

Shutesbury Conservation Commission Meeting Minutes
February 3, 2021 Virtual Meeting Platform

Conservation Commissioners present: Liam Cregan/Chair, Robin Harrington, Miriam DeFant, and, Mary David

Staff present: Tessa Dowling/ Land Use Clerk

Guests: Janice Stone, Don Wakoluk, Penny Jaques

Cregan 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.

Meeting Minutes 01.14.21

The review of the 01.14.21 meeting minutes was moved to the next meeting.

CPA Jaques South Brook Trails project

Jaques has submitted a Community Preservation Act (CPA) project to the Community Preservation Committee (CPC) that would map the South Brook Conservation Area trails and evaluate whether trails should be rerouted due to wetland impacts and what activities should be allowed on each trail. Jaques sent the Commission a draft of a support letter for the project to review and submit to the Committee before they meet on February 5, 2021.

Per Jaques, the project reflects a many year effort to meet 2001 management goals for South Brook. Various UMass students worked on the project but the Conservation Commission never ended up with that they hoped for. Jaques hopes the rerouting project, if approved by the CPC would improve the site and better protect the wetlands on the property. At 97 acres, South Brook is the largest parcel of conservation land owned by the town.

Cregan asks for a copy of the 2001 South Brook Management Plan. The plan is kept in the town hall and can be scanned by Dowling.

DeFant asks how much money Jaques asked for to complete the project.

Per Jaques, \$1500 to hire a professional to access site and advise on what trails to close or reroute. \$1000 for trail maintenance. The letter states that the Commission will contribute \$50 per year for trail maintenance. It would be better to have the trail assessment completed first before approving a new mountain biking trail.

Jaques hopes that abutters will take a long-term interest in the trail network and volunteer to help maintain it.

Per Stone, Eagle scout groups have helped with trail projects in South Hadley and other towns.

Per Cregan, Morse Hill Outdoor Nature Center students might also be interested in helping.

Per Jaques, this is a multi-step process which starts with getting approval for the project proposal from CPC. If approved, the trails assessment could take place during the growing season this year and trail work would start next year. Jaques hopes the end result will be a trail map that can be printed as a pdf and posted at the trailhead kiosk on site.

The Commission Chair and Land Use Clerk have not heard from Phil Parker since January 19, 2021 and are not sure what the status is of his CPC proposal to build a mountain bike trail at South Brook.

Jaques is willing to let the Commission know if she hears if the bike trail proposal is approved.

- At 7:29pm, DeFant moves and David seconds a motion to support the CPA project submitted by Jaques with the proposed letter signed by the Commission Chair Cregan on behalf of the full Conservation Commission. Roll call vote: David: aye, DeFant: aye, Harrington: aye, and Cregan: aye; the motion carries.

Site Visit Scheduling

Dowling provides an update on the three new projects, two RDAs and one NOI, that have been submitted to the Commission and the fact that, under the Wetlands Protection Act, Determinations of Applicability need to be issued within 21 days, unlike Notices of Intent where a hearing must open in 21 days. The Commission, therefore, will be holding an extra meeting on February 15, 2021 to open the hearings for the three projects.

The Commission confirms the schedule a site visit to 16 Wyola Drive (A house rebuild RDA project in the buffer zone) on February 6, 2021 at 10am.

The Commission schedules a site visit to 58 Lake Dr (A septic system RDA project in the buffer zone) and to 48 Lake Dr (A retaining wall repair NOI project along Lake Wyola) on February 10, 2021 at 3:30am.

Shutesbury Wetland Bylaws

At 7:41pm, the Commission starts the town wetland bylaw discussion with Stone, who was involved in writing the original wetland bylaw.

DeFant suggests that the Commission consider 1) asking what is the cost/ benefit of trying to revise the town wetland bylaw when all areas of the bylaw can be changed if the bylaw is brought before town meeting, and 2) looking first at the existing, unrevised bylaw to see what needs work.

David asks why a revision was started in the first place.

Harrington and Cregan explain that the latest wetland bylaw edits were drafted in the summer of 2020 but that they were working from a wetland bylaw revision written in 2011. The revision was started to correct language that was hard for applicants to interpret and bring the bylaw in closer alignment with Mass Association of Conservation Commission (MACC) model bylaw guidelines. The revision was not aimed at reducing protections but clarifying when certain permits would be required, such as when a Notice of Intent (NOI) or a Request for Determination of Applicability (RDA) would be appropriate within the buffer zone of Lake Wyola.

Cregan asks whether an NOI would always be required since under the wetland bylaw the buffer zone is a resource area.

Stone stresses the importance of buffer zones and recommends reading the buffer zone guidebook and will share it with the Commission. The Commission can add regulations that review the level of degradation, shade, etc. in the buffer zone and use those regulations to determine what type of permit is appropriate. Changing regulations does not require the Commission to go to town meeting.

At 8:10pm, the Commission and Stone begin the review of the current (1990) town wetland bylaw.

- Section One: Purpose

Per Stone, items that could impact wetland values “a” through “k” are listed under the state Wetlands Protection Act, items “l” through “p” are only listed under town wetland bylaw. MACC cautions that aesthetics and historic values, mentioned as items “m” and “n” in the bylaw, cannot be the primary reason to deny a permit. Stone recommends adding a definition for “significant or cumulative effect” to the wetland regulations.

- Section Two: Jurisdiction

Cregan would like to see a definition for “stream”.

Per Stone, under the Wetlands Protection Act, only intermittent streams above wetlands areas are protected. Intermittent stream status is based on topographic maps reviewed by the Department of Environmental Protection.

Per Cregan, according to stream statistics, watersheds that are smaller than one acre are intermittent. Cregan asks if vernal pools are protected depending on their square footage.

Per Stone, vernal pools are protected under the definition of isolated wetlands, which must be at least 1000 square feet in size. The Army Corps of Engineers might also protect isolated wetlands.

- Section Three: Exceptions

The Commission agrees to investigate whether a difference exists legally between an exemption and an exception under the Wetlands Protection Act. There are concerns about the language in Section 3C that

might require a landowner to file for a simple project that is not specifically listed as exempt by the bylaw. Stone recommends reading the MACC handbook for clarification.

- Section Four: Applications for Permits and Requests for Determinations of Applicability

Per Stone, referring to the fifth paragraph on page 3, money for consulting and peer-review is now asked for upfront so the requirement for town reimbursement no longer applies.

Per Stone, DEP would like to see different forms for town bylaws so that if there are appeals it is clear whether the contented ruling concerns town bylaws or state laws.

- Section Five: Notice and-Hearings

Dowling submitted a letter to the Commission and Stone regarding concerns with parts of section five and section six. Notices to abutters have not included a paper copy of the applications. Stone thinks it is sufficient that the notices direct abutters to the town website where applications are posted.

Per Wakoluk, the Commission should consider informing stakeholders as well as abutters such as the Water Department of Amherst or Fish & Wildlife.

- Section Six: Coordinating with Other Boards

Per Dowling, currently boards have not been informed of projects. She is concerned about the timeline described in section six that requires that Board members have 14 days to respond with comments to the Commission about a project. If a Determination needs to be issued within 21 days it may be difficult, depending on when the schedule of Commission meetings, to give the boards a full two weeks to get back to the Commission. Dowling will reach out to Boards and ask them whether they want to receive hard copies of Commission projects or whether they would accept electronic copies.

- Section Seven: Permit Determinations and Conditions

No comments.

- Section Eight: Regulations and Section Nine: Definitions

The Commission will consider added more definitions to the regulations at a different meeting.

- Section Ten: Security

Per Stone, this section has not come up, but allows another party to complete a project or project conditions if the first party hired to do so does not complete the job.

- Section Eleven: Enforcement

Stone recommend that the Commission review the regulations related to enforcement fines and make changes so the regulations (section 21D) are consistent with the town bylaw.

- Section Twelve: Burden of Proof

Stone again recommends adding a definition for “significant or cumulative effect” to the wetland regulations.

- Section Thirteen: Relation to the Wetland Protection Act

No comments from the Commission on this section.

- Section Fourteen: Severability

Per Stone, non-criminal enforcement has been used only once in a situation where a resident refused to stop dumping sand on a town owned beach. A Commission member would need to follow a specific procedure with the Town Clerk to have the ability to use non-criminal enforcement.

Cregan thanks Stone for going through the wetland bylaw with the Commission. The Commission will work on a more readable fee schedule and discuss possible changes to the town wetland regulations at a future meeting.

- At 9:11pm, Cregan moves and Harrington seconds a motion to adjourn the meeting. Roll call vote: David: aye, DeFant: aye, Harrington: aye, and Cregan: aye; the motion carries.

Respectfully submitted,
Tessa Dowling
Land Use Clerk