

Shutesbury Conservation Commission Meeting Minutes
October 22, 2020 Virtual Meeting Platform

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

Conservation Commissioner absent: Russ Mizula

Staff present: Tessa Dowling/ Land Use Clerk

Guests: Maria Firstenberg, Brian Patingre, Matt Styckiewicz, Becky Torres, Alan Weiss

Jaques calls the meeting to order at 7:03pm

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

Jaques welcomes Miriam DeFant to the Commission.

Jaques reads notice that Russ Mizula is stepping down from the Conservation Commission. Jaques will reach out to Mary David and the Select Board to see about appointing David for the open position.

At 7:08pm, Jaques moves and Harrington seconds a motion to approve the 9.24.20 and 10.16.20 meeting minutes with the following amendments:

-On the 10.16.20 minutes "pm" should be "am"

-On the 9.24.20 minutes the Baker Rd DOA conditions should be deleted from the section about the Lot D18 COC, and the Top of the Lake Commission contribution is \$500 not \$5000.

DeFant recusing herself from the 9.24.20 minutes part of the vote as she was not appointed at that time.

Roll call vote: Cregan: aye, DeFant: aye, Harrington: aye, and Jaques: aye; the motion carries.

Geocaching on Robert Frost Trail

Patingre has an interest in placing 3 to 4 geocache containers along the portion of Robert Frost Trail's that goes through Shutesbury near Pratt Corner Rd. Patingre would place the containers close to the trail to protect vegetation and protect geocachers' safety. He would also maintain and retrieve the containers at the end of their use. Cregan believes that portion of the Robert Frost Trail is on private property owned by Kevin Weir. Cregan will put Patingre in touch with Kevin Weir to see if he will allow geocache containers on his land.

Public Hearing for RDA at 29 January Hills Rd/Capelli

At 7:15pm, Jaques opens the Request for Determination meeting for the septic system project at 29 January Hills Rd. Weiss, representing the applicant, explains that the project is a septic repair not replacement and that erosion control measures are part of the design plan. The erosion control measures will stay in place until vegetation in the project area is established.

Per Harrington, the site visit was helpful.

Per Jaques, this is a straightforward project. There are no slope issues.

Per Weiss, on the plan it says there is a 72-hour notice to the Commission in relation to the installation of the silt fencing.

Cregan supports the conditions for this project that Harrington drafted.

Jaques asks the Commission if there are any other conditions to add.

Per Cregan, no additional conditions

DeFant asks whether the condition to tarp debris should extend to tarp all construction material that is on-site.

Jaques proposed that the new condition would ask that any unconsolidated materials that are a part of the project within the buffer zone would be tarped.

Weiss asks for upcoming meeting dates as there are two to three projects he is still working on around Lake Wyola.

Per Commission, December 10th and January 14th.

At 7:25pm, Cregan moves and Harrington seconds the motion to approve the Determination of Applicability. Roll call vote: Cregan: aye, DeFant: aye, Harrington: aye, and Jaques: aye; the motion carries.

The DOA was electronically signed at 9:00pm.

South Brook Conservation Area: intern & mapping

No movement on this project

Top of the Lake Conservation Area: follow-up; Chapter 91 license application

Jaques may have found an installer for the purchased fence for the Conservation area. Fence may be installed the weekend of October 24-25th.

Jaques mentions that a future site visit which abuts the Paul Jones Working Forest, which is a conserved forest along the “S curves” in Shutesbury. The property was purchased by State Fish and Wildlife.

Town of Shutesbury Budget & Capital Budget Request for FY22

The town is asking the Commission to complete the budget request forms. Per Jaques, the Commission does not usually have Capital Budget Requests. Dowling will bring the amount of the general budget request from Fiscal Year 21 to the next meeting.

Continue Public Hearing for ANRAD at ZD-37 (Montague/Carver)

The hearing was opened by Jaques at 7:30pm. Per Firstenberg, there are no new documents for the ANRAD for ZD-37. Firstenberg suggests moving this hearing to January. Per Jaques, money for peer review is in escrow? Firstenberg suggests holding the Pratt East ANRAD hearing in November and the Pratt West ANRAD hearing in December.

At 7:32pm, Jaques makes a motion to continue the ANRAD at ZD-37 (Montague/Carver) hearing to the January 14, 2021 public meeting. The motion is seconded by Cregan. Roll call vote: Cregan: aye, Harrington: aye, and Jaques: aye; the motion carries.

Continue Public Hearing for ANRAD at ZW-6 (Pratt Corner Road West)

At 7:33, Jaques opens the hearing and Cregan makes a motion to continue the ANRAD at ZW-6 (Pratt Corner Road West) hearing to December 10, 2020. The motion is seconded by Harrington. Roll call vote: Cregan: aye, Harrington: aye, and Jaques: aye; the motion carries.

Continue Public Hearing for NOI at Sawmill River Culvert Locks Pond Road/Town

Jaques opens the hearing at 7:26pm. Jaques asks if there is any new information. Jaques asks about the fact that the Commission is looking at 25% plans.

Per Styckiewicz, the plans are not at 100% until they are reviewed by MassDOT. There are no substantial changes between the 25% and the 100% plans although more details may be added. The Commission can add a condition to see the 100% plans that are stamped by MassDOT prior to the site visit, the pre-construction visit. Nitsch Engineering does not anticipate changes from the Army Corps.

Jaques asks to hear more about the excavation of the culvert. How will the equipment avoid resource areas?

Per Styckiewicz, the excavator can reach from the road. Heavy equipment will not go out of erosion control areas.

Per Jaques, and if there is a heavy rainstorm?

Per Styckiewicz, every slope should be stable even during a rainstorm. There are OSHA regulations/standards concerning slope stability.

Per Jaques, the 25 square ft. area that would alter the Bordering Vegetated Wetland has been removed from the plan.

Per Styckiewicz, the stonewall will be hand excavated so that the BVW will not be altered.

Jaques asks if other members have questions?

DeFant asks for more detail on the thalweg.

Per Styckiewicz, the thalweg is created from bringing in stone. At the outlet there will be a stone riprap blanket.

Per Jaques, why is the thalweg not continued downstream of the culvert?

Per Styckiewicz, there is already a scoured basin downstream of the culvert. The riprap will stabilize the area. The riprap will have a similar shape as the thalweg but not as precise due to the material.

Per DeFant, what is the source of the substrate?

Per Styckiewicz, up to contractor. Nitsch Engineering used sieve analysis to learn the substrate of the stream. MassDOT has standards for what materials can be used as substrate. They can work with the contractor to find the closest match between the substrate brought in and approved by MassDOT and the substrate size and texture of the stream.

Per Jaques, can the Commission specify that the contractor use natural substrate?

Per Styckiewicz, the substrate has to meet MassDOT standards so that may or may not be possible. Using native substrate may increase costs. The culvert will be *embedded into* the streambed. It might be possible to reuse the removed material but no guarantee.

Jaques asks if there are further questions from the Commission.

Commission says no.

Cregan states that since the Commission has all the information they wanted the hearing can close.

DeFant asks about dewatering plan.

Per Styckiewicz, the Commission can review scope of work, contractor schedule, and dewatering plan.

Per Cregan, the Commission can review the dewatering plan at the pre-construction meeting/site visit.

Per Jaques, asks will there be seeding to stabilize banks.

Per Styckiewicz, there are steep slopes but we are trying to reduce the impact the banks. The limit of work will stay within the erosion control barriers.

Per Jaques, within the erosion sock?

Per Styckiewicz, yes, erosion sock specified on plan

Per Jaques, can the Commission specify the seeds?

Per Styckiewicz, probably can specify the native seed mix to be used.

At 8:01pm, Jaques makes a motion to close the public hearing on the Sawmill River Culvert project. The motion is seconded by Cregan. Roll call vote: Cregan: aye, Harrington: aye, and Jaques: aye; the motion carries.

At 9:04pm, Jaques starts the discussion of the drafted conditions for the OOC and suggests adding the following conditions:

- trees marked for removal in the plan should be flagged for the pre-construction site visit

- all other trees should be protected

- if it arises that more trees need to be removed than were in the plan, the Commission needs to be consulted prior to removal
- the retaining wall on the upstream side of the culvert needs to be removed by hand. The stones from the wall will be saved for reuse in project (example, reuse the armoring downstream of the culvert)
- substrate harvested during construction will be used as much as is feasible within the culvert channel
- preference for use of native stones for the creation of the thalweg
- preferences that materials brought in to create the streambed inside the culvert are sized to match the streambed based on samples taken by Nitsch Engineering.

DeFant will look up MassDOT requirements concerning what materials can be used to create the streambed inside the culvert

Jaques will add the changes to the conditions and check with the commission on whether the changes are substantially different than discussed at the hearing.

At 9:12pm, Jaques makes a motion to issue the Order of Condition for the Sawmill River Culvert project with the changes and additions to the special conditions discussed at the hearing. The motion is seconded by Cregan. Roll call vote: Cregan: aye, Harrington: aye, and Jaques: aye; the motion carries.

Continue Public Hearing for ANRAD ZQ-6 (Baker/West Pelham)

Jaques opens the hearing at 8:03pm. Firstenberg explains that the ANRAD for ZQ-6 has a high number of wetlands so the solar project likely will not go forward but they want to complete the ANRAD. Firstenberg suggests continuing the hearing to February 11, 2021.

General update: Firstenberg explains that documents are owed to Emily Stockman and the Commission. TRC will provide PDFs and hard copies to the town hall. The original issues with wetland delineations were that TRC employee was using the Army Corps protocol and not the Massachusetts protocol. The employee has gone through training with Stockman and Firstenberg.

At the Montague project site Firstenberg created the corrected wetland maps. The corrections were done earlier in the growing season, which also helped. The first maps were created in October and November. Per DeFant, what time of year were the new submission maps completed?

Per Firstenberg, regular growing season July and August.

Per Harrington, we went to the Baker ANRAD during the drought, it looked different. Time of year matters.

Per Firstenberg, the Army Corps protocol requires both the hydrological and soil properties to reflect wetland conditions in order for an area to be considered wetlands. The Massachusetts protocol designates an area as a wetland if there are hydrological properties or soil wetland properties present. Both protocols also evaluate the presence of wetland plants.

Firstenberg describes the new ANRAD sites.

The Leverett Road site is 25 acres and near the Paul Jones Working Forest conservation land.

The second new project is 90 acres and located off Pratt Corner South.

After the ANRADs are completed the solar plans will be designed when possible to stay out to the wetland buffer zone. Pratt East will likely not require a Notice of Intent. Pratt West will likely require a Notice of Intent that may be filed in January 2021. The Montague/Carver site will likely also require a Notice of Intent.

Per Firstenberg, can the Commission have a proposal for Emily Stockman ready for the November meeting in regards to reviewing the new ANRADs?

Per Jaques, the decision needs to wait until the projects are submitted but the Commission will likely ask Stockman to peer review the new ANRADs.

Per Firstenberg, TRC would like to close Pratt East and open a new project.

Per Jaques, TRC will be sending out new public notifications (legal ads and abutter notices) due to the on-line format for the hearings, which is new since the original ANRAD notifications and there was a typo in the notice before. The new notifications may draw extra people to the hearings.

Jaques will check with Mark Stinson at DEP to check whether new Commission members can vote on ANRAD projects that opened before they were a member or not.

At 8:30pm, Jaques makes a motion to continue the ANRAD for ZQ-6 (Baker/West Pelham) to February 11, 2021 at 8pm. The motion is seconded by Harrington. Roll call vote: Cregan: aye, Harrington: aye, and Jaques: aye; the motion carries.

Site Visit Follow-up:

Forms from the October 4, 2020 site visits have been sent to Dowling and Dowling has followed up with landowners with permission for tree cut.

The Commission came to these conclusions after the site visits from the morning of October 22, 2020.

-In regards to the BPA for 453 Pratt Corner, the Commission did not find that the project was within jurisdictional areas so Dowling can sign off on the project.

-In regards to the request to cut down a tree on Hans Bietsch beach, the Commission approves the tree removal but asks that the stump be left in place and requests that shrubs or trees be planted in the area to prevent erosion of the steep slope.

-In regards to the tree-cutting request at 37 Shore Drive, the tree in question was not flagged and could not be found by the Commission. Dowling will reach out to the landowner again.

Old Peach Orchard CR Monitoring Visit

Jaques will ask the President of the Old Peach Orchard Homeowner Association to join the monitoring visit. Cregan could come for a late afternoon visit.

DeFant asks how long it would take. Per Jaques, the area is forty acres. The visit might go over an hour. Dowling reminds the Commission that there will be another visit in the spring if members are not able to attend this visit.

Per Jaques, there is some prep work that Dowling needs to do before the site visit. Dowling will check with Linda on this.

Jaques proposes Thursday October 29th at 4pm meeting at her house. Jaques will provide address to the Commission.

MACC Fall Conference/Fund use

Miriam has submitted her MACC Fall Conference to Dowling. Other Commission members did not sign up for the Conference.

Commissioner possible conflict of interest

DeFant explains that during the Wheeler solar project she was served a no-trespass order from WD Cows that does not have an end date. DeFant has spoken with personal lawyer, state ethics attorney, and the town council and has submitted a 23B disclosure form to the select board. DeFant has learned that she cannot go on site visits to Cows property but can vote on Cows property projects.

On a separate but related issue, commission member might have to recuse themselves from projects where they are an abutter. Abutters for ANRADs include landowners within 300 feet of the project and the Cows properties are large so they have many abutters. The thought is that abutters would have a financial interest in the outcome of the project due to changes in property values connected to the project. Jaques is within 500ft of the Carver property ANRAD but not within 300ft so is not an abutter.

Per DeFant, there is a process to not recuse if the Commission did not have a quorum due to recusing. Section 19 disclosure of conflict.

Jaques explains that only two Commission members need to go on each site visit, although it is great when the full Commission can go.

Per Cregan, DeFant's no-trespass order is just for Cows properties, which are not a usual part of the applications that come in front of the Commission.

Per DeFant, the wetland consultant is on the walks also.

At 9:16pm, Cregan moves and Harrington seconds a motion to adjourn the meeting. Roll call vote: Cregan: aye, Harrington: aye, DeFant: aye, and Jaques: aye; the motion carries.

Respectfully submitted,
Tessa Dowling, Land Use Clerk