

Shutesbury Conservation Commission

Minutes – 09/27/2023

Approved – 02/08/2024

Virtual Meeting

Meeting Start: 6:00pm

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

Other Staff: Carey Marshall (Land Use Clerk)

Other present: Patrick Garner (SCC Consultant), Amy Hirsch, April Stein, Arleen Read, Bob Douglas, Cheryl Holmes, Clif Read, David Buchanan, Don Ogden, Don Wakoluk, Donna Brewer, Elaine Puleo, Elisabeth Goodman (SCC Special Counsel), Elizabeth Fernandez – O’Brien, Eric Bachrach, Gail Fleischaker, Henry Geddes, Jacob Hirsch, Janice Stone (SCC Consultant), Jennifer Wallace, Jill Buchanan, Jill Marland, Johanna Hall, Joseph Salvador, Joyce Braunhut, Julia Connor, Karen Tarlow, John Montanari, Katherine A. Powers, Kathleen Bridgewater, Kathleen De Los Santos, Ken Lindsay, Kenneth Holt, Lesley Smith, Mark Rivers, Melissa Makepeace O’Neil, Meryl Mandell, Mick Perry, Mike Lipinski, Mike Stotz, Penelope Kim, Penny Jaques, Rebecca Torres (Town Administrator), Renee Moss, Rita Farrell (Selectboard Chair), Rob Kibler, Robert E. Seletsky, Sarah Manteiga, Sarah Roberston, Shane Bajnoci, Sharon Weizenbaum, Stephen Dallmus, Steve Schmidt, Susie Mosher, Tracy McNaughton, Ziporah Hildebrandt, Amanda Alix, Arthur Haskins, Bert Fernandez, Apple Ahearn, Edward Redonnet, Frank McGinn, Leslie Bracebridge, Jim Hemingway, Jody Shapiro, Jon Thompson, Lesley Smith, Guy DeVito, Susan Panlilio, Peggy Mathews – Nilsen, Jon Buonaccorsi, Carlos Fontes, Laura Rojo MacLeod, Libby Lass, Mike Vinskey, Michele Sedor, Suzanne Lyon, Joan Hanson, Mary Lou Conca, Sherilyn Golinski, and all other unidentified individuals.

Chair’s Call to Order at 6:00pm

Meeting is being recorded

Continued Public Hearing on Proposed Regulations for Shutesbury General Wetlands Protection Bylaw

DeFant welcomes and thanks all interested individuals who are present at tonight’s third public hearing for the draft bylaw regulations. She summarizes the rules for the public hearing to ensure an orderly meeting; remain muted until called upon by the Chair, please list your full name on zoom for the purpose of the minutes, state your name and address before speaking, and please keep comments and/or questions brief (within 2 minutes). Second comments may be allowed as time permits. If these rules are neglected then she will give a warning but if a disturbance continues then she may direct the Land Use Clerk, Carey Marshall, to remove the offender from the meeting.

DeFant states that SCC’s advisors present tonight for this regulatory project are Patrick Garner, Janice Stone, and Attorney Beth Goodman. Goodman is an experienced land use and municipal law attorney who was appointed by the Selectboard to conduct a legal review of the draft bylaw

regulations. She has also reviewed all legal documents and comments, and public comments SCC has received and provided recommended edits which all have now been incorporated. Patrick Garner is a hydrologist and wetland scientist who played a leadership role statewide in the development of wetland regulations and standards both for local bylaw and wetland protection act. He served twice as president of the Massachusetts Association of Conservation Commissioner (MACC); along with several other technical advisory committees for MassDEP. He was hired by SCC to review the regulations and consult on a technical and scientific basis. Janice Stone is a wetland scientist and served on the board of MACC. She has been a wetland advisor for 4 other local communities and is a former Chair of SCC; authored the original bylaw.

DeFant summarizes that the purpose of tonight's public hearing is to gather information to assist SCC in developing the regulations for the Shutesbury bylaw; new bylaw will not be discussed tonight. The regulations are a separate document that supports the bylaw with procedures, rules, definitions, permitting details, fees, and scientific standards. The bylaw requires SCC to adopt regulations and stipulates that SCC must make permitting decisions based on performance standards and design requirements. The current regulations were adopted 23 years ago making them out of date; contain no performance standards and lack definitions of resource areas. SCC had been advised these current regulations would not stand up to legal or scientific scrutiny.

To review the last two public hearings, the recorded video can be viewed on the town's YouTube page. Approved minutes of these meetings will also be posted. During the last public hearing, the meeting was closed early due to hitting the attendance capacity on zoom which didn't allow for all interested individuals to be present; since then, the zoom capacity has now been expanded.

SCC has structured the review of the drafted regulations based on the legal review of the Selectboard's special counsel Attorney Gregor McGregor; McGregor's legal review is posted on SCC's webpage and can be provided upon request. To summarize SCC's response to McGregor's comments, SCC has minor clarifying language that reaffirms the intentions of the regulations which is to be fair, reasonable and flexible. Repeated and unnecessary references to the Wetland Protection Act as well as a section discussed Wildlife Habitat Protection (article 3 section 9) that raised concerns has been removed. The language about practicable alternatives and alternative analysis has been simplified and changed to consider various reasonable options. What SCC was calling Small Project Permits has been changed to Approval Requests.

The last public hearing left off with SCC discussing a comment from McGregor regarding the delineation of wetlands based on hydric soils analysis; concern that the methodology is too complex. DeFant shares a recent experience SCC had with a complex resources area delineation that involved disturbed soils under drought conditions and mowed vegetation; required reliance on hydric soils analysis under the chapter 5 difficult situations methodology in the regional supplement of the Army Corps of Engineers Wetland Delineation Manual. DeFant poses the question of whether these definitions and standards for using these hydric soils, especially in difficult situations, reasonable and scientifically valid. Garner confirms that hydric soils are not unusual and they are used throughout the state and nation to help define wetlands; they are a unique indicator than the typical used wetland vegetation hydrology. Hydric soils are unique as they reflect physically and chemically changes of their subsurface to indicate high ground water situations; easily identifiable by any wetland scientist using an auger. Combined with other

indicators, then allows an individual to determine precisely where the wetland edge is. In a case with disturbed sites, hydric soils are the only indicator of what would have and what wouldn't be a wetland. The use of hydric soils is reflected in the DEP delineation manual for wetlands and are specially called out for disturbed sites.

SCC received concerns that the draft regulations would be too restrictive in regards to septic system . SCC has reviewed the issue with Goodman to ensure that the regulations wouldn't conflict with Board of Health review and Title V requirements as it is a pre-requisite in Massachusetts; not SCC's intent. SCC made changes to the draft regulations to make it clear what SCC intentions are and relieve concern of worry regarding needing to repair or install a septic system. Goodman states that reviewing the public comments have been helpful when reviewing the regulations. She has reviewed this case of concern regarding septic system being banned which she assures is not the case. The regulations have been revised to make clear that there are two methods which tracks the concepts in the DEP wetland regulations. Goodman and DeFant have reviewed the state regulations relating to Title V, 310 CMR 15: The State Environmental Code Relating to the Permitting of Septic Systems; it is their understanding that conservation commissions rely on Board of Health to make the decision about whether a system is compliant with those regulations. The interaction between the Board of Health and the Conservation Commission when reviewing a septic system proposal (repair or new) is that there is a presumption that a subsurface sewage disposal system that is to be constructed in compliance with Title 5, or local Board of Health requirements, to protect the wetlands; especially if all the components are located outside of resource areas. Any proposed septic system that is located within a resource area that doesn't meet Title V is then presumed to be unacceptable. DeFant shares that her understanding is that Title V in the state code has a 50 ft setback requirement from a wetland however, there are provision that allow an individual a variance or local upgrade level to get approval within the 50ft. An example of this would be if the site was a small lot and/or they're down by the lake where they are limited on spacing options. Goodman reaffirms that this would be a presumption that if approved by the Board of Health then it will meet the wetland protection standard. Arleen Reed, member of the Board of Health, clarifies that they can approve variances within 100-50ft of a wetland but not within the inner 50ft. SCC's concern regarding septic system is during the construction in regards to aspects such as pile of materials and erosion controls.

DeFant shares that she, Goodman and Stone discussed the idea of adding a section to address septic systems within the inner 50ft buffer zone but now understanding that these are a rarity then it may be unnecessary. Goodman agrees adding that in a rare case that the Board of Health does grant a case as such then SCC could grant of wavier of hardship in their findings/decision. Garner agrees with the discussion between Goodman, DeFant, and Reed.

DeFant shares that the next comment received from McGregor had to do with various portions of the regulation that involve delineation methods under dry weather conditions from different resource areas; concerns that it was clear and/or confusing. This draft has different regulations for dry weather conditions are addressed for boarding vegetated wetlands (BWV), Isolated wetlands, vernal pools, and intermittent streams. DeFant asks Garner if he believes these are scientifically defensible. Garner confirms he believes these regulations are scientifically defensible. There is a grey area with any of the listed resource areas and it becomes a matter of

bringing the data to the discussion. He recalls an example of this occur when there was an instance when he was reviewing wetland lines for a town a few years ago. He had previously reviewed a wetland line in a town which was in a certain location during normal conditions but when he returned a few years later during a drought, the line had moved 75ft from the previous location; they began to look at hydric soils. Normally its presumed when there is normal conditions but the weather has been becoming extreme and unusual. This tool allows the commission to protect they're and the home owners interests to ensure that they're not being penalized for unusual conditions.

McGregor's next comment is in regards to the Adjacent Uphill Resource Area (AURA) which is the 100ft buffer zone that is a protected area under the bylaw. McGregor shared concerns that the regulations language banned absolutely all construction in the AURA and all activities within the inner AURA. SCC intention has always been to have built in flexibility in these regulations and have never planned to have a ban categorically on all buildings in the AURA. DeFant asks Goodman to share his comments on this concern. Goodman states that her general comment is that SCC has a duty to act under the bylaw. As known from other court cases, vague references to bylaws that are unclear lead to lawsuits against the town so to avoid that it is better to be explicit and define the terms in which the commission will be exercising its authority. Goodman disagrees with McGregor's statement as there is nothing in the regulations stating there couldn't be construction in the AURA; there was language discussing no construction with the inner 50ft. Goodman understands that DeFant had discussed changing the language to be a presumption. None of the regulations are a ban as there is a hardship waiver available for any or all regulations. DeFant shares that there can be confusion with the public understanding of the performance standards as they are written in absolutes; can be rebutted with evidence. DeFant screenshares the draft regulations for review via screenshare. Goodman reads aloud section 6.3, and 6.4.3(septic language as previously discussed).

DeFant explains that the next comment from McGregor is in regards to Administrative Approval Requests formally known as Small Project Permits. McGregor reviewed a draft before it was changed. SCC believes these approvals are a good addition to the bylaw as they are mutually beneficial streamlined lined, inexpensive ways for SCC to review some activities that are time sensitive and don't require the public hearing process. Goodman summarizes this language gives a name to an informal practice that commonly occurs where project is determined to be outside of the 100ft thus not under the jurisdiction of SCC; not on the record, not in writing, and is not an appealable decision. If the landowner disagrees and wishes to apply for an RDA than they have the right to do so. Garner shares that in his experience, most commissions has some form of this approval through an informal discussion with the landowner; residential or commercial. DeFant shares that there is also a provision that outline working session where a landowner who is planning a project comes to the commission for advice about their project before submitting a permit which is common another informal practice SCC does.

Goodman discusses that McGregor's comments about the bylaw being illegal in requiring security in some form; citing all takings cases. It has been determined by the Supreme Court that it is illegal to require landowner given up their physical property for a permit. McGregor comment states the regulations can't require people to give up their easements because they are property rights. Goodman clarifiers that this section isn't requiring applicants to give up

easements but rather if a landowner is offering to give up an easement then SCC is allowed to consider it.

McGregor last comments were related to climate change language in article 4 section 6; performance standards for the AURA. McGregor raised certain that the section was inserting a new protected value that is not reflected in the bylaw. The question is whether or not SCC is overstepping by having this within the regulations. DeFant explains that in this section it is discussed in the preamble as a scientific process that affects wetland like draught and storms which gives reason for the need to protect the buffer zone; used a shield to protect wetlands. Goodman believes that McGregor isn't stating SCC can't consider climate issues in granting of permits or regulations but rather the issues could be handled better if the bylaw were to be amended. DeFant adds that SCC has testimony from Garner stating it is beneficial to update the standard for using more accurate precipitation data rather than the 1962 Atlas that is currently the minimal requirement under the WPA regulations. DeFant asks Garner if he believes that using the two to one compensatory flood storage as a performance standard is appropriate. Garner states it is appropriate and acts as a safety factor. It is commonly joked in the environmental community that we express 100 years storms every two years which is due to using DEP's TR – 40, TP – 40, TB – 40; outdated (1962) and produced inaccurate prediction for the amount of rainfall that would occur at different storm intervals. Recently, NOAA has released what is called Atlas 14 which is relative accurate prediction using 80 years of data. The two to one compensatory anticipates that the climate will continue to change which provides a safety factor; takes into accountable adjoining property commonly through stormwater basins – if under designed, they could overtop.

DeFant shares that SCC reviewed a comment regarding the references in the draft regulations to the WPA regulations. She and Goodman reviewed these references and concluded that those may be removed; leaving the sections where the regulations are specifically adopting the state regulations by reference. DeFant asks Goodman if she believes the draft regulations too constrained to allow for SCC to make alternative decisions in instances where they are unsupported related to a specific situation; can they be revised to address such instances. Goodman states that over any given time where SCC believes there are components of the regulations that aren't working then SCC could hold another public hearing to correct these changes and vote to adopt the revisions.

Stone introduces herself as a volunteer consultant and advisor to SCC. She has been involved in the development of the draft bylaw regulations and offering general regulatory support. Previously she served 5 years on SCC and 3 out of the 5 years was spent as the Chair. In 1987, she created the current wetland protection bylaw; her history allows to give prospective on past and present practices of the SCC. Her background consists of a M.S in Wildlife Biology with a thesis on vernal pools, 15 years of experiences mapping wetland for U.S Fish and Wildlife service and Mass DEP, 20+ years of experience working as a conservation administrator/agent in Massachusetts, and served for 9 years of the MACC board with Attorney McGregor. She has been certified wetland scientist from 1995 to 2019 and has collectively worked four 4 different administering WPA and/or local wetland protection bylaws. She has been a part of the creation/passage of wetland bylaw in Shutesbury and Hadley along as wetland bylaw regulation in South Hadley and Hadley. Wetland law regulations are important because they provide

consistency in the application of the bylaw. The regulations do not expand about the jurisdiction but clarify terms and the process. The current bylaw regulations were last updated in 2000 and do not define some of the protect resources listed in the bylaw; only discuss fees and enforcement. They are insufficient by modern scientific and regulatory standards as no scientific standards are listed and the definitions are minimal. It is important for SCC to have updated regulations in order to properly interpret and apply the current bylaw. In her professional opinion, the draft regulations are similar to wetland protection bylaw regulation that many other towns have as many of the portion have been adopted from approved regulations in other Massachusetts communities. Throughout the process there has been a lot of improvements such as the administrative approval requests, hardship waivers, and minor activity exemptions, detailed performance standards for resource areas, and types of work such as stormwater systems, vernal pool identification, and wetland declinations. The section on subsurface streams in the current bylaw regulations is based on language she originally drafted with the intention to be interpreted as intermittent streams. The standards and definition for this recourse area type in the draft bylaw regulations do an excellent job of detailing the definition and the necessary regulatory language which is important but has been absent. As a professionally conservation agent, she agrees that the draft regulations will help landowners apply for permits and realistically meet the performance standards and see no evidence that these regulations, properly interpreted, amount to a pervasive ban on development. She emphasizes this regulation are reasonable based on wetland science and best practices, and suitable for both the protection of the wetland resources and values of Shutesbury.

Rita Farrell, Co – Chair of the Selectboard, (36 Briggs Rd) speaks on the behalf of the Selectboard who retains special counsel Attorney McGregor to review the draft conservation commission regulations. Based on Attorney McGregor’s comments, SCC has made several changes for the better in which they thank SCC. She appreciates the acknowledgement that McGregor’s comments improved this draft however there remains some critical legal changes that have not been made thus they remained concern over the ones that would leave the town legal vulnerable. The changes are two-fold; first changes needed in the draft regulations generally to avoid or minimize the chance of suits or success in suits against the town and these changes have been detailed in previous correspondence to the commission – some specific ones if the bylaw is not amended first to allow them. Another serious concern is that these regulations remain long and complicated which gives the community the impression that they need an engineer or scientist to deal with SCC. Regulations need to be understandable to the Shutesbury townspeople and other doing business in town. This is fundamental to earning and keeping the support of the conservation community and the public. These draft regulations are longer than any other board regulations in town. They are intended to make new law without going to town meeting for legislative authorization namely a proper set of good amendments to the wetlands bylaw. In closing, the Selectboard has always supported the drafting of new regulations but wants to see regulations that are reasonable, understandable, and do not place undue financial burden on townspeople and that complies with the revised bylaw. We [the Selectboard] want to move ahead with the adoption of a new bylaw and look forward to it.

Mark Rivers (70 Lake Dr) asks the commissioners, based on the September 14th revised version of the draft bylaw regulations, how they would feel if the government contacted them stating they can’t use a part of their land in a responsible way. He asks this because he lives on Lake

Wyola and most of the houses are within 50ft of the lake. He is mainly concerned with section 6.4.3 that couldn't allow for the expansion or modification of his home or other homes on Lake Wyola which he believes is inappropriate. DeFant states that, as previously discussed, these regulations do not ban landowners from construction and they have a presumption that is rebuttable which they have recently added clarifying language to reassure landowner development is possible through a permit application. Goodman agrees with DeFant's response and adds that public comments may be difficult to answer as the latest revised version has not yet been posted for public access; she understands River's concerns but believes they have been addressed in this newly revised version as shown tonight.

Gail Fleischaker (62 W Pelham Rd) appreciates the work SCC has done in revising the regulations along with the different opinions from attorneys. She hoped there would be a comparison when a project is applied for under these new regulations versus the current ones. How would the review be different because of the changes in these regulations.

Stephen Dallmus (48 Lake Dr) asks Goodman, when discussing section 6.4.3, what her comment was regarding if the Board of Health approves a septic. He believes there may be a discrepancy when changing the language as it was his understanding that originally if the Board of Health approves it then SCC will approve it but with the revision it now seems if the Board of Health approves it then SCC will likely approve it. DeFant explains that approval from Board of Health for a septic system is a pre – requisite for a permit application; SCC would need to do an independent review of the construction impacts.

Melissa Makepeace – O'Neil, Co – Chair of the Selectboard, (315 W Pelham Rd) asks when the newest version of the draft regulations be available for public access with totality with the revision that occurred tonight. DeFant responds that once the public hearing tonight has ended she will post the newest version as seen tonight on the SCC webpage.

Tom Seifert (address not given) wanted to responde to comment in regards to the townspeople not being about to understand the draft regulations stating that he had no issues reading and understanding them as written. He struggles to understand what the vulnerabilities to the town are regarding the regulations as they seem speculative.

Beth Willson departs from the meeting at 7:18pm

Sharon Weizenbaum (712 Pratt Corner Rd) agrees with Seifert comments and shares confusion over the Selectboard's statement regarding their support of the adoption of a new bylaw as that is not what she has seen experienced. Specifically, there was discussion of a new bylaw needed before the regulations and a new draft bylaw was submitted to the Selectboard back in June yet has not been acknowledged. The lack of acknowledgment and attention to it grows her concerns.

Sherilyn Golinski (address not given) shares that she has researched Attorney McGregor's firm and understands that they are well experienced in strictly environmental law; it concerns her that SCC are critiquing a law firm that is as reputable as they are in the state. She is concerned that anytime a commission that doesn't agree with a legal finding that has been paid for by the townspeople than a new lawyer is hired (costing the townspeople more money) so they may

dispute with the Selectboard. Both public hearings have consisted of one law firm critiquing another law firm where the other law firm being discussed isn't present to further dispute. She hopes the town of Shutesbury will start to consider the amount of funds that townspeople are putting into legal fees. She doesn't understand how SCC is not concerned about the legal concerns raised by a well-known reputable law firm. Goodman responds that she was not hired to critique or depute his comments. MacGregor was hired by the Selectboard to review the the regulations where as she was hired to by SCC to help response to and craft regulations.

Gary Rehorka (address not given) shares his concern if SCC are to adopt these regulations then they become potentially become a 'fumbling block' and time consuming for any landowner whom wishes to do any project of size. He asks if SCC has anticipated an increase in its work load and how they plan to handle that in timely fashion. It seems to him there would be an increase of work without any increase in resources to do so such as support for people to understand and interpret the regulations; not everyone can read and understand them. DeFant responses that SCC has anticipated ways to lift the burden of landowners such as adopting a number of exemptions that are not current listed in the current regulations and instituting this Administrative Approval Request.

Carlos Fontes (359 Montague Rd) wants to response to Golinski's comment as he believes there is some confusion there in terms of wasting taxpayer money. He believes the responsibility of dealing with the wetlands bylaw and regulations with legal counsel is really in preview with SCC; this responsibly doesn't pertain to the Selectboard. He believes that the decision of the Selectboard to hire Attorney McGregor was a misuse of their power and a waste of taxpayers' money.

Tracy McNaughton (address not given) thanks SCC's work on draft the new regulations specifically in creating the Administrative Approval Requests. She lives on Lake Wyola where the percentage of landowners who consult with SCC is greater higher. She believes that the divide create by the Selectboard was unnecessary. She agrees with Fonte's comment(s).

Jill Buchanan (451 W Pelham Rd) thanks SCC's work on draft the new regulations. She agrees with Fonte's and McNaughton's comments noted that because the Selectboard did not allow for SCC to choose lawyer to review the bylaw regulation work created the divide. She appreciates SCC and Goodman for addressing all comments and question from the Selectboard's counsel.

Amanda Alix (address not given) response to the comment that the draft bylaw regulations are too long. She has researched other Massachusetts town's wetland protection bylaw regulations and found it is common to have bylaw regulations to have a long length and bylaw have a shorter length.

Susie Mosher (address not given) shares concern about the manner that this current conservation commission works in. In the past, the Conservation Commission has undertaken Town projects and were able to conduct it in a way that consulted the Boards of Health, the Selectboard, the Highway Department and the Town Administrator; there was better communication. These parties were about to work out solutions for the town and its individuals. The current SCC has given Enforcement Order and Violation Notices to the town without prior conversations whereas

previous commission would have worked it out. She understands that only one member of the commission has been a member for 4 years whereas others have sat on the commission for 3 years or less noting there is a learning curve; current commissioners have not consulted with previous members. Overall, she is concern about the process SCC uses and not their details; hopes to see SCC consult with other town boards in the future to work together.

Mark Protti (21 Old Orchard Rd) shares appreciation for SCC for upholding important conservation values and protecting water resources. He believes that this would be a great opportunity for the town to work together on updating the bylaw as it was written in 1987; makes sense to update the bylaw using all the collective work from the regulations.

Fleischaker states that, as a previous SCC commissioner, it upsets her to see turn into an us versus them situation. She shares that there is a formal process for enrolling new bylaw where it should be presented in forum as a hearing and then on a warrant at Annual Town Meeting which has not happened; not fair to say SCC presented a proposed bylaw to the Selectboard that it has been submitted when it did not follow state warranted procedure.

DeFant appreciates everyone comments but doesn't want the discussion to diverge into discussion about a new draft bylaw as SCC is not prepared to discuss or review that tonight.

Rivers didn't realize when he made his previous comment he was at the disadvantage of not using the current version. He asks that once the new version is posted how will the public be able to make any comments. DeFant response that SCC voted to close the public comment period tomorrow unless they vote to change that tonight. The recent revisions made to the draft regulations were not substantive but rather minor clarifying changes. Rivers shares that he understand then that the language he was concerned about in his original comment still stand; specifically with future commission on how their interpretation on the language. The situation on the Lake is very different from other parts of town and believe needs to be stated in the regulations. DeFant states that, as previously discussed, these regulations to not ban landowners from construction and they have a presumption that is rebuttable which they have recently added clarifying language to reassure landowner development is possible through a permit application; this process already occurs. Goodman reassures the matters of when a property is limited to only being in the inner 50ft AURA then that is when the hardship waivers provision apply and allow for alternative options.

Kenneth Holt (address not given) shares he believes many people are missing the fact that these regulations help protect landowners from arbitrary and capricious decisions about what they can and can't do on their land; helps guide landowners.

Makepeace – O'Neil asks at what point will the need regulations be in affect and at that point would they be retroactively applied to any projects that are current active applications. Related to Rehorka's comment, knowing that ice storms occur in town where trees have fallen on homeowners land near wetlands would that then going to be required to have SCC conduct a site visit and assess the situation before resolving the emergency. DeFant response that once SCC votes on the regulations they then have to be submitted and filed with the Town Clerk; date of filing is the effective date. Projects that are currently under SCC would be grandfather clause

under the existing bylaw regulations and would not affect any previously approved permits. There is a process for emergency certifications under both under state and local bylaw where applicants can submit for an emergency certification request that also include retroactive certification due to urgency. SCC doesn't expect any members of the public to postpone any actions that are necessary for public health, welfare and safety. Goodman refers to section 19 of the current draft that lays out all the conditions that occurs during an emergency.

Fonte understands the concerns the public has about specific situations but reminds people there is a water crisis current specifically in regards to the present of PFAs; growing issue. He believes this the draft regulations are in their best interest relating to this matter as it will protect the wetlands as they are the best means of filtering water.

Farrell shares her concern regarding the changes that have been made since the publication of the September 14 version of the draft regulations. It sounds that there were changes made before the public hearing as soon as earlier today. These revisions should be made public before the regulations are finalized so she urges SCC to post this version as soon as possible as they are more than just spelling and grammar corrections. DeFant response that the newest version will be posted once the public hearing is over.

Weizenbaum wants to address the comments implying that it is SCC's fault for the division between SCC and the Selectboard. It is true that the town has done many projects without applying for permits and those past commissions have allowed it. She suggests that the Selectboard and SCC are no currently getting along but it is the first time the town has an independent and professional SCC.

Bob Douglas (66 Lake Dr) owns property at Lake Wyola and is a wetland scientist. He has been involved with the bylaw of bylaw regulations in the past and currently with Andover, MA and understands the time and effort it takes to complete; appreciates their work. He has also completed an NOI in Shutesbury recently. He discloses that he know Garner and McGregor professionally through his work at MACC and at one time engaged with McGregor and his firm for his own purposes. His comments have already been previously addressed by SCC in which he is in agreeance with. During his NOI application on his property on Lake 66 he can confirm that the hardship was acknowledged.

Rebecca Torres, Town Administrator, (address not given), implores SCC to expand their public comment period for another week to provide time for the public to review the revised draft as discussed tonight since it was not provided before the beginning of the public hearing for review. Stone agrees with Torres's comment regarding the need to extend the public comment deadline. She shares that the Selectboard may be missing that the law is in legal jeopardy now with the present minimal regulations that exist; could be challenged for currently being arbitrary and capricious. SCC is trying to help the town by updating the regulations now instead of focusing on creating a new bylaw that will require waiting until the next Annual Town Meeting to pass which is a while away.

David Buchanan (address not given) thanks SCC for their time and effort on the draft bylaw regulations. He shares that he grew up in a town where the town government did not adhere to the state or local wetland protection which resulted in their reservoir and he is afraid Shutesbury

is close to the same situation. He share he is concerned by the pattern of behavior Selectboard's over the last few months. He reminds the Selectboard that they present all members of the public in Shutesbury and urges them to ensure their safety, health and welfare; by not having regulation in place, it puts these aspects in jeopardy.

Golinski points out that the Selectboard is elected by the townspeople and the SCC is appointed by those members of the Selectboard. The job of the Selectboard is to ensure the town is legal sound. She understands that McGregor's comments regarding what is and isn't illegal but it is a necessary review needed by the Selectboard in which she appreciates. The Selectboard is going their job as the governing body of the Town whereas SCC is not; SCC is a part of the governing that Selectboard oversees.

Penelope Kim (address not given) shares that she did not appreciate the comment suggesting that previous SCC's have not been has professionals the current one. She has been a resident for over 60 years and notes that even the last group of commissioners on the SCC had done amazing work; the appreciation goes through the years.

Farrell corrects the impression/ states that the Selectboard hasn't wanted regulations or bylaw; that is false. It is evidenced by their minutes and previous meeting recordings. The Selectboard wanted regulations that they felt were legally defensible and their counsel advised them that their original draft had major problems.

Mary Lou Conca (address not given) thanks SCC for their time and effort on the draft bylaw regulations and agrees with David Buchanan's comment(s). Holt also agrees with David Buchanan's comment(s) adding that the town needs these regulations adopted as soon as possible because they will be under a great deal of threat; with or without regulations the Town can be sued.

Weizenbaum responses to the comment that the Selectboard is over SCC which she believes is a distorted view. She shares she has appreciation for the past SCC bodies but believes they may have viewed their work was under/for the town; did not mean to insult the past SCC bodies with her previous comment.

McNaughton adds that in the beginning of drafting these bylaw regulations, SCC requested funds for special counsel for a legal review because Town Counsel, Donna MacNicol, recused herself. The Selectboard didn't approve of funds for special counsel until August when they had already hired Attorney McGregor. Torres comments that this public hearing is not the place to discuss of figure out the issues with hired lawyers but notes there have been a number of statements where the correct facts were not shared. She adds that DeFant as moderator, although she appreciate her taking all public comments, it is important of her to also correct the record.

DeFant agrees with Torres that this is not the appropriate forum to talk about the Selectboard and all other matters that aren't specific to the regulations. She understands this is a public hearing that allows for public comment and she doesn't want to be censoring any comments that are being made but SCC is trying to stay focus on what they are charged with tonight.

SCC has received a request to expand the public comment period another week; DeFant agrees this is appropriate. She recommends that they schedule a meeting for next week for deliberations of these regulations after the public comment has closed. SCC agrees. Goodman will not be attendance has her scope will of work will be completed after tonight's meeting. David shares gratitude for Goodman's work and doesn't not have any further questions for her. Harrington and Kahan agree with David's comment.

DeFant asks if Goodman has any other final comments she would like to make. Goodman states that there is a current bylaw that the SCC is working under that the regulations are subject to as also stated by McGregor; the regulations can't add to the authority of the commission. As to the concern regarding that the bylaw is going to further complicate, expand the jurisdiction, or result in bans, she believes or in correct due to her previous statement. The regulation provide explanation, clarity and understand to what currently exists under the town's bylaw.

DeFant shares that SCC's statutory obligation is mandated by law that is on the books to exercise jurisdiction as defined by the bylaw. The bylaw specifically has requirements for performance standard for SCC to use which they did not current possess but their current regulations have no performance standards. SCC is currently in this quandary when they issue permits and are trying to do their diligence to be responsible public officials to remedy the situations expeditiously. In order to pass a new bylaw would take a few months at best even if there is a special Town Meeting it would still need to be reviewed the Attorney General's office before going into effect. Goodman agrees with DeFant's comment adds that Stone had made this case earlier in the meeting.

Beth Willson re-enters the meeting at 8:17pm

Guy DeVito (73 Montague Rd) understands that the town is being sued and asked if Goodman would expand on that. DeFant responses that Goodman is not in the position to response to that as she is not representing the the town in this matter.

DeFant informs Willson of the request to expand the public comment period. Willson agrees with the request. SCC agrees to expand to the public comment period until Wednesday October 4th, 2023 at 5pm and that SCC will meet on Thursday October 5th, 2023 at 7pm to deliberate. DeFant expressed gratitude to all present and participating individuals who have come to tonight's public hearing. She shares that if/when the new bylaw regulation are adopted that there will be new instructions for applicants and landowners as well as educational materials available on their website; are also available to answer questions as they come up.

Motion: David moves to close the Public Hearing on Proposed Regulations for Shutesbury General Wetlands Protection Bylaw, public comment period until Wednesday October 4th, 2023 at 5pm and that SCC will meet on Thursday October 5th, 2023 at 7pm to deliberate, Willson seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye, and Willson – Aye. *The motion carries.*

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

Meeting Close: 8:35pm

Next Meeting: September 28, 2023 at 7:00pm

Documents Used

- Draft Bylaw Regulations
- Attorney McGregor's legal review comments on the Draft Bylaw Regulations