

Shutesbury Conservation Commission

Minutes – February 13, 2025

Approved – March 14, 2025

Virtual Meeting

Commissioners Present: Janice Rowan, Beth Willson (Chair), Mare Fox, Scott Kahan, Bob Douglas

Commissioners Absent: None

Other Staff Present: Matteo Pangallo (Land Use Clerk)

Others Present: Kathy Salvador, Joyce Braunhut, Tom Siefert, Terry Bernard, David Bernard, Miriam DeFant, Mary David, Mike S.

Call to Order: 7:01pm

This meeting is being recorded.

Comments from the Chair

Willson has sent the Commissioners information about the upcoming spring MACC conference on March 1 and encourages them to attend. The Commission has funding to reimburse for the cost of attendance. Fox asks if she should do some of the training sessions before attending the conference. Willson suggests doing both and that often some of the training sessions are available at the conference itself. Douglas notes there are some very good classes at the conference this year, as well as a free lunch and a panel about the removal of the Dudleyville dam in Shutesbury.

Willson mentions National Grid's Central to Western Massachusetts Energy Improvement Project, which will impact the transmission lines that cross Pratt Corner Road. They will be eventually submitting a NOI, but it may take a year or more. They have already filed an Environmental Notification Form with MEPA, which allows for public comment. Michael DeChiara has presented to the Select Board about submitting comments on behalf of the Town and Willson has provided him with Conservation Commission perspective for those comments. Willson can share the ENF and DeChiara's comments with the Commissioners. The project involves replacing towers and taking down trees to open the right-of-way, and seems typical for the kind of projects they have been doing in recent years.

Mark Stimson will be unable to attend tonight's meeting. Willson would like to reschedule him for a night that is not a regular meeting in order to allow him sufficient time for the training. Willson inquires about the availability of other Commissioners at particular times. Stimson did raise the idea of holding a joint training session with other towns as well.

Willson notes that the Forest Cutting Plan the Commission received this week will be on the March agenda. The Commissioner's role is to comment on them, within 10 days, but has no regulatory authority over them.

Review and vote on minutes of January 30, 2025

Motion to approve the minutes of January 30, 2025: Kahan; second: Fox. Approved unanimously.

Willson recognizes Miriam DeFant who asks to offer a comment on the ENF from National Grid. DeFant states that she and Janice Stone have reviewed the ENF and are preparing comments on it. She describes her understanding of the Commission's role in evaluating the project and its impact on the area's wetlands and she expresses her intention to submit comments on the ENF.

Site Visits Update

Rowan reports of a site visit with Fox to 375 Locks Pond Road to see where some trees are to be removed. There is an intermittent stream within 50 feet of both trees and the owners are concerned about proximity to buildings for safety reasons. Rowan and Fox had no concerns about the work. Fox notes that the owner planned to have someone climb the trees to remove them. Willson asks about the stream. Rowan describes it as more of a drainage ditch.

Rowan notes there were two more site visits scheduled for the library site but the weather on both occasions resulted in nobody on site. New visits will be scheduled again soon.

Land Management Update

Kahan reports that the three CPA grant applications have been submitted to the Community Preservation Committee. He also spoke with the representative from the snowmobiler club and discussed their potential interest in helping with work on the South Brook trails and could submit a letter of support for the grant. Kahan hopes they can provide additional donated labor beyond what was described in the grant application.

Order of Conditions for 58 Lake Drive

Willson shares the draft Order of Conditions for 58 Lake Drive and reminds the Commission that the project was to square off an existing deck and put in some stairs. She reviews the findings of fact and the special conditions for the project.

Douglas asks to review the condition regarding erosion controls, which Willson reads over.

Douglas notes that the order seems to make clear that there will be impact on the waterline.

Motion to approve the Order of Conditions for 58 Lake Drive: Fox; second: Douglas. Approved unanimously with one abstention (Rowan).

Vote to allow Town Attorney to Review Conservation Restriction for Lot H-151

Willson talked with Donna MacNicol about reviewing the conservation restriction for Lot H-151. She asked the owner, Mark Wightman, if that would be acceptable to him and he agreed. The Commission needs to vote to approve her looking at the restriction for them.

Kahan asks about the wording of the motion because it insinuates a conflict of interest but he does not see one here. Willson says that she thinks MacNicol wanted the Commission to know she had worked with Wightman in the past and that the Commission is okay with that.

Motion to approve Town Counsel, Donna MacNicol, to represent the Conservation Commission on the review of a conservation restriction for the property owned by Mark Wightman on Leverett Road, Lot H-151, in Shutesbury, MA, even though Mr. Wightman was a former client of the Town Counsel approximately ten years ago concerning a property not located in Shutesbury: Fox; second: Kahan. Approved unanimously.

Willson hopes to have the conservation restriction for deliberation and vote on March 13. Kahan asks to have MacNicol's comments in advance of that meeting to expedite the discussion. Douglas asks about the process after the Commission's review. Willson notes that it has to undergo a legal signature process with multiple parties before it goes to DEP for their review.

Certificate of Compliance for 31 Lakeview Road

Willson describes the project as house construction on the Sawmill River. Willson and Rowan did a site visit in December to confirm that everything in the Order of Conditions was done and they found everything to be compliant and complete. Rowan agrees that everything was complete and the final piece of the required sign marking the resource area was installed.

Willson shares the draft complete Certificate of Compliance and notes that the owners submitted the required Form 8A and fee. She reviews the contents of the draft Certificate and notes that there are no ongoing conditions. Douglas asks if maintenance of the stone wall should be an ongoing condition. Willson suggests making it maintenance of the no-disturb boundary because there are posts beyond just the stone wall and revises the draft Certificate accordingly. She notes that most of any other ongoing conditions that might be desired by the Commission were addressed in the previous Amended Order of Conditions.

Kathy Salvador thanks the Commission.

Motion to issue the Certificate of Compliance for 31 Lakeview Road: Douglas; second: Rowan. Approved unanimously with one abstention (Fox).

Administrative Approval Request for 31 Lakeview Road

Kathy Salvador explains that an arborist has identified two trees on the roadside that have died and should be removed. Willson states that she has shared with the Commission a map of the property showing the trees to be removed.

Douglas asks if the Commission requires the replacement of trees as a condition or mitigation. Willson notes that the entire property is buffer zone and within the riverfront area. Pangallo shares the map of the property. The trees are in the outer 100 and might be outside the buffer zone for the wetlands. Willson notes that in the outer 50 feet there is a requirement for a one-to-one replacement. The Commission could therefore ask for a replacement. Salvador notes that they plan to plant to replace the trees but not in exactly the same places because the stumps will remain. Willson asks what kind and Salvador answers they can duplicate the kind of trees for the planting.

Motion to approve the Administrative Approval Request for 31 Lakeview Road: Fox; second: Douglas. Approved unanimously.

Administrative Approval Request for 375 Locks Pond Road

Terry Bernanrd explains there are two large trees near their garage and large branches are falling on the structure. They would like to remove both. Pangallo shares the map showing where the trees are located. David Bernard explains one is a 100' pine and one is a maple. They had an arborist look at them and confirm they are dying. Willson asks if they plan to replant and David Bernard answers they will if they have to. Willson notes the proximity of an intermittent stream.

Willson asks how close the inner tree is to the stream. David Bernard answers that it is about eight feet. Willson finds that proximity a bit concerning. She asks how the tree would be removed and the Bernards did not know yet. She notes that using larger equipment that close to the stream could impact it, and erosion controls might be needed. David Bernard notes that a week ago the power company piled brush in the stream during their ongoing tree work on Locks Pond Road. Willson makes note of that. Terry Bernard notes they can put a buffer up and that large trucks could not access that tree. David Bernard offers to tarp over the stream, which is really more of a run-off from the road.

Willson suggests that since there is no information about the equipment to be used, the Commission will require erosion controls and that there would need to be a one-to-one replacement planting in the same general area and similar species. The Bernards indicate that those are acceptable to them. Willson will include them in the Administrative Order.

Motion to approve the Administrative Approval Request for 375 Locks Pond Road: Rowan; second: Fox. Approved unanimously.

Bylaw Regulations

Fox asks if her comments on the Word Document are being shared automatically with Willson. Willson answers that they need to be sent back to her individually. In the past they had been making collaborative comments on a shared Google Doc but that was determined to be noncompliant with Open Meeting Law.

Discussion of the revisions begins with Section 8, on riverfront areas. No revisions are suggested for the preamble or definitions. Fox asks about the location of riverfront in Shutesbury. Willson notes the Sawmill River and Kahan adds the Swift River along the s-curves into Leverett.

Willson suggests removing 8.3.2 in the presumptions section. Douglas asks why. Willson notes that it presumes the MAHWL is coincident with the BVW but this might not always be the case. Douglas says he understands the logic in removing it.

In 8.4.1, in performance standards, Kahan suggests that it would be hard to comply with and does not seem particularly clear. Willson notes that this language does get repeated elsewhere in the Regulations and that it is meant to indicate that no work is allowed unless the applicant can show that the work will not have an adverse effect on the resource area and the values described in the Wetlands Protection Bylaw. Kahan agrees but notes that it is quite subjective. He asks if this kind of language is in the Wetlands Protection Act and, if so, whether it needs to be repeated here. The Chair recognizes DeFant who notes that this language is in the CMR, as is much of the language in the proposed Regulations.

Kahan raises a similar concern for the paragraph on alternatives analysis at 8.4.2.3. He asks if there is an easier way to define what the Commission would need to see to be convinced. He is worried that the language is too vague and leaves the method for determining if a project would have no impact too subjective. DeFant says that this too is from the State regulations and that they did not want the Town's regulations to be weaker than the State's. Douglas indicates that he would prefer to leave the language in the regulations because it is good guidance and aligns with the State's requirements. Kahan asks if there is anything new here or if it is just regurgitating the State's language. Willson notes that most of this whole section regurgitates from the State. DeFant explains that there are some places where there are important distinctions from the State regulations but also that those places where it follows them the goal is to make sure the Town is aligned with what the State is doing. Kahan thinks there is a better way to do this than to just repeat the State's law in the Town's version. He thinks this would be a good question for Town Counsel because the last time they consulted with an attorney on this they recommended referencing but not repeating state law. Willson thinks it should be the opposite: the regulation should use full language rather than referencing sections in state law because those sections could change. By using the full language, the Town's regulations remain consistent even if the State's regulations change. Kahan notes that State law typically changes by becoming more restrictive which could lead to a situation where the Town's regulations become more lenient over time as the State's regulations become stricter. Willson notes that they could always use the phrase "as amended" for places where they do want to simply reference the State law.

Kahan asks if in 8.4.2.5 the Commission is asking for a mandatory conservation restriction or if the required strip of vegetative cover is only during the project. DeFant answers that this is in the State regulations and that at the Commission's discretion they can require it. She does not know whether the land use is intended to be permanent or if it is just when it is permitted.

In Section 9, Kahan suggests adding an exemption for invasive species to the vegetation removal section. He thinks these regulations should only apply to removing native species. Willson agrees and suggests that they add that language in places where it is relevant. She notes that there

are some species that are not native but are also not considered invasive and that there are still reasons the Commission might want to know if someone is removing invasive vegetation.

In 8.1.3, Willson suggests changing “native” to be broader and include non-native species that are not considered invasive. Kahan cites 8.3.5 and 8.3.6 as examples where this language comes up in terms of vegetation other than trees.

Willson asks the Commissioners for their thoughts about the mitigation replacement numbers included in the regulations. DeFant explains that this was a simplification of the previous regulation’s complicated chart of replacement by tree dimensions. This is modeled on what is done in many other towns, with the ratio based on closeness to the resource area rather than the size of the tree. Rowan does not think that replacing with the same species is always the best because as a forest matures the species change over time, so planting should match the successive growth of the forest. She also notes that with climate change, we are likely going to be extending what we mean by “native.” Kahan suggests striking the same-species requirement. Rowan notes that there are times where a non-native species would be preferable to a native one, such as with a hybrid chestnut which has better odds of survival than an American chestnut. Kahan suggests replacing the language to simply specify simply that the replacement not be an invasive species. Rowan agrees with that, as does Willson. Douglas suggests the language be revised to state that the replacement species should be native or otherwise approved by the Commission, which would create a waiver process.

Willson corrects a typographic error in 8.3.3.

In 8.3.5, Willson thinks “native” should not be included because the Commission still has an interest in protecting a resource area from any kind of work that would involve removing any kind of vegetation, whether native or not.

In 8.3.6, Willson agrees with Kahan that it should be clear that in-kind replacement does not include invasive species. DeFant raises the idea of adding “native” to the definitions section. Kahan suggests they adopt the State’s definition. Willson revises 8.3.6 to exclude invasive plants from the in-kind replacement requirement.

Rowan is concerned about the use of “must” in 8.3.9.1 because again the same species is not always preferable for purposes of replacement. She suggests using “must” for the non-invasive requirement but “should be” for the native requirement. Willson makes those revisions and adds that a particular species approved by the Commission is also acceptable.

Rowan asks what happens if plantings are not successful, as required by 8.3.9.4. Willson notes, the language indicates that the Commission can then require re-planting.

Rowan asks if Administrative Approval Requests will still be included in this section. Willson notes that they will now be called Small Project Permits.

Willson added section 10, limited projects, at the end of the article.

Unanticipated Business

Willson will survey the Commission about holding a special meeting to conclude discussion of the regulations revisions before the March regular meeting. Douglas agrees, especially because the busy season is about to start.

Willson informs the Commission that a large Bundled NOI will be coming from the Highway Department, FRCOG, and PVPC for the March meeting.

Pangallo asks the Commission to encourage anyone they know to join the ZBA, which is now down to just one full member.

Willson thanks Pangallo for the work he is doing to digitize old project files before the documents are destroyed as part of the ongoing cleanout of Town Hall.

Adjournment

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

Adjourned: 9:12pm

List of Documents Used:

- Minutes of January 30, 2025
- Draft Order of Conditions for 58 Lake Drive
- Draft Certificate of Compliance for 31 Lakeview Road
- Map of location of two dead trees to be removed at 31 Lakeview Road
- Map of location of two trees to be removed from 375 Locks Pond Road
- Proposed revisions to Wetlands Protection Bylaw Regulations