

Shutesbury Conservation Commission

Minutes – 9/14/2023

Approved – 01/11/2024

Virtual Meeting

Meeting Start: 7:00 p.m.

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

Other Staff: Carey Marshall (Land Use Clerk)

Other present: Mary Anne Antonellis (Library Director), Chris Volante (Kestrel Trust Representative), Tom Siefert, Dale Houle, Michael Hootstein, Amanda Alix, Steve Sullivan (Highway Superintendent), Frank McGuinn III, Penny Jaques, Steve Bressler, Elaine Puleo, Gail Fleischaker, Joyce Braunhut, Joseph Salvador, Bill Sieruta (consultant), Paul Lipman, Beth Goodman (SCC counsel), and all other unidentified individuals.

Meeting is being recorded

Due to some technical difficulties the meeting is opened late.

Chair's Call to Order at 7:13 p.m.

Request for Determination of Applicability (RDA) for 74 Pratt Corner Road/DeFant Kibler

Miriam DeFant, Chair of SCC, is the co-landowner of 74 Pratt Corner Road and has recused herself from participating due to conflict of interest. SCC voted for Beth Willson to Chair the public meeting for the 74 Pratt Corner Rd at their last meeting.

Willson opens the public meeting for the 74 Pratt Corner Road/DeFant Kibler RDA and asks for DeFant to present the proposed project to SCC. DeFant shares that there is a BVW and intermittent stream that goes under their driveway through a culvert. The driveway is currently gravel with a large slope that results in problems with erosion and unsafe icy conditions in the winter. They are proposing to add a thick layer of traprock on top of the entire existing gravel driveway; no excavation or removal of material is proposed. The turnaround section of their driveway is close to the BVW and currently has compacted gravel for parking their vehicles. They are proposing taking a section of the turnaround and converting it to a rain garden with native herbaceous plants to improve the stormwater management of the area; reducing the amount of runoff and gravel. During construction they are proposing to use erosion socks to protect the culvert and the downgradient part of the rain garden.

Willson asks who will be completing the work and what is the schedule of construction. DeFant answers that Clark Excavating will be doing the driveway work and excavation for the rain garden area because it is too compacted to do by hand. The construction of the rain garden will be completed by the landowners. The driveway and digging out the rain garden will be done in fall but the planting may be completed in the following spring; the rain garden will be stabilized with mulch and protected by erosion controls. SCC has no further question or comments. There are no public questions or comments.

Motion: David moves to close the public meeting for 74 Pratt Corner Rd RDA, Harrington seconds. Vote: David – Aye, DeFant – abstain, Harrington – Aye, Kahan – Aye, and Willson – Aye. *The motion carries.*

Willson is unable to share her draft DOA for 74 Pratt Corner Rd RDA and shares that they are written standardly as any other DOA; landowner will send photos of the erosion controls once they are placed and photos once the project is complete. This would be a determination Negative 3 under the WPA and the Bylaw. SCC grants Willson permission to sign for them digitally.

Motion: David moves to approve the Negative 3 DOA under both the WPA and Bylaw for 74 Pratt Corner Rd RDA, Harrington seconds. Vote: David – Aye, DeFant – Abstain, Harrington – Aye, Kahan – Aye, and Willson – Aye. *The motion carries.*

Kestrel Land Trust Request for Amended Order of Conditions for Ames Pond Trail Maintenance Project, DEP File Number 286-0291

DeFant confirms receipt of a request to amend the OOC for the Ames Pond Trail Maintenance OOC. SCC will hear and review a short explanation of the request from the applicant, Chris Volante, and determine whether the change is minor or major. DeFant shares that the request is to add to the bog boardwalk and puncheon which would result in larger impacts, and to change the mowing plan. Volante clarifies that the footprint of the boardwalk is not being changed but the support structure type is what they are proposing to change. The change in type will require a different mode of installation rather than hand-driven piers; requires machine driving and helical piles. The other proposed change in boardwalk is to the wooden puncheon in the wooded forest. Originally, they planned to only repair and extend the puncheon by 12 feet but they are now proposing to replace it with diamond piers as the support structure and extend it closer to 30 feet. The change in the footprint is marginal because they will be making the path narrower; from 4 feet wide to 3 feet wide. DeFant proposes that SCC make the determination that the proposed changes are minor and will require an Amended OOC. SCC agrees the changes are significant enough for an Amended OOC but minor enough to not require a new NOI submission.

Motion: Willson moves to determine the changes are minor and doesn't require a new NOI submission, David seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye, and Willson – Aye. The motion carries.

The AOC Public Hearing take place on October 12th; time to be determined.

Public Meeting for Request for Determination of Applicability (RDA) for 66 Leverett Road/Lot O-32/Town of Shutesbury

SCC received an RDA application to conduct environmental investigations on 66 Leverett Road/Lot O-32 as part of the construction project. The investigations involve soil borings and test pits in order to prepare for their design work; proposed work is in the Buffer Zone. SCC confirms they have reviewed the site plan. DeFant shares that the applicant(s) has asked for the fees to be waived since it is a Town project; vote needs to be made.

Motion: Willson moves to waive the fees for the RDA 66 Leverett Road/Lot O-32, David seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye, and Willson – Aye. The motion carries.

Michael Hootstein comments that the map provided for the project is inaccurate as it doesn't reflect the drainage. The property is contaminated with preferred contaminant pathways; not percable soil. He understands that the Commission has been threatened by the Town and will have to provide this; wants SCC to know that the fraud committed by the Town officials on Lot O-32 is going to be a part of the basics of his civil rights complaint. He protests this project and asks SCC to require more information. DeFant clarifies that the activity proposed in the project is an exempt activity under the Wetlands Protection Act (WPA); RDA is only being considered under the Shutesbury General Wetlands Protection Bylaw.

Jaques asks if the applicant could present their project before further public comments were heard. DeFant agrees and adds that she is satisfied with the information provided by the applicant as it is exempt under the WPA and the work is basic and necessary. David and Harrington agree with DeFant's comment. Jaques is willing to go into more detail about the work if SCC would like but understands that SCC seems to be familiar with the project as it is similar to the investigations that occurred near the radio tower further out on the property. DeFant adds that since the project is an RDA and not an NOI, the applicant is not required to have a fully engineered and surveyed project site plan; an ORAD has already been approved for this site so SCC has an understanding of where the wetland boundaries are.

Mary Lou Conca asks where the exemption is stated in the WPA. DeFant explains that the RDA application is on the SCC webpage where the exemption is quoted and cited. The WPA can be viewed online and the exemption list is under CM 310 CMR 10.00.

SCC has no further questions or comments. There are no further public comments. Jaques asks if SCC will be making their determination now or at the end of their meeting. DeFant stated that being they are running behind due to some technical difficulties. They will make the determination and approve the DOA later in the meeting. Jaques requests that SCC make their determination now while the public is present. DeFant would prefer to not review and approve the orders right now as they have other applicants waiting due to the delay. Jaques is only

inquiring about the determinations. DeFant shares she is inclined to approve the DOA under the WPA as a negative determination as it is exempt; there would be another determination for the Bylaw. Jaques asks if SCC would vote. DeFant states that due to the specific language needed to be reviewed that would require them to open and review the drafted DOA. Willson believe she doesn't need to review the drafted DOA as she is familiar with them. David agrees.

Motion: David moves to close the public meeting for the RDA 66 Leverett Road/Lot O-32, Willson seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye, and Willson – Aye. *The motion carrier.*

DeFant shares the drafted DOA under the WPA for SCC to review via screenshare; *no edits were made.*

Motion: Willson moves to approve the Negative 1 DOA under the WPA for 66 Leverett Road/Lot O-32, David seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye, and Willson – Aye. *The motion carries.*

DeFant shares the drafted DOA/ special conditions under the Bylaw for SCC to review via screenshare; *no edits are made.*

Motion: Willson moves to approve the Negative 3 DOA/ Special Conditions under the Bylaw for 66 Leverett Road/Lot O-32, David seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye, and Willson – Aye. *The motion carries.*

SCC grants DeFant permission to sign for them digitally.

Public Meeting for Request for Determination of Applicability (RDA) for 27 Weatherwood Road/Lipman

DeFant summarizes that the RDA for 27 Weatherwood Rd is for a septic repair project that includes the installation of a new septic tank and leach field. The site was delineated by Ward Smith where an isolated wetland subject to protection under the Bylaw, not WPA, was flagged. Sieruta confirms the proposed project is to replace the existing septic system as it would not pass Title V inspection in its current condition. The location of the new system will be 100 feet away from the well and will include a new 1,500 gallon tank because the current 1,000 gallon tank is no longer acceptable by Massachusetts law. He wasn't aware of how close the project was to a wetland until the delineation was completed; accepts any recommendation SCC has.

DeFant shares that SCC typically recommends using straw wattles or erosion sock with straw or mulch but not hay. The erosion controls are to stay in place until the area is stabilized and because the project would occur in the fall, new grass may not fully take hold until the next growing season in Spring. Sieruta understands but is confident that the grass will take hold before fall because of the current weather conditions and mulching it with straw. He confirms they will use straw wattles for their erosion controls. Willson asks what is the closest distance to the wetland in regards to excavation. Sieruta is unsure because he hasn't seen the delineation. DeFant shares that during their site visit it appeared to be closer to 50 feet. Sieruta suggests that he will measure the distance and put it on the as-built plans. SCC has no further questions. There is no public comment.

Motion: David moves to close the Public Meeting for the RDA 27 Weatherwood Rd, Harrington seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye, and Willson – Aye. *The motion carries.*

DeFant shares the drafted DOA under the WPA for SCC to review via screenshare; *no edits were made.*

Motion: Willson moves to approve the Negative 1 DOA under the WPA for 27 Weatherwood Rd, David seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye, and Willson – Aye. *The motion carries.*

DeFant shares the drafted DOA/Special Conditions under the Bylaw for SCC to review via screenshare. SCC agrees to remove Special Condition #15 since the area is already well landscaped; conservation seed mix is required.

Motion: Willson moves to approve the Negative 3 DOA/Special Conditions under the Bylaw for 27 Weatherwood Rd, David seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye, and Willson – Aye. *The motion carries.*

SCC grants DeFant permission to sign for them digitally.

Site Visits

11 North Laurel Drive/Dill – DeFant conducted a site visit where the landowner is looking to remove a shed; DeFant recommend an RDA or Administrative approval if the new Bylaw Regulations are to be approved.

576 West Pelham Road/O'Brien – DeFant was a part of a site visit with MassDEP investigating a suspected wetland violation that included possible wetland filling and other alterations. Present at the site visit several MassDEP agents, the landowners, landowner' wetland consultant, David Haines, and the Chair. They observed a large area right next to a BVW that has been filled and graded to match the upper part the property; it is unclear if a wetland was filled but it was clear that at least the Buffer Zone right up to the boundary of the BVW had been filled/altered. Investigation work to excavate and locate the wetland boundaries is undergoing. The landowner shared that the reasoning for leveling the area was to have an area intended for a livestock corral. They also observed two areas altered for a stream crossing with a culvert. She shared her concerns to MassDEP regarding the culverts because they are permanent, armored with large boulders, and had only a small pipe of 6-inch diameter; DeFant feels they are undersized for the size of the wetlands. There was also a human-made pond upgradient of one culvert which she believes is impounding water. Lastly, there was a long linear swale made to divert water from the wetland to the access road; about 1,000-feet long. Kahan asks if she observed any activities that are under the Bylaw that DEP may not be looking at. DeFant is unsure because MassDEP has not stated what they are going to propose; she believes that once the wetland boundaries are determined, then MassDEP will share the proposals. The landowner shared at the site visit that he was willing to correct anything but wanted to keep the wetland crossing to allow the livestock to access a pasture that is located uphill; DeFant unsure if he is eligible for an agriculture exemption. She shared her concerns to MassDEP regarding the Buffer Zone alterations and that the landowners proposed use could result in non-point source discharge. She spoke to Town Counsel, Donna MacNicol, where she was assured their Bylaw jurisdiction was preserved so SCC could still pursue enforcement to activities related to the Bylaw. She recommends SCC not consider doing so until they hear from MassDEP and what they propose; need to avoid conflicting or duplicative enforcement orders. Kahan clarifies he was asking if SCC should pursue other investigations to make determination of facts in regard to the Bylaw. DeFant agrees but still recommends waiting until MassDEP shares their proposal to determine whether SCC agrees to pursue further investigation. SCC agrees to continue to reach out to MassDEP for more information as it comes out. DeFant shares there is also another potential wetland violation towards the side of the property where there is a turnaround area that has been filled and graded close to a wetland. The landowner claimed they did not do this and suggested that the Highway Department was maintaining this as a turnaround for plowing and school buses. SCC will inquire more information from the Highway Department. Steve Sullivan, Highway Superintendent, reported that the Highway Department has not placed any materials on this property nor regularly grades it. He shared that the Town of Pelham may have done work in this area. Because the site is near the road, it is hard to determine who has been dumping leaves and yard debris in this area. DeFant noted that the area has been graded recently with fill because the banks are not vegetated yet. SCC will schedule a site visit once they had heard back from MassDEP.

140 Leonard Road/O'Connor – The landowner had the property delineated; the property has a large BVW wrapping around the site. The landowner wants to regrade the property, place a new gravel driveway with a turnaround and culvert, and remove a number of trees to reduce shade. DeFant explains to them that because of the numerous changes they are looking to make and the proximity of the work to the BVW, this would require an NOI. She shares that the previous culvert has collapsed and the new culvert the landowner is proposing is in new location closer to the BVW; believes an outlet detention basin would be needed in this case to catch sediment, maintenance of this needs to be coordinated with the Highway Department. Highway Department has been attempting to coordinate with the landowner. SCC agrees that an NOI is needed.

Site Visit Scheduling

West Quabbin Woodlands Conservation Area – September 15, 3:30 p.m.

Old Peach Orchard CR Monitoring – TBA

Top of the Lake Conservation Area – TBA

South Brook Conservation Area – TBA

62 Lake Drive – TBA

57-59 Shore Drive – TBA

70 Cooleyville Road – TBA

Ryo Arai request – TBA

Since the list is long, DeFant plans to email SCC for site visit scheduling

Chair Updates

SCC received an anonymous complaint about Cows' Forest Cutting Plan logging on Montague Road. DeFant reached out to the DCR Forester who did not have any concerns about the logging activity. She asks if SCC would like to schedule a site visit or leave it be since SCC's role in Forest Cutting Plans is advisory. Willson believes that contacting the DCR Forester, as DeFant did, is the extent of their role in these situations; David agrees.

Discussion between Commission and Special Counsel Elisabeth Goodman regarding legal review of the draft Bylaw Regulations

Attorney Beth Goodman, SCC Special Counsel, was hired by SCC as approved by the Select Board. She has completed her review of the draft Bylaw Regulations and is here tonight to discuss her review with SCC. DeFant shares that Goodman and her have discussed the recommendations, but this is SCC's first time discussing the draft Bylaw Regulations together with Goodman.

Goodman thanks SCC for having her tonight and confirms she has completed her review of draft Bylaw Regulations along with the written comments from Attorney McGregor and Attorney Brewer. Her comments were addressed by DeFant, and she participated in a meeting with David and DeFant. Her general comments are that the Bylaw could be updated but the newly drafted Regulations help define SCC's jurisdiction. It would be great if the Town were to amend or adopt a new Bylaw in the future. She believes the Regulations aren't detrimental, too aggressive, or harm the Town's effort to control wetland Values; they are more helpful than having no Regulations. Regulations provide a structure/basis for review and are helpful to both applicants and commissions; provide definitions and structure for each situation such as an RDA, NOI, and Enforcement Orders. These Regulations are detailed and comprehensive which all together support and improve the work of the Commission; these are her general statements that she will make during the Public Hearing.

Goodman notes that DeFant has a proposed agenda for the Public Hearing that they can review. The meeting will be recorded so that if there is a challenge made against the Regulations and someone took the Town to court, they could refer to the testimony to be provided from the Public Hearing; two scientists will testify for the Regulations at the Public Hearing. Although she is a lawyer with the skills of reading language/Regulations and understanding the process, she is not a scientist. If a judge were to ask if the Regulations are suitable, then testimony from a scientist/expert is needed.

DeFant asks, with the severability clause in mind, is the Bylaw defensible with these Regulations? Does the Special Counsel see any evidence of SCC overreaching or trying to expand upon their jurisdiction unlawfully, improperly, or to infringe on anybody's property rights?

Goodman states that in her opinion, if these Regulations were challenged in court for claims of being invalid, a judge would rule these Regulations are within your authority; the Regulations are similar to those of other Commissions and are often tied to the state's standards. SCC's jurisdiction is more extensive. It's clear in court decisions that the Town's authority supersedes the control and authority of the state. For example, the Town has additional wetland resources that are not protected under the WPA but are protected by the Bylaw. It is appropriate to make the Regulations state how SCC will review cases under the Bylaw. She hasn't seen any evidence that she believes would cause a judge to rule the Regulations are beyond SCC authority. In addition, she believes that in McGregor's comment, he didn't state that the Regulations were aggressive or that this isn't how other Towns have written their Regulations. He cited the case that states that if you (SCC) don't have concrete definitions in your Regulations, then it could be overruled and leave the Town subject to lawsuits. On the other hand, McGregor states that the Regulations are detailed and technical, so a challenge will be hard. She believes these draft Bylaw Regulations are appropriate as do the experts and scientists who helped SCC draft them. She is

prepared to attend the Public Hearing, listen to the testimony from Patrick Garner, the explanations about why certain sections were drafted the way they were, and any public comments.

Goodman asks if any of the Commissioners, some of whom have scientific training and have read the draft Bylaw Regulations, have any of concerns they would like to discuss with her tonight. Kahan understands that some of the criticism/comments SCC has received states that SCC updating the Bylaw Regulations is improperly expanding the authority of the Commission; asks for Goodman's opinion if she believes the draft Regulations improperly expand the authority of the Commission in some way. Goodman states that as of now, SCC has a Bylaw that can be thought of as a skeleton. It states that SCC has certain Protected Resource Areas and that the SCC will accept evidence about impacts on them. In the general arrangement of wetlands regulation in Massachusetts, when conducting an activity that alters a Resource Area, then an applicant would have to mitigate or address the alteration; the Commission has the ability to deny or allow the activity with conditions. These drafted Bylaw Regulations detail how the review occurs, when presumptions are used, or how exemptions are allowed. The authority under the Bylaw is broad, it is just not well-defined. The Regulations are to help define and explain how the Commission will work under the Bylaw, so it doesn't expand their authority; you already have the authority. She doesn't agree with the statement that the newly drafted Regulations grant the Commission more authority, as their authority is still limited by Bylaw. If a Regulation were to be ruled by a judge to be outside of the authority held by the Commission, then it would be taken out and would not invalidate the entirety of the Regulations; the severability law applies as earlier brought up by DeFant; the new Regulations are not creating new jurisdiction.

Goodman states that she, DeFant and David had spent two hours on the phone going over McGregor's comments where he stated that he believes some of the Regulations exceeded authority of the Commission. Goodman believes there were several errors in McGregor's comments which can be discussed during the Public Hearing; one particular Regulation he mentioned was the Small Project Permits, SPPs. She also flagged this Regulation in her comments because the Commission doesn't have the authority to change how the issuance of permits and notices are required; therefore, SCC can't have a permit that doesn't require notice. She recommended that they allow for Administrative Approval Reviews, which would not result in an issuance of a permit but can allow the SCC to deliberate whether a member of the public needs permit to complete their desired activity; Commissions do this all the time; administrative reviews are not permits and are not illegal; just giving people advice; individual still has the right to submit permit in a case where the Commission advises that it is needed; not a problem to provide a procedure where the Commission can look at things and talk to landowners; Regulations are not expansions but more details about how reviews occur.

DeFant shares that with Goodman's guidance they have simplified some sections for example the section previously called Alternatives Analysis. There is a section within the WPA for Riverfront Redevelopment where the Regulations discuss Alternatives Analysis; to avoid confusion, they edited the Bylaw Regulations section to state Consideration of Reasonable Options.

DeFant shares the newly edited version of the draft Bylaw Regulations for SCC and Goodman to review via screenshare. She asks Goodman if she has read though the minor language edits she has made to the section on Title 5 and septic systems. Goodman reads through the section aloud. In Section 11.2.1, you are saying Title 5-compliant systems will be presumed to protect wetlands if outside of a Resource Area. In 11.2.2, if it does not meet Title 5, then presume it will have an adverse effect. 11.3 gives Performance Standards. This is a good example of earlier discussion about the Bylaw and the Bylaw Regulations, where the Bylaw states to not alter Resources Areas and the Regulations detail what the Commission means by alter and what Resource Areas are protected. Specifically in this Section, and we looked at the WPA state Regulations, it says that if you want a new system, expand a system, or repair an existing system in the outer 50 feet of the AURA, the Commission will only review construction impacts. If you want a system within the inner 50 feet of the AURA and you have BOH approval, the presumption that effluent impacts are not significant may be overcome with credible evidence. This basically just mirrors the state Regulations; they have the same presumption. This defines the role of the Commission; there is nothing illegal about this; if you took this to a judge, they wouldn't say you had exceeded your authority.

DeFant notes that another section they discussed was regarding vernal pools. They discussed wanting to make sure the public understood that SCC was not looking to regulate vernal pools in previously developed areas as SCC would presume that landscaped areas are degraded and therefore do not have high value for wildlife benefits of vernal pools.

DeFant asked Goodman to discuss the Regulations for protecting the inner 50 feet of the AURA. McGregor suggested that the SCC would over time remove all structures within the AURA. Goodman and DeFant reviewed the Performance Standards. Pre-existing structures would be exempt from the 50-foot No-Disturb Zone. No one on the SCC imagined the language as drafted would ever be interpreted as meaning that the SCC would abolish all structures in the Buffer Zones. This was never the SCC's intention. DeFant suggested minor edits to the Performance Standards on Page 31 to highlight that McGregor's novel interpretation is not what is intended. When an applicant is proposing a project in the AURA, the SCC would look to see how the inner 50 feet of the AURA can be enhanced to the greatest extent possible. The goal is to avoid any misinterpretation that the SCC would be going out and seeking removal of existing structures when no application for work is proposed. DeFant notes that this section is about mitigation because the Bylaw treats the AURA as a Protected Resource Area; when there is an application to alter the AURA, the Commission would look for enhancements as mitigation. We are not going to order someone to tear down their house or garage, pre-existing structures are exempt. If someone wanted to tear down a 1,000 s.f. house and build a 5,000 s.f. house instead, the SCC might ask for mitigation. Goodman notes that the Regulations allow for the Commission to require an undisturbed, vegetated area within the AURA as mitigation. Willson suggests they rewrite 6.4.1 to say, "When an Applicant proposes a project with impact to the AURA, the Commission may require mitigation involving restoration, including but not limited to . . ." SCC agrees, and minor edits are made.

DeFant states that after tonight's meeting, she is going to clean up the draft they just reviewed and send it out to all the Commissioners and post it on their webpage for public access. There have been some other edits made over the past few days based on Goodman's feedback. A passage about endangered species that McGregor raised concerns about has now been removed. Goodman clarifies this is due to NHESP having the superseding authority in regard to that matter; thus, those issues are deferred to NHESP. DeFant adds that some references to the WPA were removed to avoid confusion over the Bylaw administering the WPA, which is not the intention. Goodman adds that another edit they made was to clarify that donation of lands or easements could only be done voluntarily; SCC cannot require a donation of land or easement, as agreed by McGregor.

Goodman asks the Commission if anyone has any concerns about what they read in the draft Regulations. SCC does not have any concerns. Willson shares that she agrees with Goodman that the drafted Bylaw Regulations is not going beyond the Bylaw. The draft Regulations explains what SCC will do in situations, which will help guide residents and future Commissions. She believes that because most residents have never seen the full, detailed list of the SCC's jurisdiction, it may appear to them as the Commission is going beyond the limits of the Bylaw. Lots of Towns across Massachusetts have Regulations such as this, but it is new to Shutesbury residents. The old Regulations are vague and short and didn't provide all the specifics like the new draft Regulations do. Willson does not believe the Regulations expand the Bylaw jurisdiction at all; she doesn't agree with McGregor's opinion but understands why some residents have questions. Goodman: residents may not have understood what the Bylaw allows.

DeFant states that Regulations and environmental law often have declarative statements, like, "This is not allowed" or "You shouldn't do that," but there is always discretion in any given situation where the Commission evaluates how to apply those rules to any given situation. If everything was prejudged, then the public wouldn't need regulatory bodies to review permit applications. These Regulations have waiver provisions so that the SCC can balance the Regulation standards with the landowners' applications, where the applicants can explain to SCC what they need to complete their project as proposed. SCC currently already grants waivers, but SCC is providing clarity about them in these draft Regulations. Goodman adds that by definition Regulations are not a ban; they are an explanation of what the SCC's review would entail. Members of the public should not be expanding or building in wetlands and should only do so when they have to; then they have to mitigate.

Goodman shares that during the Public Hearing, SCC should listen to all the comments that are shared. It is important to have a legislative history so if a challenge is raised, then there is an understanding of why something

was written. If any comments they hear tonight raise any concerns or doubts, then SCC should revisit them during their meeting to discuss whether the regulation(s) meet their criteria.

Planning for agenda for Public Hearing on Bylaw Regulations

DeFant shares Public Hearing on Draft Bylaw Regulations Agenda for SCC to review via screenshare. DeFant reads the agenda aloud. Willson shares she has no issues with the drafted agenda but shares that she understands some members of the public have asked SCC to go through every section of the Regulations during a Public Hearing and wonders if there are plans to do so; believes it may be an impossible task. DeFant agrees that it may be an impossible task as it would drastically affect the timeline in which the Regulations could be approved; she is unsure when everyone would be satisfied in that case. She proposes that in the future, after these Regulations are approved, that the SCC hold educational sessions for members of the public. David agrees and adds she hopes that the new draft answers a lot of the questions members of the public have as they have been working to clarify those questions as well as simplifying and shortening the Regulations when possible.

DeFant shares she has been updating their FAQs sheet as more comments/questions have been received. Goodman asks if contact information is listed on their webpage so they may receive written comments prior to the meeting. DeFant confirms yes and that a town-wide email has been sent to all Town residents regarding the Public Hearing which included a notice inviting comments. She notes that most of the comments they have received provided generalized thoughts and opinions and have not pointed out anything specific within the draft Regulations.

Public Hearing on Bylaw Regulations to be held on Monday, September 18 at 7:00 p.m., via Zoom

Unanticipated business

None

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

Meeting Close: 9:21 p.m.

Next Meeting: Monday September 18, 2023, at 7 p.m.

Documents Used

- Agenda
- Draft Bylaw Regulations
- Attorneys Gregor McGregor and Donna Brewer written comments on draft Regulations
- 74 Pratt Corner RDA and Site Plan
- Draft 74 Pratt Corner DOA
- Ames Pond Amended Order of Conditions Request and Site Plan
- 66 Leverett Rd/ Lot 0-32 RDA
- Draft 66 Leverett Rd/ Lot 0-32 DOAs
- 27 Weatherwood RDA
- Draft 27 Weatherwood DOA
- Public Hearing on Draft Bylaw Regulations Agenda
- Site Visit Reports for 140 Leonard Road and 576 West Pelham Road