

Shutesbury Conservation Commission
Minutes – 9/26/2024
Approved – 10/10/2024
Virtual Meeting

Meeting Start: 7:00pm

Commissioners Present: Beth Willson, Robert Douglas, Scott Kahan, Janice Rowan

Other Staff: N/A

Others present: Kathy and Joe Salvador, Anna Mancebo and Mike Stotz, Tom Siefert, Frank McGinn, Miriam DeFant, Donna MacNicol, Town Counsel, and Jim Martin, attorney for the Applicant

Chair's Call to Order: 7:00 pm

Meeting is being recorded.

Comments from the Chair – Beth Willson:

A new Land Use Clerk has been hired. Matteo Pangallo is an English Professor and the current Chair of the Shutesbury Community Preservation Committee. This is a welcome development.

Beth Willson will be participating in a meeting with the Fort River Watershed Association and the Nature Conservancy on 10/16/2024. The group has an \$8,000 grant for use in the Fort River watershed and is looking for input from the four towns in the river's watershed.

Site Visit Summary – Janice Rowan:

1. 9/26/2024 – Russell Greco, 640 Wendell Road, proposed garage construction. No Conservation Commission jurisdiction at the site (no identified wetlands).
2. Scott Kahan also met with Stephen Sullivan, Town Highway Department, to talk about the West Quabbin Woodlands parking lot project.

Minutes:

Janice Rowan will continue taking Minutes until the new Land Use Clerk position is on board and ready to resume this task.

Motion to approve draft Minutes from 9/12/2024 (with a date correction) made by Bob Douglas. The Motion was seconded by Scott Kahan. Scott Kahan, Beth Willson, Bob Douglas and Janice Rowan voted to approve the Minutes. Rowan will provide the final copy to Beth Willson. These Minutes along with a small backlog of previously approved Minutes will be posted soon.

7:15 pm – Kathy and Joe Salvador, 31 Lakeview Road, Petition to Amend Order of Conditions (OOC), DEP/Permit # 286-0286:

The applicant has requested that the Commission amend the OOC to remove the “in perpetuity” restrictions (27, 28, 30, 31, 32, 33, and 34). Additionally, they requested language to allow specific limited use in the do-not-disturb area (30), things like walking or a bench, for example.

Lengthy discussion on the matter ensued.

Donna MacNicol shared her legal position for the discussion: it is illegal for the Commission to put “in perpetuity” conditions on property because the Commission’s authority is limited to wetlands protection. This sort of restriction is not necessary, it is onerous and it’s outside the Commission’s jurisdiction. The Commission has no way to monitor and enforce these restrictions forever. She suggests eliminating language that is inappropriate and exceeds Commission authority. Additionally, “in perpetuity” language may be counter-productive if it conflicts with some change in the law in the future.

Scott Kahan expressed concern that some of the condition language was mitigation for a wetlands violation. It was written to protect the boulder/pin demarcation, for instance.

Donna MacNicol said the “in perpetuity” language should be removed, but the condition language upholding the Wetlands Protection Act and Town Bylaw could be retained.

Beth Willson noted that the Deed Restriction covers the border requirement.

Scott Kahan pointed out that the applicant already agreed to this restriction, as it has been filed. Kathy Salvador explained that they agreed under duress noting that the Chair was overzealous and took advantage of their ignorance of regulations. She asserted that they do want to have the wetlands protected and that this adds to the value of the property. They were not, however, in any position to ask back then.

Scott Kahan offered to keep the Deed Restriction, delete the “in perpetuity” conditions, and deal with language for limited use (30) as a separate permit issue to follow.

Donna MacNicol suggested “in perpetuity be stricken from 31 but also noted that this condition is overly broad, vague and undefined which will make it unenforceable. Maybe the best thing to say is that the markers will be inspected periodically, as needed, which can be done anyway, without a condition, within Commission authority, under the Wetlands Protection Act. She also noted that 33 and 34 could be deleted and addressed by the Commission in other ways – the

Commission can notify all new homeowners after a real estate sale or they can be reminded of the home's OOCs via the Town Newsletter periodically. Otherwise, how can the Commission do a Certificate of Completion on a condition that is so open-ended?

Donna MacNicol went on to clarify the distinction between Conservation Restriction, Conservation Easement and Order of Condition. A Conservation Restriction is the most onerous but it's also the clearest. An initial survey is conducted to establish conditions. Property use limits are established. And the task is to make sure that use is limited to what is specifically allowed. It restricts any other use by the owner.

A Conservation Easement establishes a shared interest in a property. It doesn't restrict the owner as long as their use doesn't negatively impact conservation.

An Order of Condition is a permanent record for the property. It acknowledges wetland boundaries and legal limitations and prohibits certain practices. These, by themselves, are restrictions on the property. Deed restrictions aren't needed. The WPA and Bylaw give the Commission authority or jurisdiction to the Commission. The Deed Restriction just acknowledges that this jurisdiction is granted.

Beth Willson suggested that we continue the meeting and return with new language drafted for the conditions based on this discussion.

The Salvadors agreed to continue this discussion next meeting.

Janice Rowan motioned to continue the hearing at the next Meeting on October 10 at 7:15 pm. Scott Kahan seconded the motion. Beth Willson, Scott Kahan, Janice Rowan, and Bob Douglas voted aye.

Public Comments on this OOC amendment request:

Miriam Defant did not appreciate having to wait 45 minutes to express her concern that the applicant had attacked her in explaining the situation and that none of the Commissioners came to her defense. In her own defense, she said that she was acting in good faith as Chair of the Commission when she wrote the OOC for the Salvador's project. She added that the Commission had voted to approve the OOC and had done so without advice from Town Counsel who had recused herself.

Beth Willson apologized to Miriam Defant for the wait but it was necessary for the discussion. She also said that she was sorry that Miriam felt offended.

Kathy Salvador expressed similar contrition. She also reiterated that, as an applicant, it appeared that the process and her treatment went beyond what was required to protect the resource, thus her use of the term overzealous.

Anna Mancebo noted that others, including herself, had projects from that period and were also impacted by the practice of inserting OOCs that included the illegal “in perpetuity” condition. When asked how that would be handled, Beth Willson suggested that the Commission would review these OOCs and that people with concerns should email her.

Tom Siefert cautioned that the OOC was issued by the Commission and that this should not be personal. He also questioned again whether Town Counsel has a conflict of interest with the Salvadors as acquaintances. Donna MacNicol clarified that she had recused herself in 2022 to avoid the appearance of conflict, having purchased a house from the Salvadors. However, it has been years since that transaction and she has no ongoing business with them. There is no conflict nor any reason to perceive conflict. Siefert also questioned whether this was a hearing and then Miriam asked if it had been appropriately advertised. Beth Willson indicated that this was the case.

Upcoming Site Visits:

October 5 – 9:30 am – 43 Old Orchard Road, Conservation Easement monitoring
October 5 – 10:30 am – Top of the Lake Conservation Area, Merrill Road, monitoring
October 6 – 2:45-5 pm – Town-Wide Birthday Party, Community Outreach Event, Town Common. This is a recruitment opportunity to fill the remaining Commission vacancy.
TBT – Eli Masterson for George Duranti, 16 Sumner Mountain Road, building construction

Unanticipated Business:

Bob Douglas noted upcoming Conservation Commissioner training opportunities available through the Massachusetts Association of Conservation Commissions (MACC) including the Fall Conference on October 19, 2024.

It was agreed that the Commission would return to the process of updating the regulations at future meetings, a task set aside temporarily during the busier summer schedule.

It was also agreed that the Commission would seek new applicants to fill the current vacancy through a variety of means like the Town newsletter and the Community Outreach Event. Tom Siefert indicated that he was also still interested.

Public Comment: See 31 Lakeview, above

Motion to Adjourn: made by Bob Douglas; Second: Scott Kahan; Voting Aye: Beth Willson, Scott Kahan, Janice Rowan, Bob Douglas

Meeting Close: 9:20 pm

Next Meeting: October 10, 2024 at 7:00 pm

Documents Used:

Order of Conditions for MA DEP/Permit # 286-0286

Petition to Amend Order of Conditions Dated 5/27/22 for 31 Lakeview Road Shutesbury, Massachusetts, filed by James F. Martin, Esq., Pullman and Comley