

## **Shutesbury Conservation Commission**

Minutes – June 12, 2025

Approved – July 10, 2025

*Virtual Meeting*

**Commissioners Present:** Beth Willson (Chair), Scott Kahan (left at 7:00pm), Mare Fox, Bob Douglas, Janice Rowan

**Commissioners Absent:** None

**Other Staff Present:** None

**Others Present:** Miriam DeFant, Jill Buchanan, Billy Spitzer, Tom Siefert, Mary Anne Antonellis, Sharon Weizenbaum, Penny Jaques

**Call to Order:** 6:04pm

This meeting is being recorded.

### **Bylaw Regulations Revisions**

Willson shares the draft regulations and discussion begins with section 19, Emergency Projects. Douglas asks how emergency calls are currently handled. Willson answers that the call typically comes to the Land Use Clerk or to her and then the Commission would need to do a site visit and have authorization from a public authority that there is an emergency. The Chair can sign off on an Emergency Certification even if the Commission has not yet met to discuss the matter, in which case the Commission needs to vote to ratify the Certification at their next meeting.

Rowan gives the example of the home on Wendell Road where the parking area was washed out this past spring and asks what would have happened if the homeowner was not able to contact the Commission before they needed to clear a parking area. Willson explains that ideally the Commission would have the opportunity to review the project after the fact and can require the submission of a post-project application, including an RDA or NOI.

Rowan asks what happens if there is a State-declared emergency. Willson answers that in those situations no Emergency Certification is required because the State's emergency declaration will stipulate what kind of work DEP is allowing because of the emergency and for how long.

Willson reviews the Emergency Certification provisions in the regulations and explains that they follow what is used in the Wetlands Protection Act. She reviews other provisions relevant to emergency situations in particular areas.

Douglas considers the section complete and is satisfied with the way the Emergency Certification process works.

In section 20, Appeals, Douglas asks if the court referenced is the Superior Court or if appeals would go to DEP adjudication. Willson answers that if it is an appeal of something that was

approved under the Wetlands Protection Act, the appeal goes to DEP. If it is something only approved under the Town's Bylaw it would go to the court of jurisdiction. Fox notes that the court of jurisdiction could be a district court rather than the Superior Court.

In sections 21 (Severability), 22 (Effective Date), and 23 (Amendments) there are no comments from the Commission.

In Article VI, part 1 (Timeframes for Submission of Documentation), Willson asks for Commissioners' opinions on the requirement that materials be submitted at least ten days prior to a public hearing. Douglas states that in his experience he has used fourteen days because it usually means material can be submitted at one meeting and considered at the next, and allow time for abutter notifications to go out. Willson and Rowan both also agree that fourteen days seems more familiar and makes sense. Willson changes ten days to fourteen days. The Chair recognizes Miriam DeFant who points out that the Commission must hold a hearing for an RDA within 21 days. Douglas concurs and notes that the original language of 10 business days is itself two weeks already and would account for vacation days or holidays. Willson agrees and reverts the paragraph to the original language of ten business days.

In section 2.6, Douglas asks about the requirement in 2.6.3 that plans be drawn to scale and if hand-drawn sketch plans would be allowed for RDAs. Willson answers that the Commission has done that in the past for RDAs and for AARs, or Small Project Permits, and could do the same going forward. She proposes adding language stating that the Commission can waive the plans-to-scale requirement and Douglas agrees. Rowan asks if it should be formulated in such a way that the plans-to-scale be required, rather than waived, and Willson thinks it would be preferable to reserve the requirement and only offer the waiver if it is determined appropriate by the Commission, such as for small or minor projects. Douglas agrees with Willson and provides an example of an instance when a waiver of an engineered drawing might be appropriate. Rowan suggests the Regulations still indicate that the option of a hand-drawn drawing might be allowed with the Commission's permission. The Chair recognizes DeFant who points out that the Wetlands Protection Act requires an engineered, stamped plan for RDAs. Willson removes the proposed revision to 2.6.3 because the Town cannot be less restrictive than the State regulations. Douglas notes that the Mass DEP checklist instructions for RDAs states that a site plan or sketch can be submitted. He proposes that this be tabled and researched but he thinks that sketch plans are permissible under the State regulations because engineered plans can cost three to five thousand dollars, which seems unreasonable to require for minor projects. Willson agrees to table the question and research it further.

Willson notes that the requirement of a plan is repeated again in section 3.5. Douglas adds that section 4.3 states the Commission may require that a professional assist with a complex filing, so the Commission does have the opportunity to ask for or require more information. He notes that section 5.7 means the Commission may determine that a particular project does not need to provide specific information. Willson wonders if the State requires that the plans accompanying NOIs be stamped. Douglas responds that the State's instructions for NOIs also include the possibility of a waiver for stamped plans.

The Chair recognizes DeFant who notes that she was incorrect and that the State's RDA instructions mention scale but do not require stamped plans. She thinks the Commission has the authority to waive stamped plans for AARs, RDAs, and NOIs and notes that it has done so in the past when scaled drawings were not necessary. Willson agrees and wants to do more research into the provisions of section 5.7 to be sure it is correct.

Willson suggests going back to look at section 6.1, on site visits, in light of the revisions made to the section on enforcement. Douglas states that the language in the draft regulations looks like it aligns with what is indicated in the Wetlands Protection Act.

In section 6.2.3, Willson does not think the Commission can require people to post their lot number or house number prior to a site visit. Douglas thinks it is important to have it so the Commission can locate the project site. Willson agrees to keep it. Fox asks if this has ever been a problem with this on a past site visit and Willson does not recall an instance of it. Douglas notes that sometimes projects are done on unnumbered lots, so this requirement would be useful. The Chair recognizes DeFant who notes that this was taken from some other towns' regulations and it is a way of indicating to the applicant that they are responsible for making sure the Commission is in the right place and that the Commission is not walking on someone else's property. Fox thinks it should be made clear that the applicant makes sure the Commission can find the lot, which might mean having a person present. Willson decides to keep the language in the draft regulation.

Rowan raises a concern about fees in section 7.1.2 and the lack of a cap on how much the Commission can charge to an applicant for the Commission hiring consultants or engineers. Willson explains that there would be a process of soliciting competitive quotes that would be shared with the applicant but that it would still be within the Commission's authority to get third-party reviews when needed. She notes that such reviews are often highly valuable, particularly for larger projects. Douglas agrees that it is critical and allowed under the Wetlands Protection Act that the Commission can retain a third-party independent consultant to review a complex or large project.

Willson notes the fee schedule in the Regulations has already been approved by the Select Board and so it cannot be revised now.

In section 8, Willson notes that there is a limit that fees charged by third-party consultants must be reasonable, which likely reflects the language in State law, and which gives applicants a legal opportunity to object to fees they consider unreasonable.

Discussion of the draft regulations will begin next time with section 8, on consultants and consultant fees.

### **Comments from the Chair**

Willson shares that Rowan's service on the Commission will be ending on June 30 and she is not seeking re-appointment. She expresses her gratitude to Rowan for all she has done for the

Commission and the Town, particularly taking the lead on site visits. Douglas also thanks Rowan for all her help and service over the past year and a half. Fox also thanks Rowan.

### **Review and vote on minutes of May 22, 2025**

Motion to approve the minutes of May 22, 2025: Fox; second: Douglas. Vote: Douglas - Aye; Fox - Aye; Rowan - Aye; Kahan - Aye; Willson - Aye. *Motion approved unanimously.*

### **Site Visits Update**

Rowan reports that Fox will be taking over site visits for the new library project.

On May 27, Rowan visited Lot O-32 and found nothing much to report. Sediment levels were low along socks and curtains and the grass is germinating. If the settling ponds and wattles are repaired, and landscaping completed, everything will be fine.

On June 10, Fox and Rowan visited Lot O-32 and Fox reports that Rowan showed her what to look for on the property. She noted that there are some places where it seems additional wattles need to be added rather than simply putting new ones on top of old ones. The retention ponds show evidence of dirt accumulation on top of the rocks. Rowan notes that she provided photos of places where the wattles are being overtopped by mud. She observes that there has been a tremendous amount of rain lately and another high rainfall could cause them to leak out. She notes that the contractor has taken to digging out in front of the wattles in an attempt to delay until the landscaping work can begin. Most of the work around the building is done and the drainholes are in place, but the next big problem could happen when they bring up the dirt at the building. Willson thinks they should clean out the basins before they bring the ground up and landscape because they will have to bring in large pieces of equipment to clean them out so they can work as infiltration basins. Rowan reports that the contractor was trying to decide about raising the sides of the pond nearest the road. Fox notes that between the two visits she took, the basin closest to the street was definitely more filled in. Willson thinks the contractor needs to be told to think about the timing of cleaning out the ponds before the landscape works. Rowan suggests Willson visit the site with Fox and her again on June 24.

### **Land Management Update**

There are no updates.

### **Administrative Approval Request for 74 Pratt Corner Road Vernal Pool Identification**

The Chair recognizes Miriam DeFant who explains that she has shared with the Commission information regarding a pool on her property at 74 Pratt Corner Road that she would like certified as a vernal pool by Natural Heritage. She is asking for an opinion from the Commission that the pool is a protected resource area under the Town's Wetlands Protection Bylaw. She has submitted an Administrative Approval Request and can drop off the fee payment at Town Hall tomorrow.

Willson notes that under the State's definition of a vernal pool, as with other resource areas, there is a time limit on the delineation, even though Natural Heritage's process does not recognize a time limit, and the Bylaw follows the Wetlands Protection Act. DeFant notes that under the definition of vernal pools in Bylaw, it would always be a vernal pool unless someone physically altered the resource area. She thinks the Wetland Protection Act's three-year time limit would not make sense because then it would have to be documented and resubmitted every year, which seems onerous. Willson responds that all wetlands can naturally change or dry up which is why all resource area delineations are, under the Act, good for only three years. DeFant asks what data would be required to document that the resource area is still a vernal pool. Willson explains that it would need to follow the same delineation criteria each time. DeFant is concerned that in a given year it might not meet one of the criteria and thus not be approved as a vernal pool for that three-year period. Willson explains that the delineation would still need to be submitted each period, just as any other wetland area would need to have its wetland delineation renewed at the end of the period.

Douglas sympathizes and agrees it is tricky and expensive to do a full delineation. He wonders if simply having the designation noted in the minutes would be sufficient as a placeholder for future purposes if someone someday wanted to develop near the pool. DeFant feels this is different than delineating a BVW because a vernal pool occurs within a specific window of time each year and, while a particular breeding species might not be evident in a given year, the morphology and physical characteristics of the pool would remain and thus allow for it to still be identifiable as a vernal pool. She expresses concern that this could expose the resource area to harm by work undertaken in proximity to it, such as the utility line tree work planned for the area during the breeding season.

Willson asks if Ward Smith's delineation marked the pool. DeFant answers that he conducted his delineation in March, which is not within the breeding season needed to identify the pool. She notes the challenges of delineating a vernal pool because it requires multiple visits, including at night, which is burdensome for a resource area where there is no proposed work currently.

Willson proposes that the Commission recognizes that the applicant has come forward with evidence that part of the BVW delineated in March 2025 is a vernal pool. She notes that the evidence provided clearly shows that it is a vernal pool and that it should be protected. She

suggests that when the BVW expires and if a new one is sought, the new delineation includes designation of the vernal pool. DeFant considers that suggestion too expensive because it would require multiple site visits during off hours. Willson explains that what DeFant is thinking of is what is required by Natural Heritage to have it certified; what Willson is describing is having the Commission formally agree now that it is a vernal pool based on the information provided.

DeFant notes that under the Bylaw and regulations, after three years, someone who wanted to contest the existence of the pool would have to provide evidence of such, but Willson's proposed course of action would put the burden on DeFant to prove that it is a vernal pool. Willson agrees because that is how the State's Wetlands Protection Act works.

Willson notes there has also already been a site visit to the location because of the recent Emergency Certification on the property. Douglas confirms that he did the site visit and what he saw was a vernal pool. DeFant adds that they will be submitting a new Emergency Certification for the continuation of that other work.

Motion that the Commission recognizes that the area identified by the applicant at 74 Pratt Corner Road is a vernal pool and that if a new delineation is sought for the existing BVW the pool should be identified within that delineation: Douglas; second: Fox. Vote: Rowan - Aye; Fox - Aye; Douglas - Aye; Willson - Aye. Motion approved unanimously.

### **Discussion of Restoration Projects at Lot O-32**

The Chair recognizes Mary Anne Antonellis who reports that Ward Smith came to Lot O-32 for his required fourth visit and looked at the vegetation in the restoration area on the east side of the property. Jaques notes that it was BVW2 and Antonellis adds he also saw BVW 3 and considered the vegetation in both areas to be successful and meeting the goals of the restoration. Jaques asks if the Commission wants to do a site visit or if the report is sufficient because they want to apply for a request for a Certificate of Compliance. Willson indicates she is satisfied with the report but since they will be there on June 24 they can also look at the restoration areas just to confirm. Jaques agrees and asks to be notified after the site visit so they can submit the request for the Certificate. Antonellis will meet the Commissioners for the site visit.

### **Unanticipated Business**

Douglas asks the Commission if he can serve as the Commission's representative on the Lake Wyola Advisory Committee because that seat on the Committee has been empty since Mary David left the Commission. He notes that he knows Lake Wyola, is a member of the Lake Wyola Association, and as part of his professional work he oversees three other lakes; he also has attended Committee meetings in the past.

Rowan asks if the Committee gets to approve or disapprove of the recommendation from the Commission. Douglas notes that the Committee is required to have a representative from the Commission and Willson explains that the Commission can choose its representative.

Motion to approve Bob Douglas as the Conservation Commission's representative on the Lake Wyola Advisory Committee: Rowan; second: Fox. Vote: Rowan - Aye; Fox - Aye; Douglas - Aye; Willson - Aye. Motion approved unanimously.

Douglas reports that the Stormwater Erosion Task Force has applied for a grant from FRCOG to study the sedimentation going into the lake, which could lead to future projects. He is enthusiastic about the Task Force and the work it has been doing. Willson asks if the Task Force will keep going after this grant is complete. Douglas answers that, per its charge, the Task Force will disband after it makes its recommendation to the Select Board this month. He notes that erosion going into the lake has been a known issue since the 1990s and it may continue to need future work.

Willson states that the Commission will meet at 6pm for its next meeting to finish work on revising the regulations. After the discussions, she will make a clean copy and red-line copy and then the Commission will hold a public hearing on them before voting on them.

## **Adjournment**

Motion to adjourn: Rowan; Douglas: second. Vote: Douglas - Aye; Fox - Aye; Rowan - Aye; Willson - Aye. Motion approved unanimously.

**Adjourned:** 7:52pm

## **List of Documents Used:**

- Draft Bylaw Regulations
- Draft minutes of May 22, 2025
- Photos of wattle fences at Lot O-32
- Email from Miriam DeFant with information regarding a vernal pool at 74 Pratt Corner Road
- Administrative Approval Request for 74 Pratt Corner Road