

## Shutesbury Conservation Commission

Minutes – 3/13/2023

Approved – (10/12/23)

*Virtual Meeting*

**Meeting Start:** 6:02 p.m.

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

**Commissioners Absent:** Beth Willson

**Other present:** Janice Stone (SCC Consultant); Rita Farrell; Erin Jacque; Don Wakoluk (SCC Consultant)

Meeting is being recorded.

### **Discuss Draft Bylaw Regulations:**

Jacque introduced herself as a Shutesbury resident and wetland scientist who serves at the Conservation Administrator for the Town of Amherst. DeFant invited Jacque because the draft that the SCC is working on includes material from the Town of Amherst's Regulations. Goal for this meeting is to review the first two articles of the draft document. DeFant notes that the Regulations cannot involve the 200-foot Riverfront Area Resource Area from the WPA since it is not protected in the Bylaw, only the 100-foot Buffer Zone is protected. DeFant notes that the Regulations must be confined to the jurisdictional areas outlined in the Bylaw; Regulations can explain jurisdictional Resource Areas but cannot expand on them. Definitions can help to protect aspects of Resource Areas that are not easily protected without definitions. Bylaw also does not mention Bank, boundary between two Resource Areas.

DeFant asked Jacques about importance of Regulations. She has been a conservation professional in four towns and has served on a Conservation Commission. Every community is unique. Important to exercise Home Rule authority by protecting Resource Areas. WPA protects Resource Areas. WPA does not protect Buffer Zones; Buffer Zone alterations can have a tremendous impact on Resource Areas; can have implications for water quality and quantity. We want people to do what they want with their land, but if we don't protect wetlands Resources, it can become a Tragedy of the Commons. If water becomes unusable, then we have failed. Developers often try to do a maximum build-out in Buffer Zones, using as much of the Buffer Zone as they can. Regulations with minimum setbacks limit how close a developer can get to the Resource Area. Amherst allows only 20% alteration of Buffer Zone. Greater alterations have to be either restored or they pay into a mitigation fund where wetlands can be restored and enhanced elsewhere in Town. You want to be able to allow development and activities. DeFant: MACC trainings discuss the importance of protecting Buffer Zones as bioactive Resource Areas, not just a cushion between development and the wetlands. Many species require far more than 100 feet of upland habitat. Stone: Commissions want to be consistent over time. DeFant: Regulations would help to make rationale for decisions more explicit. Stone suggested using a different term for the Buffer Zone to highlight its environmental significance. Stone: developers using the WPA know they need to apply for permits for Buffer Zone alterations but may assume it is not protected. Jacque: Sturbridge has a 200-foot Buffer Zone and 500 feet if there is a slope. Kahan: we've discussed minor exempt activities as defined in the WPA. DeFant: the draft has incorporated some exemptions for some minor activities, but the Bylaw protected the Buffer Zone as a Resource Area. Some activities are

so minor that we could consider exempting them from all permitting requirements, but this draft is proposing requiring permitting review for structures that require ground disturbance in the Buffer Zone because they change the functions of the Buffer Zone more than other types of minor activities such as vista pruning. Jacques: In my experience, Amherst has reached its development capacity and there is likely to be more development pressures (subdivisions, commercial development, etc.) in future years on hilltowns as a result. Conservation Commissions have to pick their battles. DeFant: proposed draft has options for administrative approvals of very small projects without need for RDA process. Also have provisions for waivers. Jacques: Why take out Limited Projects? Suggest getting a legal review. Use language for waivers, rather than variances. Vernal Pools—make Regulations be as protective as possible. Development around a Vernal Pool can destroy it even if it is out of the Buffer Zone.

DeFant screenshares the draft Regulations. DeFant: this is a working document and is not a final draft for public review. Final draft will be released for public comments at a later time. DeFant summarizes Article I content. Case law has determined that Conservation Commissions cannot rely on principles like cumulative effect in permitting decisions if they have not defined these terms in advance through Regulations. Bylaw mentions cumulative effect so it needs to be defined. Values are the aims of the Bylaw. Values are similar to the Interests found in the WPA. Cannot expand on these Values. Shutesbury's Bylaw does not mention climate change mitigation or resilience as a Value. Some communities are revising their Bylaws to include climate change mitigation and resilience as Values. DeFant and Stone attended recent MACC training that discussed how to revise Bylaws to address climate change impacts. Protection of the 100-foot Buffer Zone was emphasized as being critical.

Areas subject to protection as described in the Bylaw: DeFant notes that the Commission never interpreted the Bylaw as protecting subsurface lakes, only subsurface streams. SCC discussed that jurisdiction can, under some circumstances, extend beyond the 100-foot Buffer Zone if there is cause to believe an activity is going to alter an area subject to the protection under the Bylaw. Stormwater management upgradient of wetlands can impact wetlands and could end up being reviewed under enforcement. Stone: this jurisdiction exists under the WPA; if work outside the Buffer Zone fails, it becomes jurisdictional. Kahan: need to consider how this affects Lake Wyola where there are watershed-scale, stormwater issues. Wakoluk: agrees with putting this under enforcement. DeFant: important to have two separate permits under WPA and Bylaw establishes Home Rule authority. Stone recommends consistent language that makes it clear that the 100-foot Buffer Zone is a protected Resource Area. Kahan: cautions against using vague language about recommendations; Regulations should be clear if something is required. Language indicating presumptions are always rebuttable and waiver provisions exist.

SCC reviews language establishing a "No Disturb" area within the Buffer Zone. SCC has not recently permitted any structures within 25' of a wetland; some structures within 50' have been approved; SCC should always be asking applicants if they have considered alternatives that move structures farther away from wetlands. Jacques: Amherst has a setback table in its Regulations; it has a 50' No Disturb Area. DeFant: when thinking about this, important to also consider that houses in Shutesbury are usually built on much bigger lots than in Amherst; applicants are always free to rebut the presumption of a No Disturb requirement based on the conditions of their property. David: why aren't we starting with a 50' No Disturb Zone? DeFant: recommends a 50' No Disturb

Zone with hardship waivers available. Stone: South Hadley had a 50' No Disturb Zone; recommends 50' No Disturb Zone rather than having separate requirements for 25', 50', and 75'. Development within the outer 50' of the Buffer Zone should be avoided. Exceptions and exemptions are discussed. SCC is not regulating agriculture because it is preempted by state law.

SCC discusses adopting some of the exemptions for minor projects that are currently exempted in the WPA Regulations. The draft as written does not include road maintenance and accessory structures in the Buffer Zone. Stone advises not allowing vista pruning right down to the wetland edge of the Buffer Zone. She notes that the WPA does not allow vista pruning in the inner 50' of the Buffer Zone to BVW and inner Riverfront Area. Jacque: vista pruning should not be in the inner 50' of the Buffer Zone. SCC discussed repair of existing structures. Jacque inquired about hypothetical situation where someone replaces a foundation but does not increase footprint of the structure. In her professional experience, permits are required for activities involving ground disturbance. Kahan inquired why recommended exemptions do not incorporate accessory structures in previously landscaped areas. DeFant notes that this exemption is not in the draft because there can be a lot of projects involving ground disturbance for accessory structures; in the WPA, those projects are only exempt if more than 50' from the wetland boundary; her view is that the SCC has conducted some valuable reviews of permitting of these kinds of activities. Kahan suggests making the Regulation consistent with the WPA Regulations; feels these could be small structures like decks and porches; not houses; doesn't feel reviewing these projects is an effective use of SCC resources. David: doesn't agree; feels SCC should review these projects because some landowners may take advantage of the exemption; exemption would allow too much freedom from review. DeFant: requiring a review also means the SCC has the ability to monitor things such as use of erosion controls; if the project is exempt, then the SCC would not know the work was happening and would be able to assess; reviewing doesn't mean the SCC wouldn't allow a project; purpose of the Bylaw was always to provide protections that don't exist under the WPA and not just duplicate the state Regulations; that is why Buffer Zone is a protected Resource under the Bylaw; Regulations are asking applicants to demonstrate the need to alter the Buffer Zone and allows for approval of activities in the Buffer Zone upon review; SCC has not reviewed any decks or porches since DeFant has been on the SCC, but they have required RDAs for dug-foundation garages, pools, and driveways in the outer Buffer Zone. Jacque: recommends having a process for very small, inexpensive projects to be approved without an RDA; recommends Administrative Approvals process. DeFant: fully supports that concept of Administrative Approvals for small projects but doesn't think it makes sense to exempt them from all review. Kahan believes the SCC should look at how it is spending time and whether review of small projects is useful. DeFant suggests tabling discussion to a later meeting. Stone also thinks Administrative Approvals are a good idea; pools can have a big impact and some decks can be very large. Kahan would like to revisit discussion about reviews for small projects. DeFant: SCC has had a lot of previous discussion about this topic.

SCC discussed Hardship Waivers provisions. DeFant: language requires applicants to provide information to justify the waiver; SCC has had some instances where applicants have sought waivers but did not want to provide information to justify the request. Draft language requires an examination of alternatives and efforts to avoid, minimize, and mitigate; language as written provides waiver provisions for small lots; mitigation might include vegetated buffer strips and pervious paving materials.

SCC discussed general Performance Standards for no significant or cumulative effect on Resource Areas. “No Disturb” area for Vernal Pools would be 100’, not 50’.

DeFant: Riverfront Area (RFA) is not a protected Resource Area under the Bylaw, but Regulations could adopt some of the RFA Performance Standards for RFA and apply them to the 100-foot Buffer Zone to streams. David: where is RFA? DeFant: along Sawmill River, Roaring Brook, South Brook, Adams Brook, Dean Brook. Stone: WPA RFA Regulations are pretty good because they were added more recently.

Presumption Concerning Point Source Discharge. David inquired about properties along Lake Wyola that have culverts draining into the lake. DeFant: if we were permitting a project on a site with this kind of discharge, we might require that they remove it unless they can show that it is absolutely necessary; some of them are not legal currently under the WPA; SCC is not looking for them, but it would have to be reviewed under an application. Wakoluk: what about stormwater discharge from roads on Cooleyville Road, Leverett Road, and Locks Pond Road? DeFant: there are probably situations where necessity would dictate the need for a waiver. Wakoluk: new culvert on Locks Pond Road will be a collection point for stormwater; it’s at the base of the hill.

SCC briefly reviewed the overview of the remaining sections of the Regulations, including Definitions and Performance Standards for Inland Wetlands. DeFant: much of these sections are standard and commonly used. David: where did the fees come from? DeFant: looked at about fifty sets of Regulations from other communities; looked for Regulations that have been updated in past five years and have updated fees; focused on the low end of the range; the NOI fees for large commercial projects were taken from the mid-range of fees. Goal was to capture activities that currently have no attached fees but use SCC resources, such as Certificates of Compliance; fees can be used for administrative costs; shifts some burden to applicants instead of taxpayers. Amherst has a mitigation fund; can be used for wetlands restorations and improvements.

SCC will meet on March 27 at 6 p.m. to review additional sections with goal of refining draft to give to its Technical Advisor, Patrick Garner, to review.

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

**Meeting Close: 8:08 p.m.**

**Next Meeting: April 13th, @ 7 pm**

**Documents Used:**

- Draft Revised Town Bylaw Regulations, version 10

*Respectfully submitted by Miriam DeFant, Commission Chair, 10/7/2023*