

Shutesbury Conservation Commission
Minutes – August 15, 2024
Approved – November 14, 2024
Virtual Meeting

Meeting Start: 7:00pm

Commissioners Present: Beth Willson, Janice Rowan, Robert Douglas, Scott Kahan (7:08pm)

Commissioners Absent: None

Other Staff Present: None

Others Present: Miriam DeFant, Tom Siefert, Mark Wightman, Kathy Salvador, Adrienne Dunk, James Martin, and others

Chair's Call to Order: 7:00pm

The meeting is being recorded.

Inquiry from Miriam DeFant about whether her Small Project Permit requires a site visit. DeFant offers to send photographs and documentation in lieu of site visit. Commission decides no site visit is necessary but Willson will add this project to next meeting's agenda.

Chair's Comments

Doc Pruyne has left the Land Use Clerk position. Carey Marshall is helping while Becky continues the search. Willson will also help with some of the administrative work.

Rowan offers to take minutes at next meeting.

Approval of Minutes

No action taken on October 12, 2023 minutes because neither Rowan nor Douglas had read those minutes yet. Will vote on them next meeting.

June 27, 2024 minutes. No comments on the minutes. Motion to approve: Kahan; second: Douglas. Approved unanimously.

Discussion of and Vote to Recommend New Conservation Commissioner

Willson: Tom Siefert and Todd Tietchen interested. Commission will vote on recommendation to Select Board, which will vote on it August 22. Decision up to the Select Board but they want to know who Commission recommends. Siefert already on Planning Board and Stormwater Task Force, which meets Thursdays. Tietchen is not on other boards.

Kahan: Both candidates would be great. Siefert has attended many past Conservation Commission meetings but his commitment to other boards seems to be a conflict.

Tom Siefert: Would be willing to make a three-year commitment to the Commission but defers to Tietchen under assumption he would do the same. Withdraws himself from consideration.

Motion to recommend Todd Tietchen to Select Board for vacant position as Conservation Commissioner: Rowan; second: Kahan. Approved unanimously.

Dudleyville Pond Dam Emergency Certification

Douglas: With dam removal it's important to make sure it is a real emergency, and two engineers have confirmed that this is an emergency.

Motion to ratify emergency certification for Dudleyville Pond Dam: Douglas; second: Rowan. Approved unanimously.

Willson: Work will start on Monday if weather permits. Erosion control inspection on Tuesday at 10am, which Rowan will attend. Commission has received the erosion sedimentation/water management plan from the contractor and Willson has reviewed it and found it sufficient.

Commission has no comments on the plan.

Site Visit Updates

Rowan: 678 Pratt Corner Road tree removal project has a curtain drain added to the process and will discuss RDA on it at next meeting. Lots of wet ground around the house where the trees are.

30 Sumner Mountain Road regarding building carport near conservation lands. Not a problem because there are no wetlands near enough to be of concern.

16 Cornwell Road regarding building a garage. Not near anything of concern or any wetlands.

66 Leverett Road regarding new library project. Site visit was during a deluge and was able to see erosion controls in place.

585 Wendell Road regarding building an addition. No wetlands near the house.

Culvert project with Steve Sullivan to look at removing erosion controls. Sullivan had ideas for restraining some stormwater runoff that has become apparent after the job.

678 Pratt Corner Road

Due to lack of Land Use Clerk, the legal ad for this hearing was not run in the newspaper in time and so the hearing will be held next week, 7:15pm on August 22.

Conservation Restriction on Map H, Parcel 151

Mark Wightman: Open Space Special Permit from the Planning Board and special permits from the ZBA to avoid cutting down trees and access property through existing road. Four acre building envelopment has no wetlands but the remainder of the eighteen acres is going into a conservation restriction. Has had no luck getting an organization like Kestrel Trust interested. Has come to Conservation Commission on recommendation from Planning Board about the Commission being the authority holding the restriction. Describes what the MGL states about conservation restriction. Does not have a restriction yet but one is required by law due to special permit. Already got the curb cut but should have done that only after recording the restriction so Planning Board agreed to reverse the curb cut permit until then. Was going to let the buyer record this but is now going to do it himself. Has one and a half years left to do this and was hoping the town would be interested.

Kahan: Conservation Commission does hold a number of restrictions around town that we regularly monitor. We could have a better process by which to monitor those restrictions. We would need to work with you to develop way to cover the nominal fee costs for those monitoring inspections. What is your timeline?

Wightman: Lots of interests in the property, so purchase could happen soon. Barring a sale, a year and a half, but sooner would be better. In Commission's time frame, though.

Douglas: The Town would be a good candidate for this restriction. Likes idea of having a fee to hire agent or wetlands scientist to walk the property each year.

Wightman: Agrees that there should be a nominal fee to cover that cost.

Willson: Are you looking for a commitment from us?

Wightman: No commitment needed yet, but after this I can talk to my lawyer about recoding the restriction in the Registry of Deeds. I'll come back and present that to the Commission.

Rowan will email Wightman to coordinate date for site visit.

Order of Conditions for Lowering Lake Wyola

Willson: Extension is being sought for Order of Conditions for lowering the lake so they can continue to work on submitting a new Notice of Intent to update the Order.

Adrienne Dunk: Tonight is not official extension request—just opportunity to discuss the request in advance of submitting necessary wetlands protection form. GZA retained by the Town to do some dam engineering work and to re-permit the annual winter drawdown. Current Order set to expire in January 2025. Working to coordinate with relevant state agencies prior to submitting new Notice of Intent in order to avoid lapse in authorization. Not looking to change the conditions in the Order of Conditions, such as date or timing, just for three-year extension with goal of being back before the end of that period with new NOI.

Willson: Important to update the NOI so the extension seems warranted. The new bylaw allows only a one-year extension of Orders of Conditions. Would that impact your work?

Dunk: Could there be multiple one-year extensions in succession? Our goal was to avoid coming back every year but would if that's all that is allowed. Massachusetts Environmental Policy Act review may be required for this work, which may require more time.

Willson: No restrictions against multiple extensions in a row. The Commission would be willing to receive a request for the one-year extension.

31 Lake View Road

Kathy Salvador: Cites the letter sent by their lawyer to the Commission. House is complete and has occupancy permit. Seeking to clean the Order of Conditions up before applying for Certificate of Compliance. We've met all the other conditions placed on project and tried to go above and beyond, especially with plantings and restoration of the property. Concern now is with the seven that are "in perpetuity" and is seeking for them to be waived.

James Martin: Cites the July 18 letter sent to Town Counsel and Planning Board. Cites state law that places restriction on the term of conditions and prohibits arbitrary and capricious conditions. The Town's Wetlands Bylaw also prohibit restrictions that would constitute a taking. Argues that conditions 27 through 34 are so restrictive as to constitute an unfair taking of the property, now and on the title going forward. Considers the conditions excessively and unnecessarily aggressive and constraining, even of temporary activities like raking leaves, mowing lawn, and other attempts to maintain the property. Because the Bylaw permits waivers, is seeking a waiver of these seven conditions because they are arbitrary and capricious, burdensome, constitute an unlawful taking without compensation, and reduces the value of the property.

Douglas: Is entirety of this parcel in riverfront resource area?

Willson: Yes. And a lot of it is also in the buffer zone for a BVW. [Screen shares map of the lot and the Order of Conditions and reviews the layout of the property.] This is a riverfront redevelopment project. Condition 27: because entire property falls under the Wetlands Protection Act, any work that would result in loss of permeable surface would have to be approved by the Conservation Commission. This is also reflected in Condition 18, so seems legal.

Kahan and Douglas: Agree.

Rowan: If it's mentioned twice, is it necessary to have here?

Martin: Because it is under the "In Perpetuity" heading, the effect here is different than in Condition 18, which is not under that heading.

Willson: But Condition 18 is in perpetuity as long as the Wetlands Protection Act exists.

Martin: Difference is that an in-perpetuity condition cannot be revisited.

DeFant: Drafted this Order of Conditions. Heading “Post-Construction/In Perpetuity Conditions” was meant to imply that the following conditions are both “Post-Construction Conditions” and “In Perpetuity Conditions” but that they are not necessarily one and the same.

Willson: Number 27 is just asking them to come back to the Conservation Commission if they want to do work on permeable surfaces. It’s a usual condition in an OOC.

Martin: Why should this property be burdened with it in perpetuity?

Douglas: Doesn’t see it as a burden. It’s a reminder for future owners.

Martin: Doesn’t mind reminder; doesn’t want it in perpetuity. It’s extreme and in another section.

Willson: But we all have to abide by the Wetlands Protection Act in perpetuity. Whether it’s in OOC or not, anyone who wants to put an impermeable surface down within a buffer zone always has to get approval from Commission. This seems legal.

Martin: Chapter 184, Section 23 puts a limit on conditions to a thirty-year period. Has to be reason to go beyond statutory period and none is articulated in the OOC, and it’s duplicative.

Kahan: These are already required by law. But we should move on and then return to this one.

Salvador: Issue is with “in perpetuity” which might be off-putting for a future potential owner.

Willson: Moving on to condition number 32, this is the same as DEP’s Standard Conditions, 19c.

Salvador: Why repeat it then if it’s already a requirement?

Willson: Listing it in special conditions is a reminder that it’s there and that if the responsibility for the property changes, these conditions are still applicable.

Martin: Again, restatement under the heading “in perpetuity” is different from the DEP’s requirement of “continuous” notification after a change of ownership. Puts a cloud on the title.

DeFant: Common for OOC’s to include continuing condition for BMPs. Commission’s regulations include provision for continuing conditions, as does Wetlands Protection Act.

Martin: Bylaw provides for waivers of conditions. Not challenging conditions from the DEP but there is a concern from a legal and title basis. They should not have to worry about getting into a court case in twenty years about which conditions are in perpetuity or not if they’re listed in both places. We want to clean this up to avoid confusion going forward.

Willson: Purpose tonight was to hear you and start looking at these with that information. We will discuss this further with Town Counsel before moving forward with a decision.

Rowan: Is there anything about the other in-perpetuity items they want to highlight?

Kahan: Interested in others, like 30 and 31. Not required by laws, but serve as off-set for the work being done in the riverfront. They should remain in effect as long as the dwelling remains in the resource area. Should be in perpetuity because the impacts they offset remain in perpetuity.

Martin: 30 too vague to be a perpetuity condition and would encompass things like raking, which are simply an attempt to make use of and care for property. It's vague, onerous, and not necessary, and restricts use of property. 31 requires additional activities and funds and also too vague. 32 asks owner and future owners to incur expenses but topography and other things might change that would render this unnecessary or out of date. 33 places burden on property owner to be enforcement agent but this should not be their responsibility. 34 also makes current owners enforcement agent, making it an undue burden and restriction not allowed by law. None eliminate protection of the property, which is already provided for by other conditions. You have the ability to waive these and they do not contribute to the protection of the area; they're egregious, over-reaching, and so onerous as to constitute a taking prohibited by law.

Salvador: Welcomes Commission to come see property to help understand this request.

Douglas: Is project complete?

Salvador: Yes, except for getting as-built plan from engineer to complete request for Certificate of Compliance, but wanted to address these concerns first. Boulders and pins all in place.

Willson: Will put this on agenda for next Thursday, August 22 at 8pm.

Rowan: Will work to set up time for site visit in advance of that meeting.

Douglas: Half of the Commission is new, so this is new for us. It would be good for us to review the video and minutes for the discussion that led to these special conditions.

Martin: I'll also contact Donna MacNicol to see if she needs anything from me.

Unanticipated Business

Willson: Received building permit email. Will check jurisdiction. Also a tree question.

Rowan: Tentative date for Kestrel walk-through is now firm.

Willson: Penny Jaques coming to September 12 meeting to talk about Top-of-the-Lake.

Adjournment

Motion to adjourn: Kahan; second: Douglas. Approved unanimously.

Adjourned: 8:45pm.

List of Documents Used:

- Minutes of Conservation Commission meeting on June 27, 2024
- Emergency Certification for Dudleyville Pond Dam
- Order of Conditions for 31 Lake View Road