

Shutesbury Conservation Commission

Minutes – 08/10/2023

Approved – (11/9/23)

Virtual Meeting

Meeting Start: 7:00 p.m.

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

Commissioners Absent: Scott Kahan

Other Staff: Carey Marshall (Land Use Clerk)

Other present: Penny Jaques, Mary Anne Antonellis, Gail Fleischaker, Joyce Braunhut, Mike Vinskey, Don Wakoluk, Jim Hemingway, Sharon Weizenbaum, and all other unidentified individuals.

Chair's Call to Order at 7:01 p.m.

Meeting is being recorded

Lot O-32 Proposed Mowing Plan

Jaques shares that when visiting the site, specifically the wet meadow, she had noticed bittersweet and small trees starting to grow within. She hasn't thoroughly observed all vegetation that is growing, but she imagines there is more than just the bittersweet; doesn't want them to grow to full maturity and spread. In order to keep the meadow in good condition, she is proposing a mowing plan. There was an Enforcement Order placed on the site in Fall of 2022 that included requiring the Highway Department to cease mowing on the property. Since the mowing has stopped, the meadow has been able to grow back fuller, but she is proposing to mow portions to eliminate invasive species or woody growth. She is proposing that she and one to two SCC's members accompany her in measuring out 25 feet from the wetland flags in the field portion and placing stakes to clearly establish the boundary. Then, they would discuss with the Highway Department a desired height at which the field would be mowed from the 25-foot mark and greater. She put 4 inches height in the proposal as that is her own personal practice on her property. The proposal is to mow in November after a week of no rain and the ground is firm. She understands that in the past, SCC has condition mowing under the condition of frozen grounds, but believes the condition she has described would be sufficient; only to be mowed that one time of year. They would exclude the wetland area that been recently restored. She is also recommending that a MOU be signed between the Library Director, Mary Anne Antonellis, the Highway Department, and SCC.

DeFant asks when the library NOI application submission is to be expected. Jaques answers that it is expected to be submitting by mid-to-late fall. DeFant shares that she would prefer to see this type of plan rolled in with the NOI. Jaques shares they plan to propose a field management plan in the NOI. SCC had asked for remediation for working in the Buffer Zone and she believes enhancing the meadow by removing the invasive species would be great remediation. What prompted her to submit this proposal was the observation of bittersweet, including a patch roughly 10 – 15 feet in diameter.

DeFant proposes that SCC have an agreement for this proposal for one year with the understanding future management would be part of the NOI. Jaques offers to draft the MOU and will share it at a later meeting. She hopes to have the exterior area mowed by the end of August and the interior mowed in November. DeFant shares it may be difficult for SCC to review and approve the agreement by this month. Jaques understands and proposes that in the meantime her and any Commissioners who are interested can go to the site to stake the 25-foot boundary. DeFant agrees and adds it could help with drafting the agreement. Discussion tabled to next meeting.

Lot O-32 BVW Restoration Initial Report, received 7/27/23

SCC has not yet reviewed the Lot O-32 BVW Restoration Initial Report but acknowledged that it has been received in compliance to the OOC. DeFant shares that she was hoping for more detail about the items/materials that were removed during the restoration. Jaques shares that other items that were removed, besides the items listed in the report and the typical household trash that has been continuously found, were pieces of a car, small bits of plastic and glass, and old cans and jars.

Follow-up to 8/9/23 joint meeting with Select Board regarding Bylaw Regulation updates and request for legal review

Willson shares the beginning of the joint meeting regarding funding was positive and quick. The following discussion, regarding whether SCC will develop a new Bylaw or adopt Regulations first was frustrating, as it has been continuedly brought up. The meeting ended with somewhat of an agreement, but ultimately, Willson believes both SCC and Select Board need to move on, finish the Regulations and then work on the Bylaw. She is disappointed there wasn't full conclusion made. David agrees with Willson adding that SCC should move forward with the legal review followed by a public hearing now that the funding has been approved. She isn't convinced that having a meeting with both lawyers for the SCC and Select Board would be an effective way to review the draft Regulations. She has reviewed both comments from Attorney Gregor McGregor and Attorney Brewer and believes that McGregor's comments have already been addressed. DeFant and Willson agree.

The Select Board asked DeFant to draft an agreement for any work with Attorney Goodman. She sent a Scope of Work to Goodman and received an Engagement Letter back for SCC to review. SCC has reviewed the Engagement Letter and has no comments or questions.

Motion: David moves to approve and send the Scope of Work and Engagement Letter from Attorney Elisabeth Goodman and authorize the Chair to sign, Willson seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, and Willson – Aye. *The motion carries.*

Bylaw Regulation Public Hearing planning

DeFant shares it is important to keep the purpose of a public hearing, as they have done in other public hearings or other situations, the main focus of the meeting. SCC has done this in past by limiting time on public comments to allow for all interested individuals to make a comment or ask a question. When SCC has their next public hearing, it should focus on the most recent draft Regulations and not the question of "what is a Bylaw?" That question should be for another public hearing, which is important to have when SCC has focuses on a new draft Bylaw and

shares it with the public for review. David agrees and states she would be in favor of spending time during two public hearings discussing the Regulations to have a more thorough understanding. DeFant recommends having two short meetings because it would be more cost effective and if the points that SCC is making regarding the draft Regulations can't be made known in a reasonable amount of time, then it more likely a more philosophical debate that SCC can't resolve; SCC can't resolve all possible issues. Although SCC wants to educate the public as much as possible during these meetings when the public is the most interested and engaged, it is not within the scope of the review of the draft Regulations to able to answer general questions such as "what is a Conservation Commission?"

DeFant proposes that once SCC reviews the legal review from Attorney Goodman, SCC plans a public meeting with Goodman to discuss and ask questions regarding her comments and/or feedback. This session would mainly be for SCC and would not involve taking public comment at that time in order to be time efficient as revisions may need to happen. Once those revisions are made, then that version of the draft Regulations should be posted, and a public hearing should be scheduled based on that new draft. SCC agrees. DeFant proposes that the public hearing would be in September to give them enough time to make any necessary revisions based on Goodman's feedback. SCC will invite the Select Board and if they wish to have McGregor there as well, then SCC needs to discuss how to pay for Goodman's time as they have been granted 5 hours with Goodman; discussion between McGregor and Goodman may take up more time than they have been granted. SCC also needs to consider whether they would like to invite Patrick Garner to this meeting as well; need to discuss funding for his attendance. SCC has \$3,000 in their Bylaw fee account that they may use for consultants; if it were to be used by a lawyer then SCC would need Select Board approval. David expresses it may not be necessary to have Garner present as she understood most of the comments received by the Commission from the public are more aimed at SCC explaining the reasoning for their decisions in the draft.

DeFant recommends SCC should review how they want to structure the public hearing. At the last one, she had a 20-minute presentation with a PowerPoint slideshow. She could do a more extensive one to be responsive to written comments they received, but it would take up more time, limiting discussion afterwards. A presentation may not be necessary because all the meetings are recorded and posted on the town's YouTube for the public's access. She has also posted the PowerPoint slideshow on the SCC's webpage alongside a comparison of the old and new Regulations (as drafted), and an updated FAQ handout. The FAQ includes what some Regulations mean using examples for different types of projects. David suggests that they put together a topic schedule for the public hearing to go over the topics that seem to be of the most interest, leaving time at the end for questions. She isn't sure what these topics are at the moment as she would need to refer back to the written comments they have received. DeFant recommends topics such as stormwater management, performance standards, tree removals, the AURA, and alternative analysis. David recommends non-technical topics such as exemptions and how SCC would decide on waivers, because the public's main concerns are how they will be affected; not the technical components. DeFant understands and proposes going through the different permit types and what each process looks like. Willson agrees adding that they could give examples of different level of projects and how they qualify for different permits. SCC agrees that when they post a notice for the public hearing that they will invite the public to submit written comments, questions, and concern prior to the meeting so SCC can review them.

For scheduling a date, DeFant shares that it will more than likely be on a Wednesday so Janice Stone may attend. She doesn't want to set a date yet until they have received the review from Goodman.

DeFant shares that there is new version of the draft Regulations that she has shared with the commission but has not yet posted on the SCC webpage. This version is shorter after DeFant removed redundant language as discussed with Stone. In one section, she took a paragraph concerning stormwater management and condensed it to align with the state Stormwater Standards and some additional provisions such as using the NOAA Atlas 14 precipitation data, etc. The only other component that could be taken out without losing substantive language would be the Preambles, but she believes they are important as they provide educational language; SCC take language from Preambles and use them for permit Findings. SCC agrees. SCC discusses looking at modifying the formatting of the Regulations. The way it is set up currently makes it hard to follow and read as pointed out by some public comments. In the beginning, DeFant used indentations to provide space in between sections when necessary but had a difficult time having them line up. She has now made them into decimal points which makes the draft shorter in length but not as easy to read. Once the content of the Regulations is agreed upon, DeFant will revisit formatting.

Review draft minutes for 6/8/23, 6/22/23, 7/7/23, and 7/13/23

6/8/23 – SCC has reviewed the 6/8/23 minutes; no comments.

Motion: David moves to approve the 6/8/2023 minutes, Willson seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, and Willson – Aye. *The motion carriers.*

7/7/23 – SCC has reviewed the 7/7/23 minutes; no comments.

Motion: David moves to approve the 7/7/23 minutes, Willson seconds. Vote: David – Aye, DeFant – Aye, Harrington – Abstain, and Willson – Aye. *The motion carriers.*

57-59 Shore Drive NOI update

A public hearing was scheduled for 57 – 59 Shore Drive NOI last meeting but due to a miscommunication, the landowner and/or representatives did not come to the meeting; hearing wasn't opened. The NOI is being updated as it is incomplete, but MassDEP will not require them to resubmit for a new filing number. A site visit will need to be rescheduled in the future.

FRCOG Shared Conservation Agent Feasibility Study updates

Earlier this week, FRCOG had a meeting to discuss their Shared Conservation Agent Feasibility Study where over a dozen Conservation Commissions were represented. The main discussion topic of the meeting is what Commissions are looking for in areas of support; varied widely as each Commission's community varies. Some Commissions didn't have a Land Use Clerk position at all. Some Commissions need some input from an expert on a topic at hand. There was discussion about FRCOG pooling resources as a county and being a support across Commissions. DeFant suggested setting up quarterly forums for countywide Commissions to share experiences and resources with one another. She also suggested creating a listserv. Scott Jackson (UMASS Professor, Chair of the Whatley Conservation Commission, and a member of the MACC Board) was present and stated he would be willing to be an available resource for

Commissions. SCC supports the idea of having forums and creating connections with neighboring Commissions within the county. In the FRCOG meeting, there was a suggestion that Wendell, Leverett, and Shutesbury revisit the idea of sharing an Agent because they are very similar communities and geographically closer. Another option is to have a contract with a consultant for a certain number of hours per year and possibly have this as a pooled effort between three Towns, using consultants such as Emily Stockman. DeFant believes having the shared contracted consultant may be the best approach for as it could dovetail with the Land Use Clerk position.

Locks Pond Culvert Replacement Project (DEP #286-0279) Update

David: Select Board invited SCC to their meeting with LWAC and Finance Committee, (FinCom), to discuss the Locks Pond Culvert Replacement Project. David summarizes the topic of discussion was reviewing different proposals to continue the project, including a new design for the dewatering system pipe. A final decision was not made and the discussion was planned to continue. DeFant shared there was discussion of possibly submitting a Permit Extension Request since the permit expires in November of this year; may also submit an Amended OOC Request to lift the time-of-year restrictions. She recommends SCC think about what time-of-year restrictions make sense if the work is to continue next year. She also suggested SCC consider hiring a consultant to review the new engineering plan if they decide to redesign the dewatering plan; recommends Patrick Garner. Willson does not think a consultant is necessary.

DeFant shares that the Lake Wyola Drawdown permit that was originally due to expire in October of this year has received an extension due to the COVID Pandemic; now expires in spring of 2025. The MOU signed between the Town and the SCC is not binding and does not provide clear guidance. From her understanding, the NOI and OOC are tied to the Division of Fisheries and Wildlife (DFW) Performance Standards, which define what a minimum flow from the dam should be for stream health; is based on the size of the watershed and time of year. The current practice for the dam at Lake Wyola is basing the flow on what they believe is the inflow to the lake; adjusting the outflow to be 50% of the inflow. The current practice does not appear consistent with Performance Standards. This current practice would be okay during period of high rain/flow, but in drought conditions, it can result in less water being released than what the Aquatic Base Flow would require. DeFant had discussion with members of the Leverett Conservation Commission as they are stakeholders because the majority of the Sawmill River is in their Town; she recommends inviting Leverett Conservation Commission to meeting for further discussion. David understands that the Town has sent out their RFP for proposals to hire a firm that will address these concerns and permits; they have received one response but awaiting more. DeFant proposes that SCC write a letter to the Town summarizing their understanding of the DFW minimum flow standards and recommend using that as their practice since it was referenced in the permit. Willson doesn't believe a letter is necessary as the Town is actively working to find a firm to advise them in this process, as long as SCC keeps guiding and working with the Town to form a well-developed NOI application. David agrees stating that it would be better use of time for SCC to work with the Town and their hired firm in the future when they are discussing how they plan to develop their NOI. DeFant asks if SCC should then request for a working meeting when the Town has hired a firm. SCC agrees.

Site Visits

Locks Pond Culvert – David met with Eric Stocker, Select Board member, Torres, and the engineer at the site. The engineer measured the water flow, using a dye methodology. Their measurements showed the flow was on the higher side than was hoped for.

Site Visit Scheduling

64 Lake Drive/Jones (NOI for home addition pending) – TBD; awaiting NOI

57/59 Shore Drive/West (NOI for home demolition and reconstruction) – TBD; awaiting revised NOI

70 Cooleyville Road/Kiely (garage/addition) – TBD; awaiting new plot plan

88 Shore Drive/Kingsbury – August 16th, 2023 at 4:00 p.m.

Chair Updates

MassDEP Subscription – Mass DEP has shared an email advising their discounted subscription to the DEP Recorder, a periodical with a database of DEP decisions for research. The discounted price is \$275 and DeFant recommends SCC purchase it. SCC agrees they try it for the year and if they don't use it as much as its worth then reconsider their renewal next year.

Motion: David moves to approve the funds for MassDEP Subscription Funds for FY24, Harrington seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, and Willson – Aye. The motion carries.

Donation Account – DeFant shares that her understanding of the donation account, per the discussion from the Select Board meeting, is that if the donation account were to be set up, then any use of funds would have to be approved by the Select Board. Since the donor has requested that the funds be used for the legal expenses for the Bylaw/Regulations work, these actions would need to be approved by the Select Board anyway. The Select Board could deny or modify a request made by SCC to use the funds. For example, if they were to decide the request didn't meet the purpose of the donation, then it could be denied. DeFant suggests asking the donor if they would be open to expand their donor request to include both legal and other expert consultant expenses related to the Bylaw Regulations and administration, in order to provide more flexibility in use. Willson agrees, noting that the Select Board was going to ask the donor to edit his request anyway.

64 Lake Drive NOI – A NOI has not yet but submitted but building plans have been shared. The property is next door to 66 Lake Drive, the property that has a problematic drain as discussed during the 66 Lake Drive public hearing(s). The project is for a home addition on the lake side of the house. A site visit will be scheduled once an NOI is submitted.

Unanticipated Business

Meeting Rescheduling – Willson's next CPC meeting conflicts with the next SCC meeting. SCC agrees to reschedule the next meeting to August 23, 2023 at 6 p.m.

Motion to Adjourn: David moves to adjourn, Harrington seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, and Willson – Aye. The motion carries.

Meeting Close: 8:31p.m.

Next Meeting: August 23th, 2023 at 6 p.m.

Documents Used

- Agenda
- Lot O-32 Proposed Mowing Plan
- 66 Lake Drive site plan
- Locks Pond Road Culvert Replacement Order of Conditions
- Lake Wyola Drawdown Order of Conditions
- Draft Minutes for 6/8/23 and 7/7/23
- Scope of Work and Engagement Letter from Attorney Elisabeth Goodman
- Draft Bylaw Regulations
- Lot O-32 BVW Restoration Monitoring Report

Respectfully submitted by Carey Marshall, Land Use Clerk