

Shutesbury Conservation Commission
Minutes – 12/14/2023
Approved – 02/08/2024
Virtual Meeting

Meeting Start: 6:00 p.m.

Commissioners Present: Miriam DeFant (Chair), Mary David, Robin Harrington, Scott Kahan,

Absent: Beth Willson

Other Staff: Carey Marshall (Land Use Clerk)

Other present: Rebecca Torres (Town Administrator), Amanda Alix, Mary Lou Conca, Gail Fleischaker, Ward Smith, Leonard and Loretta Moskal, Janice Stone (SCC Consultant), Erin Jacques, and all other unidentified individuals.

Meeting is being recorded.

Chair's Call to Order at 6:00 p.m.

Review of Draft Wetlands Protection Bylaw:

SCC received written feedback from McGregor law firm yesterday regarding the draft Bylaw. DeFant had a couple of questions which she has submitted. Shares the edited draft with Track Changes and comments on screenshare. Overall, the number of edits and comments was limited. David had no problem with suggested edits. DeFant sent questions to Town Clerk about legislative history, whether it should say the Bylaw is being amended or replaced. Stone: sometimes have to be very specific in a warrant article if it is only being amended. Fleischaker suggests leaving off the legislative history. Torres: Town will get more information to the Commission about this tomorrow.

SCC reviewed Bylaw.

Section 1: Purpose: Minor wording changes considered to reduce redundancy.

Section 2: Jurisdiction: Not increasing jurisdictional areas, except adding Riverfront Area so as to be in agreement with the Wetlands Protection Act. This protected Resource Area was not recognized in 1987 when Bylaw was adopted. Minor edits were considered.

Section 3: Exemptions and Exceptions: adopting exemption for agriculture and mosquito control; no major changes to language about emergency projects and utility projects. Additional language makes it clear that the Regulations can outline additional exemptions, including some Minor Projects. Legal reviewer approved this. Kahan: we can go back and look at our Regulations and could look at exemptions. DeFant: we would update our Regulations to make sure everything agrees.

Section 4: Small Project: codifies the Administrative Approval from the Regulations as a new project permit type. Struck a sentence that belonged in the Regulations.

Section 5: Applications and Fees: Reviewer indicates there is no need to specify 53G fees as Attorney McGregor had suggested in an earlier review of the Regulations. Minor wording changes considered. Removed language about waivers of fees for non-landowner applicants; matter can be considered in the Regulations.

Section 6: Notices and Hearings: added Certificates of Mailing to save money for applicants. Using 100-foot Abutters Notice, rather than 300 feet as in Zoning Bylaws. The more abutters, the greater the expense.

Section 7: Coordination with Other Boards: minor edits.

Section 8: Permits and Conditions: reviewer recommended sentence, found in many other Bylaws, be removed that could be interpreted as a taking of land. Removed a redundant paragraph. Presumptions are from the MACC Model Bylaw. Took out some language about amending permits; it can be put in the Regulations. Minor wording changes.

Section 9: Regulations: no recommended changes.

Section 10: Definitions: took out a couple of definitions per reviewer recommendation.

Section 11: Security: No comments.

Section 12: Enforcement: When discussing 21D enforcement, reviewer said to check Town Bylaw. DeFant has reviewed it but it does not mention the Conservation Commission. DeFant asked Select Board whether that Bylaw also needs to be changed? SCC needs a legal opinion about this.

Sections 13-17: No recommended changes. DeFant asked Town Clerk, if the effective date needs to be identified in the Bylaw since it does not become effective until its approval by the AGO, waiting for feedback.

DeFant will post on website the updated draft after the meeting. SCC satisfied with the draft. Draft is a replacement because the piecemeal amendments discussed in November seemed very confusing and impractical due to the number of sections that required changes. DeFant advised having one updated Bylaw in a cohesive document. SCC agrees. Kahan: is there time for further edits? DeFant: have a public hearing on the Bylaw on 12/18, can consider edits at that meeting and then submit an approved draft to the Select Board for its meeting on 12/19. Torres: there is a little room to play with up to January 1, any later changes will have to be amended on the floor of the Special Town Meeting.

DeFant asks SCC to consider how to structure the public hearing. Kahan would like Chair to give a short presentation with the highlights. Willson: important to point out the differences between the old and new Bylaw versions. David: show edits in different colors. DeFant has already put the document up on the website with the recent changes shown in Track Changes with the comments from the legal reviewer. Kahan: would like to see an updated Side-by-Side comparison document. DeFant will do that. At Special Town Meeting, the SCC would typically give a report and have some handouts. DeFant has started drafting a handout to review on January 11. The Land Use Clerk can help with copying. DeFant: who is going to do the report? Willson suggests that DeFant do it. David: would be nice if this was sponsored by the Select Board, can we request this? Torres agrees to take this request to the Select Board which is meeting next Tuesday, the 19th, she is sure the Select Board would be happy to do this. DeFant and David thank her. DeFant: thanks, the Select Board for the legal review; SCC based the new Bylaw on the MACC Model Bylaw, which was requested by the Select Board, hopes we can all feel good about this. Willson willing to help with the presentation. DeFant asked about whether SCC can have a PowerPoint access. Torres will find out. DeFant: if the Bylaw is adopted, we will need to update the Regulations so that they agree with the new Bylaw language. SCC will need another legal review for this. David asks if this is necessary. DeFant thinks it is a good idea. Hopefully, it will not take long. Torres will ask the Select Board about how the SCC can get a legal review of the updated Regulations. Torres says that she will get back to the SCC with an answer to the question about 21D. DeFant wonders if the 21D Bylaw should also be on the Warrant if it needs to be updated. Torres does not think that is likely to happen for the Special Town Meeting. The MGL Chapter 40, Section 22F update will be on the Special Town Meeting Warrant. DeFant asked Torres to give an update on fees. Town Counsel wishes to have the SCC hold on collecting fees until the vote at Special Town Meeting and the Select Board approves the fees. Torres: during the interim period before the new Bylaw is approved by the AGO, and after the MGL Chapter 40, Section 22F vote and fee schedule is approved by the Select Board, then the SCC can collect fees. DeFant suggests SCC meet with the Select Board to review the rationale for the new fee schedule. DeFant asks for confirmation that the existing Regulations will remain in effect until the new Bylaw is approved by the Attorney General's Office. Torres will inquire. DeFant inquires if there are comments from the public. There are none. Fleischaker inquiries about the 21D issue. DeFant: there is a 1989 Town Non-Criminal Disposition Bylaw that permits the SCC to use non-criminal fines via MGL Chapter 40, Section 21D. Willson leaves meeting.

2023 MSMCP Dues:

Motion: David moves to pay the 2023 MSMCP Dues and update subscriptions to the MACC Environmental Handbook. Kahan seconds. Vote: David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye. *The motion carries.*

Emergency Certification for 140 Leonard Road/O'Connor: Emergency permit sought for a tree removal. **Motion:** David moves to ratify the Emergency Certification for 140 Leonard Road. Harrington seconds. **Vote:** David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye. *The motion carries.*

Draft Minutes:

8/23/23: No edits. **Motion:** David moves to approve the 8/23/23 minutes. Harrington seconds. **Vote:** David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Abstains due to absence. *The motion carries.*

8/30/23: No edits. **Motion:** DeFant moves to approve the 8/30/23 minutes. David seconds. **Vote:** David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye. *The motion carries.*

9/07/23: No edits. **Motion:** DeFant moves to approve the 9/07/23 minutes. David seconds. **Vote:** David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Abstains due to absence. *The motion carries.*

Fiscal Year 2023 SCC Annual Report: DeFant screenshares the draft document. Minor edits considered. Kahan inquired about number of site visits where there was no jurisdictional interest. DeFant clarified that she only tracked it for FY22. **Motion:** David moves to approve the draft FY23 Annual Report as written. Harrington seconds. **Vote:** David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye. *The motion carries.*

Site Visits

64 Lake Drive/Jones Pre-Construction Site Visit: David and Harrington attended. Erosion controls look good.

Continued Public Hearing for 56 Lake Drive Notice of Intent: Landowners and Ward Smith (consultant) are present. Extending a stairway for safety on the project for a total of 288 square feet. Amended permit to include dock; 3-4' x 10' aluminum extensions, legs sit on the lake bottom; have not filed Chapter 91 license. DeFant: we won't issue a COC until you get the license and record it at the Registry. Smith agrees to this. DeFant: what is the date of the NOI? September 14, 2023 was filing date. Site plan surveyor: Daniel Salls. NHESP has signed off on project. No more questions. No public comments.

Motion: David moves to close the Public Hearing for the 56 Lake Drive Notice of Intent. Harrington seconds. **Vote:** David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye. *The motion carries.*

SCC reviewed the draft Special Conditions via screenshare. No edits. SCC gives permission for Chair to sign digitally for the permit.

Motion: DeFant moves to approve the Order of Conditions with Special Conditions under the WPA and the Shutesbury Wetlands Protection Bylaw for the 56 Lake Drive Notice of Intent. David seconds. **Vote:** David – Aye, DeFant – Aye, Harrington – Aye, Kahan – Aye. *The motion carries.*

Chair Recusal and 244 Baker Road Enforcement Order:

DeFant informs the SCC she wants to make a statement. She notified the SCC that she is recusing herself on all matters related to 244 Baker Road due to a series of complaints that have been filed, and out of an abundance of caution, and her desire to avoid any appearance of a conflict of interest. She has discussed the matter with the State Ethics Commission. She was advised that, based on the information known to her, she was not required to recuse herself, but she is choosing to do so. She does not want any perception that she has any bias in any proceeding before the SCC.

DeFant has become aware of some reports submitted to the Select Board, including a report submitted by the Chief of Police involving both DeFant and the SCC. DeFant finds those reports troubling and concerning. Some of them involved a public records request that the SCC received from the Chief of Police regarding Michael Hootstein and the Lot O-32 Oversight Group. SCC consulted with Special Counsel Beth Goodman and acted on the advice of counsel, both Attorneys Goodman and MacNicol, in that matter. Any actions DeFant took were in concert with the advice of the SCC's legal counsel and decisions being made by the SCC as a whole, not her individually. DeFant has objected to being singled out as being somehow engaged in improper actions when the SCC was all following the advice of counsel. There were some other allegations about DeFant in this report from the Chief of Police that DeFant also finds troubling and untrue; she objects to those complaints and don't believe they should have been made.

Harrington: has been at site visits with DeFant; the statements made about DeFant are untrue. Harrington is concerned about SCC safety and wants a police escort for any future site visits. David notes she has also been at these site visits to this property; she also finds it difficult to conduct site visits with the owners.

DeFant repeats that she has objected to any allegation that she has ever behaved improperly or with any animus toward any landowner on any site visit; all of the actions she has taken have been within her official role as a Conservation Commissioner and not in any personal capacity.

Alix: sorry to hear this is happening; asked for clarification about police investigation into the Lot O-32 Oversight Group. DeFant: thought this was a settled issue so is surprised it is being brought back up now; SCC received a public records request back in May; SCC attempted to be responsive to it; SCC had some questions and requested a time extension which it was entitled to under certain circumstances; SCC attempted to negotiate an extension; there were a lot of back-and-forth emails; DeFant spoke with Donna MacNicol about this issue, and then Special Counsel Beth Goodman advocated on behalf of the SCC; the public records request was withdrawn. In the complaint that was filed, it was alleged that the request was dropped because DeFant was being so obstructionist that the Police Chief just gave up. DeFant notes that what the SCC heard in the email from the Police Chief was that she had everything she needed, that we shouldn't worry, and that she wasn't asking for anything more. DeFant disputes that she played a role individually in this; SCC was acting on advice of our attorney; we believed it was all settled, so she is confused about why this is still coming up six months later; would like to put this behind us.

Conca: thanks the SCC for its work and courage.

DeFant: both DeFant and Willson, due to being an Amherst employee, are recused from anything involving 244 Baker Road. SCC needs to decide how to proceed.

Harrington stated she is upset that she cannot recuse herself because now there are only 3 Commissioners available and there wouldn't be a quorum without her. Harrington and David have no further comments. David: at the last site visit to 244 Baker Road, we told them we would follow up in the spring. SCC will address it at that time.

Kahan: thanks DeFant for work on Bylaw. DeFant: have learned a lot in the process; realize it takes about three years to get really oriented to the work of being a Commissioner.

Unanticipated Business:

Locks Pond Culvert Project Update: David looked at the site. The road is open and is paved. Erosion controls are still in place. David thanks everyone for getting it done.

New Library NOI: DeFant received an email that the Town will be submitting the NOI for the new library project soon. Next meeting is January 11.

Land Use Clerk Position status: DeFant asked Marshall about status of position, which has been posted. Marshall has no updates. She believes the Select Board is reviewing applications but is unclear about the process. She has not set a date for her resignation.

Dudley Pond Dam: Jacques has been working with the Brown family to secure funding to remove a hazard dam at the pond on Montague Road; they have just been awarded funding from the Mass Division of Ecological Restoration for the engineering study for the removal; Town will need to have the two road culverts assessed because they may require removal once the dam removal is underway. SCC congratulate Jacques and the Brown family.

Next Meeting: Monday, December 18, 2023, at 6:00 p.m. (Public Hearing for new Wetlands Protection Bylaw)

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

Meeting Close: 7:34 p.m.

Documents Used

- Agenda

- Draft Bylaw
- Red-lined Draft Bylaw with comments from McGregor Law firm
- List of SCC Bylaw questions for Town Clerk and Bylaw reviewer
- 56 Lake Drive NOI
- Draft 56 Lake Drive Order of Conditions
- MSMCP Dues and MACC Handbook Invoices
- Draft FY23 Annual Report
- May 2023 SCC emails regarding a public records request from the Chief of Police
- Letter to the Select Board from Mary David, 12/13/23
- Email to SCC from 244 Baker Road resident, 10/12/23
- Emails to the Select Board from the Town Clerk (11/21/23), Chief of Police (11/14/23), and Baker Road residents (10/15/23 and 10/25/23)
- Chair responses to the Select Board, 11/10/23, 11/24/23, and 11/28/23
- KP Law response to the Chair on behalf of the Select Board, 12/12/23
- 244 Baker Road Enforcement Order and related site visit reports
- Email from Officer Anthony Traghese, Mass. Environmental Police regarding 244 Baker Road resident complaint, 10/13/23

Respectfully submitted by Miriam DeFant, Commission Chair, 1/7/23