

Shutesbury Conservation Commission Minutes for August 12, 2021  
Virtual Meeting  
Approved 8.26.21

Commissioners Present: Mary David, Miriam DeFant, Robin Harrington,  
Commissioners Absent: Beth Wilson, Scott Kahan  
Associate Commissioners: Janice Stone, Don Wakoluk  
Guests: Maria Firstenberg, TRC Mark Stinson, DEP, Matthew Styckiewicz, Structural Engineer, Nitsch Engineering, Kate Pfordreshe, Jeanne Brown

Meeting opened at 7:00PM

### **New Items & Updates**

**Update on quorum issues with ANRAD approvals** DeFant reported on her discussion with Town Counsel and the Town Administrator on this issue. Town Counsel Donna MacNicol stated that a quorum for the Commission is a majority of the five seats on the Commission. To vote, a commissioner must attend all substantive meetings except one, as allowed by the Mullin Rule.

With the lengthy duration of the Cows ANRAD Public Hearings from initial filing to the closing of the hearing (e.g., the Carver/Montague site has been continued for 18 months) and since the Commission has undergone substantial transition in membership, a quorum issue has arisen with ANRAD votes and ORAD signatures on two of the parcels. To resolve this, Town Counsel has advised that applicant resubmit the ANRADs with improper signature (Baker Rd and Pratt Corner West) as well as the Montague/Carver Rd ANRAD (which is still open) to ensure that they will hold up if challenged.

Stinson: according to Wetlands Protection Act, a quorum is defined as a majority of members in office. This conflicts with Town Counsel's statement.

Stone: in Hadley a quorum is a majority based on number of seats, not number of members.

DeFant: consulted with the AGO office on Open Government. They advised that the quorum is based on the number of seats on the board as constituted and does not change with vacancies. MACC guidance is that ANRADs should be resubmitted if turnover results in the loss of a quorum. Town Counsel has advised that the two ANRADs with improper signature be refiled and the Commission will use an abbreviated process for hearing. If TRC resubmits, all would be done in one meeting. No new material would be required.

Stinson and Firstenberg understand that the Town can waive its portion of the filing fee. Stinson stated that DEP cannot waive its fee. This issue will be discussed further at a future meeting. Firstenberg stated she would consult with her company and their client about how to proceed.

### **Update on Lake Wyola Advisory Committee and response to resident complaint**

Douglas (property owner on Lake Drive) sent the Commission a video showing stormwater on Lake Drive infiltrating his property and affecting his septic system. Stinson asked whether this is a civil issue or a wetlands issue. David: property owners on Lake Drive have diverted water to Douglas' property. A sediment plume is traveling into the lake.

Wakoluk: for 20 years there have been three issues at the lake: run off from roads, run off from septic, and run off from roofs. The Town and the Commission have not gotten involved. DeFant noted that the

2007 engineering report was not acted upon. Stinson: The town can spend funds on a public way, but not on a private way. This type of problem is found in many places across the Commonwealth. He suggested researching the Watershed Protection District Bylaw. DEP has grants that may be helpful (319 Nonpoint Source Competitive Grants Program , 604b Grant Program: Water Quality Management Planning) Stone: Both of these grants go through FRCOG and suggested checking with them. David: Mark Rivers sent letter to Select Board to request a committee to work together to solve the problem. As of now, no meeting has been scheduled. DeFant asked David to work with the Commission and LWAC.

**Update on South Brook Conservation Area CPA Project** Jaques has contacted the CPC and is waiting on response from CPC on using the funds to hire a consultant.

**Wheelock Tract Site Visit** is scheduled for August 25 at 3:30 at 130 Pratt Corner Road. The site operators request of "release of claim" to visit the site has been rescinded. Town counsel determined this is not appropriate. Those attending should meet at the gate.

**Update on DeFant's Conflict of Interest statutes** DeFant reported that she has completed the process required to rebut her 'Conflict of Interest' status that barred her from site visits on the Cowsls' properties, thus she is no longer required to recuse herself.

**Site Visit Follow-up:**

294 West Pelham Road/Gendron for personal ground mounted solar array. The proposed project is not within 100' of wetlands.

35 South Laurel Drive/discussion tabled until next meeting.

518 West Pelham Road/Schmidt for free-standing garage. The proposed project is not within 100' of wetlands and the BPA will be signed.

**Site Visit Scheduling**

640 Wendell Road – the Commission suggested 5:00 on Monday, August 16 if it can be arranged that quickly.

**7:15pm: Continued Public Hearing, ANRAD at ZU-2 (Pratt Corner South)**

Continued public hearing opened at 7:19 p.m. Firstenberg reported that TRC finally obtained the last signature that was need to move forward. A new parcel, which provided access to the site, was added to the review. The access parcels are owned by Town of Amherst and required a signature for permission to use the property. This new area is located on the most recent maps. Stockman completed the site walk a while ago. The outstanding map will be sent on Friday, August 13.

The commission agreed to **continue the Public Hearing to 8 p.m. on August 26.**

Stone suggests having town counsel and TRC legal representative present to discuss how to proceed on the ANRAD quorum issued discussed earlier in the meeting.

**7:30pm RDA Public Meeting, 35 S Laurel, Grybko Watering system**

This hearing will be rescheduled due to incorrect posting of the meeting.

**8:00pm, Locks Pond Road Culvert Replacement Project**

**Request to change the time of year restriction** Matthew Styckiewicz submitted a request to the Commission to allow an adjustment in the Order of Conditions (OOC) for DEP File #386-0279 by extending Construction Time (Special Condition #6 in the OOC). The OOC for the project included a time

of year restriction requiring work be done during the least flow time year. Styckiewicz explained that lead times on securing materials has been difficult. As a result, contractor cannot start till mid-September. The request is to extend the Construction Time thru November 16. The current schedule is planned for September 8 – October 15.

David asked when will the lake be drawn down? Styckiewicz explained that the lake will not be drawn down specifically for this project. He clarified that the contractor is asking for “normal” level of lake during this time of year, not a drawdown. The Contractor, who visited the site shortly after July’s heavy rains, is concerned about keeping the flow within the capacity of the dewatering system. He has spoken to Dam Keeper Howard Kinder about how to manage the flow during project. DeFant noted that Kinder does not feel there is a need to change current flow pattern.

Stinson explained that the original time of year restriction came from Army Corps and is no longer in used. Thus, this is a minor change to the OOC and does not require a formal Request for Change. Styckiewicz: the Army Corps has required submittal of full “Pre Construction Notification” and has issued a draft response.

David made a motion to approve time extension for the project; Harrington seconded  
All Commissioners voted to approve the request.

**Review of dewatering plan.** Styckiewicz screen-shared the recently completed Dewatering Plan. He noted that Nitsch requested 8 cu ft/sec in the design. The Dewatering Plan specifies double the typical flow capacity. Wakoluk requested that the pipes be flush with ground level to facilitate passage of aquatic organisms. Nitsch feels that capacity of the system is acceptable but has some other issues with the plan: it encroaches on private property and would remove a stone wall. Styckiewicz has checked plan against the Commission’s OOC Dewatering Conditions and feels that they have been met. He noted that installation of the Dewatering System will have no additional impact to area, as the trench for pipes will be within area of culvert replacement. Nitsch has asked the Contractor for revisions and will share them with Commission.

**Site visit** Styckiewicz reported that the construction sequencing plan will come soon. The Contractor, MAS Bridge, will post DEP File # signs. The Contractor would like to meet before erosion control is in place, followed by inspection after erosion is installed. No clearing will take place until after the Pre-Construction meeting. Styckiewicz: At the site visit, the Contractor would like to discuss tree removal. A couple of trees may need to be removed to excavate wing walls. Wakoluk asked if these are Town trees? If so, the Tree Warden must be consulted. Wakoluk noted that he is the Tree Warden.

**Site Visit Forms :** DeFant requested any site visit forms sent to the Commission be have file names that start with the address of the location.

Meeting adjourned at 8:46 pm

Next Meeting 8/26/21 at 7 pm