SCC discusses the possible site visit locations for example intermittent streams to review with Garner and Horsley. DeFant: suggest we have Garner review the Draft Regulations as part of his scope. Willson agrees. Most of Regulations are fee schedule, definitions, policies, and Performance Standards which were taken from Amherst's new Bylaw Regulations. Proposing in Regulations to protect Vernal Pools, as does Town of Amherst. Many Regulations have No-Disturb Zones for Resource Areas; would be a rebuttable presumption that could be waived. DeFant will reach out and coordinate with Garner and Horsley.

Policies regarding permitting of structures (docks and buoys) in Lake Wyola

Kahan joins the meeting late at 8:30pm

Smith: Rivers is no longer present but is wondering if SCC had anything else to discuss about this matter. DeFant: as discussed earlier, SCC will be requiring applicants with unlicensed docks to get a Chapter 91 license to bring the dock into compliance with Mass DEP; most instances would be an RDA. Smith understands the policies with docks but he is more concerned with buoys; at the last LWAC meeting that was the topic of discussion because they use buoys often in the summer for their beaches. He knows buoys fall under Waterways Program jurisdiction but is also a Resource Area, so SCC has jurisdiction as well. DeFant: she was going to recommend to SCC that regulations says putting structures in the lake, temporary or permanent, an application needs to be filed with SCC (NOI or RDA). To make this less onerous for SCC and lake residents, she suggests SCC craft a policy that would require applicants to comply with certain conditions; such could be approved through an administrative review process; no drafts have been completed. *This matter will be returned to in future meetings.*

Site Visits

86 Sand Hill Road/Kalt/Dandelion Energy – see section ***Public Hearing for Amended Order of Conditions Request, 86 Sand Hill Road/Dandelion Energy: geothermal energy system for further details.***

Site Visit Scheduling

Discussion has been postponed

Meeting Close: 9:38 p.m.

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

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

Documents Used:

- Agenda
- Draft minutes
- 86 Sand Hill Rd OOC (original)
- 86 Sand Hill Rd Amended OOC

- Lake Wyola Lowering OOC Extension Request (Rivers)
- 66 Leverett Rd/ Lot O-32 ANRAD
- 56 North Laurel Ch 91 License Application
- 56 North Laurel Drive Landowner Letter
- Fire Station PFAS Report
- 2022 Old Peach Orchard CR Monitoring Report

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