

Shutesbury Conservation Commission Meeting Minutes
April 23, 2020 Virtual Meeting

Commissioner Penny Jaques/Chair calls the meeting to order at 7:00p.

Conservation Commissioners present: Penny Jaques/Chair, Robin Harrington, and Liam Cregan

Conservation Commissioner absent: Russ Mizula

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Karen Keegan, Roy LeClair, Claudia Citkovitz, Diane Jacoby, Henry Geddes, Andy Regan, Robert & Rebecca Edelson, Ashleigh Pyecroft, Mary Lou Conca, Julie Rypysc, Sarah Bista, Kenneth Elstein, and Katie Cerow

Statement relative to conducting virtual meetings following the Governor's restrictions on public meetings is read into the record by Scott.

Harrington moves and Cregan seconds a motion to approve the 4.9.20 meeting minutes. Roll call vote: Harrington: aye, Cregan: aye, and Jaques: aye; the 4.9.20 meeting minutes are approved as presented.

Emergency Certificate: Subsequent to the 4.23.20 site visit to observe a beaver dam and newly created pond off Town Farm Road, Jaques completed and signed the Emergency Certification Form. Harrington and Cregan have received and reviewed the Emergency Certification for the installation of a leveler pipe to lower the pond level sufficient enough to prevent overflow onto Town Farm Road. Cregan moves and Harrington seconds a motion to ratify the 4.23.20 Emergency Certification Form completed and signed by Jaques. Roll call vote: Harrington: aye, Cregan: aye, and Jaques: aye; the motion carries. Scott will forward the Certificate to Michael Callahan/Beaver Solutions, Catherine Hilton/Board of Health, Shutesbury Highway Department, and Mark Stinson/DEP Circuit Rider.

Jaques reads a statement to the guests interested in the ANRAD public hearings: at the 4.9.20 meeting, the Commission voted to not hold virtual public hearings and that the ANRAD public hearings be postponed until they can be held in person; the purpose of an ANRAD (Abbreviated Notice of Resource Area Delineation) is to confirm the wetland boundary and no projects are associated with an ANRAD; there may be projects proposed in the future and, if a project is proposed, a Planning Board special permit and a required public hearing will allow time for the public to weigh in; at 7:30pm and 8:00pm, the respective public hearings will be continued to a future date.

Chapter 53 Section 17 of the Acts of 2020: Scott reports that during the 4.22.20 MSMCP weekly Zoom meeting, KP Law provided guidance, protocols, and sample documents for using electronic signatures.

375 Locks Pond Road/Bernard: Scott reads the 4.20.20 email from Terry and Dave Bernard into the record; the Bernards have decided not to move forward with installing a full basement because the house is too close to Lake Drive; they plan, instead, to replace the existing sunroom

and deck using pillars similar to what is currently there. On behalf of the Commission, Scott will email the Bernards about the Commission's requirement for the installation of erosion control and that all excavated material and construction debris to be removed from the buffer zone.

57 Shore Drive/West: Commissioners have received and reviewed the 4.15.20 "57 Shore Drive – tear down permission" email from Donna West. Commissioners agree with Jaques recommendation that the stumps for the two cut trees may be ground providing the underground root structure remains, all demolition debris must be removed greater than 100 feet from the bank and the use of silt socks for erosion control rather than trenched haybales. On behalf of the Commission, Scott will email the required conditions to West.

South Brook Conservation Area Intern: Scott summarizes the 4.15.20 email from Kayla Speros. Jaques recommends the trail map dimensions be 11x17"; she will contact Speros to follow-up on trail mapping questions.

Lake Lowering Memorandum of Understanding: Follow-up by Mark Rivers/Lake Wyola Advisory Committee remains pending.

Shutesbury Highway Department Annual Project List: Response from Highway Superintendent Tim Hunting remains pending.

174 Locks Pond Road/Olszewski: Per Scott, the initial request for a Certificate of Compliance for DEP #286-0169 is not under SCC's jurisdiction; because a Superseding Order of Conditions was issued by DEP, it is their responsibility to issue the Certificate of Compliance.

Jaques reviews her prior statement regarding the ANRAD public hearings noting that they will be continued to such time as they can be held in person; there will be no discussion regarding the ANRADs scheduled for 4.23.20.

Continue Public Hearing for ANRAD at Lot ZD-37 (Montague/Carver Roads) at 7:30pm: Jaques moves and Harrington seconds a motion to continue the public hearing to 5.14.20 at 7:30pm. Maria Firstenberg/TRC, per her 4.9.20, email agrees with this continuation. It is noted that if the State of Emergency remains in effect on 5.14.20, the public hearing will be continued to a future date certain at that time. Roll call vote: Harrington: aye, Cregan: aye, and Jaques: aye; the motion carries.

32 Lake Drive: Scott: the Commission office became aware of the proposed septic plan because of an abutter inquiry; the Board of Health was contacted and forwarded the site plan to the Commission; response from Jeff LeBeau/designer remains pending. Commissioners have received and reviewed the site plan (presently visible via screenshare) dated 3.14.20 "Subsurface Disposal System Site Plan" by Jeff LeBeau. Abutter Karen Keegan, owner of 34 Lake Drive, states concern about the distance from the lake to the proposed soil absorption system. Jaques: the proposed system appears to be about 80 feet from the lake; if the site is within 100 feet of the lake, a wetland permit will be required before work can proceed. To Keegan's question, Jaques explains that abutters within 100 feet of the proposed work site will be notified. Jaques refers

Roy LeClair to the Board of Health for questions about well locations, testing, and septic system requirements. Scott will follow-up with LeBeau and the Board of Health.

Shutesbury General Wetlands Bylaw: Jaques: the local bylaw protects areas not protected by the Wetlands Protection Act, specifically, isolated wetlands as defined in the “Regulations Under the Shutesbury General Wetlands Protection Bylaw”: “any area of one thousand square feet or more which meets all standards for vegetated wetlands under state law or regulations, except for the ‘bordering’ requirement”. It is noted that there are areas within the four ANRAD delineated sites that are under the jurisdiction of the local bylaw and that vernal pools are protected. Scott notes the need to review the fees, as defined in the Regulations, for consistency of use. Harrington, Cregan, and Scott will review the Bylaw and Regulations for updates and clarifications. It is noted that changes to a bylaw require a town meeting vote while a majority Commission vote is needed to change the regulations. Scott will create a check list for notifying relative boards about upcoming applicant public meetings and hearings.

Chapter 53 Section 17 of the Acts of 2020 (continued): Per Scott, DEP “Frequently Asked Questions” guidance relative to Section 17 remains pending. It is noted that as of this meeting, the Commission has not needed to decide about the use of electronic signatures, however, such a decision may need to be considered.

ANRAD Procedural Questions:

Ashleigh Pyecroft receives confirmation that the Shutesbury General Wetlands Protection Bylaw has not been updated since its passage in 1990 and states her understanding that there will be no discussion about the ANRADs, however, would like to ask procedural questions. Jaques explains that the wetlands on all four ANRAD sites were delineated by TRC in the fall of 2019 and that the peer review consultant, Emily Stockman/Stockman Associates, has visited each site with a TRC representative and a Commissioner. Jaques notes that the Commission has respect for and confidence in Stockman’s work; by visiting the sites in the spring, Stockman has expanded the wetland boundaries for each site; subsequent to this, TRC will revisit each site and submit revised site plans; Stockman will then revisit each site to verify the reflagging for the expanded delineations. Jacques continues: all of this work needs to be complete before the public hearing is resumed. To Pyecroft’s question, Jaques explains that wetlands are more visible in the spring.

Continue Public Hearing for ANRAD at Lot ZQ-6 (Baker/West Pelham Roads) at 8:00pm: Per Chapter 53 Section 17, Cregan moves and Harrington seconds a motion to continue the public hearing to 5.14.20 at 8:00pm. Maria Firstenberg/TRC, per her 4.9.20, email agrees with this continuation. It is noted that if the State of Emergency remains in effect on 5.14.20, the public hearing will then be continued to a future date certain. Roll call vote: Harrington: aye, Cregan: aye, and Jaques: aye; the motion carries.

ANRAD Procedural Questions (continued): To Pyecroft’s questions, Jaques explains that if an individual has information about potential wetlands within one of the ANRAD areas, they may send the information to Scott who will forward it to Stockman and confirms that there are no projects associated with the ANRADs. It is further explained that a potential solar array installation will require a Planning Board special permit application and a public hearing for which abutters would be notified. Jaques to Pyecroft’s question: Stockman is not finished with

the peer review. Jaques reviews the process: Stockman visits each site with a TRC representative, the wetland boundaries are expanded by Stockman, TRC has revisited and reflagged some of the sites; Stockman has yet to revisit these sites; this can go back and forth as long as it takes for the final delineations to be agreed upon then Stockman will issue a final report for each ANRAD. To Pyecroft's question, Jaques: the ANRADs address wetland delineation, runoff will be addressed by the Planning Board special permit. Pyecroft asks about changes to the topography due to tree cutting. Jaques notes that the Planning Board hired an engineering consultant to review the Wheelock site. Cregan notes that the Wheelock site has detention basins. To Mary Lou Conca's question, Jaques explains that there are currently no solar projects before the Commission and that the four ANRAD sites may or may not have future solar project proposals. Cregan to Conca's question: the ANRAD applicant is W. D. Cowls, Inc. and TRC is Cowls' representative. Jaques: at the initial hearing (1.9.20), it was noted that the telephone number listed on the applications is that of a solar developer. It is noted that the ANRAD applications are available on the Commission's webpage. Claudia Citkovitz asks what will happen if COVID-19 restrictions continue. Jaques explains that the Commission voted not to hold public hearings during the State of Emergency and that agreement on the ANRAD boundaries must be done in the context of a public hearing. Scott explains that Chapter 53 Section 17 gives land use permitting authorities the ability to pause public hearings during the State of Emergency. Pyecroft asks if a Planning Board special permit could be submitted without an ANRAD agreement. Jaques: it appears to be the applicant's intention to verify the wetland boundaries before applying for a special permit. For Conca, it is clarified that procedural questions are not part of the public hearings that have been continued to 5.14.20. Andy Regan thanks the Commission for the opportunity to attend.

At 8:19pm, Jaques moves and Harrington seconds a motion to adjourn the meeting. Roll call vote: Cregan: aye, Harrington: aye, and Jaques: aye; the motion carries.

Respectfully submitted,
Linda Avis Scott
Land Use Clerk