

Shutesbury Conservation Commission
Minutes – 12/2/21
(approved 12/9/21)
Virtual Meeting

Meeting start: 7:01 pm.

Commissioners Present: Miriam DeFant (Chair), Mary David, Robin Harrington, Scott Kahan, Beth Willson

Others Present: Janice Stone, Don Wakoluk, Elizabeth Fernandez O'Brien, Ellen Waldinger, Carlos Fontes, Stephen Sullivan, Jeff Lacy, Penny Jacques, Bridget Likely, Edward & Lesley Redonnet, phone #12407317379

27 January Hills Road COC Request: The Commission reviewed the as-built certified plans submitted by the applicant, Ellen Waldinger. There was a consensus that the original construction was consistent with the 9/23/1994 Order of Conditions associated with the construction of the septic system, house, and driveway. The Commission discussed concerns about recent repairs to the gravel driveway in the buffer zone of a BVW that resulted in soil disturbance and unstabilized slopes in the buffer zone as well as damage to what appeared to be a pre-existing culvert under the driveway. Erosion was also observed on along the edges of a culvert on the upper paved portion of the driveway that was contributing to sediment discharge into a buffer zone. The Commission determined that these recent repairs and lack of maintenance constituted grounds for an Enforcement Order. Landowner Waldinger expressed a willingness to work with the Commission to find the best solution to the problem. She is aware of continuing erosion problems and would like to improve the stormwater system. She suggested possibly building an artificial pond or wetland to capture water in the area. The Commission informed her that any extensive new stormwater construction would require a new NOI because it would be in the buffer zone. The Commission reviewed a draft Enforcement Order that would require the landowner to apply erosion controls in the short-term and present the Commission with a comprehensive repair plan, subject to Commission review and approval, to be completed in 2022. The landowner is to notify the Commission once the temporary erosion controls are in place. Depending on snow cover, the Commission will determine if a site visit at that point is needed. The landowner reviewed the required timelines for completion and was agreeable. Should the landowner encounter difficulties meeting the deadlines in the Enforcement Order, she should consult with the Commission. The landowner wishes to pick up the final copies of the orders at Town Hall on Friday afternoon.

Motion: DeFant moved to approve the Certificate of Compliance for 27 January Hills Road. Willson seconded the motion. Approved by unanimous vote: 5/0.

Motion: Willson moved to approve the draft Enforcement Order with amendments for 27 January Hills Road. Harrington seconded the motion. Approved by unanimous vote: 5/0.

Notices of Intent Policies and Procedures: DeFant proposed that the SCC consider how it wants to handle NOI applications in general and commercial NOIs in particular. The SCC does not receive many NOI applications, most of which are small-footprint residential projects.

Currently, the SCC has no checklist for applicants as do many other Conservation Commissions. The MACC offers samples of NOI checklists that other towns use to help applicants. This could be particularly helpful for residential projects where landowners may not have previous experience in how to put together NOI packets. DeFant recently attended the Amherst Conservation Commission Public Hearings for the AMP Solar Project on Shutesbury Road and had a conversation with Erin Jacques, the Amherst ConCom Wetlands Specialist who is also a Shutesbury resident. She shared some documents for the SCC to see how the Amherst ConCom was handling the NOI review process. Amherst is using a wetlands 3rd party reviewer, but also is considering using a civil engineer, a hydrogeologist, and a geologist. The NOI in Amherst was withdrawn, but it will be resubmitted at some point in the future. Amherst required on-site soils evaluation and groundwater depth assessment with a ConCom representative present. DeFant suggested that the SCC may wish to consider in advance what kinds of 3rd party consultants it may wish to use, in addition to a wetlands scientist, so that it is prepared should any large commercial NOIs be submitted. Willson noted that she used to be the Wetlands Specialist for the Amherst ConCom. They routinely use civil engineers to review commercial NOIs. She was not aware of an example of using a hydrogeologist or geologist. Amherst has used Bucky Sparkle as a civil engineering consultant. Stone is aware of him. She noted that he is competent. He works on commercial projects but has also provided 3rd party review to municipalities. Stone and Willson are going to provide the SCC with a list of other environmental consultants that they are familiar with. Wakoluk inquired about what kinds of legal consultation are available to the SCC besides Town Counsel should the SCC need more specialized guidance. He wondered if there was a conflict of interest in using Town Counsel. Further research on this topic is needed. DeFant noted that the SCC must do its due diligence with any NOI, reviewing the application and determining what information is needed to issue an Order. She suggested that the SCC may not wish to have a formal checklist because it is difficult to characterize in advance all of what may be required for any project. Willson noted that a basic checklist of minimum requirements could be helpful. DeFant will distribute a draft checklist based upon models from other towns' Conservation Commissions, for the SCC to review. There was general agreement that any policies established should apply broadly to all NOIs, though the SCC will need more expert consultants to help it evaluate large, complex, or commercial projects. The SCC will need to evaluate NOI submissions on a case-by-case basis to determine what information is needed to review them. Stone noted that soils testing is very important to evaluating stormwater features on projects that need to meet the DEP Stormwater Standards. DeFant asked what kinds of projects are subject to those Standards. Complex, large projects that involve point source discharge are required by state law to provide a Stormwater Report with the NOI that considers Low Impact Design, models pre- and post-treatment conditions, and demonstrates that the stormwater features achieve 80% removal of Total Suspended Solids. The applicant must demonstrate that the project meets the DEP Stormwater Standards. Stone noted that the stormwater features on the Amherst AMP Solar site plan did not appear to fully align with DEP Standards. She agreed the SCC would need a civil engineer to evaluate plans such as that one. Willson noted that a hydrogeologist seemed worthwhile because of the soils' characteristics in Shutesbury. The SCC needs to know how soils under stormwater features will perform. She noted that she observed the need for this on the site visit on the Wheelock Tract Solar Project last summer. There was general discussion about whether the SCC might need a wildlife habitat evaluation for some NOIs. A wildlife biologist may only be needed if a project meets certain requirements such as

involving a cold-water fishery or Natural Heritage area. Stone noted she has name of third party consultants that have been used in Hadley and Granby. She will share that information.

Should the SCC receive a large, complex NOI, the Commission was in agreement that it would need to determine whether it would need individual 3rd party reviewers from different disciplines or whether they can find experts who are capable of reviewing multiple aspects of the project.

CPA Pearson Land Acquisition Proposal: Bridget Likely from Kestrel Fund presented the proposal to purchase 34 acres of land on Pelham Hill Road that is currently for sale. This property has conservation value due to its proximity to other conserved open spaces and the presence of Amethyst Brook on the property. Conserving this property would provide a valuable wildlife habitat corridor. It can also be made available to the public for passive recreation and nature appreciation with trails and parking area. Currently, Kestrel has \$206,250 available through the federal Forest Legacy program. This money must be spent by July and requires that a town hold the deed to the conserved land. Kestrel has also come up with an additional \$20,000 from a private donor to facilitate this purchase which is for \$275,000. With other administrative costs, the total cost of the acquisition is \$311,200. Forest Legacy requires a 25% match. Kestrel is looking to the Town to provide the balance of \$84,950. The current proposal is to apply for CPA funds for a portion of this balance and to fund the remainder from the SCC's Conservation Land Trust Fund. The SCC discussed how best to approach this proposal. There was general agreement that the proposal needs to balance the need to avoid exhausting the trust fund while also making the proposal amenable to Town Meeting approval. Historically, the CPC has not been used to fund such large projects, but this is also the first time that there has been a land acquisition proposal for the town using CPA funds. The last major conservation land acquisition was in 2001 with the South Brook Conservation Area which was purchased with Self-Help Grant funds from the state and a town match. Likely reported that Kestrel is moving ahead with the acquisition and has acquired a purchase and sale agreement contingent upon town approval. The closing would not take place until after the spring Town Meeting. Although a logging plan had been submitted by the landowner, this has been paused at Kestrel's request. Jaques suggested lowering the CPA match to \$48,000 instead of \$68,750. The SCC can still adjust the budget before the final application is due in February. Acquisition would require the development of a Conservation Restriction which would be held by Kestrel. The CR would guide the management plan for the property. Likely has a draft template that Kestrel uses and will distribute it to the SCC. There is room for flexibility in the goals of the CR. The final CR would not need to be developed until the time of the purchase. The land would be held in fee by the Town with the Conservation Commission having management responsibilities. The SCC would need to develop a management plan for the property. The Town of Amherst was approached about the acquisition, but it has not expressed an interest at this time. Kahan asked how the SCC approaches and prioritizes land acquisition. Jaques noted that the SCC has not in the 24 years that she has been involved had an opportunity like this with such a large funding match from an outside source. The SCC does not have criteria for land acquisition because acquisitions have been so infrequent and often resulted from some immediate opportunity. Jaques noted that access to passive recreation trails is a high priority for many town residents per the Open Space Plan Surveys. Kahan noted it would be good to have a consistent approach to management of all conservation properties. Some properties, however, are more environmentally sensitive than others. Jaques noted that the maps of Town-owned conservation land can be found in the Open

Space Plan. Kahan volunteered to look at this and to try to develop a uniform management plan for the SCC. Jaques advised that the Select Board needs to be involved soon since their consent will be required to access the conservation trust funds. DeFant will send an email to the SB to request a discussion in January. Stone suggested that the final application should include some photographs to illustrate the conservation value of the property.

Wendell Road Repairs: The SCC reviewed a site visit on Wendell Road in which it inspected two areas of recent road repairs that resulted in sediment discharge into jurisdictional wetlands, namely, South Brook and a Bordering Vegetated Wetland on the uphill portion of Wendell Road. Both areas are on the dirt road section of the road where there have been recent repairs. Because of steep slopes, multiple wetlands, and the presence of South Brook along this section of road, the area is environmentally sensitive. DeFant recently emailed the Select Board, Town Administrator, and Highway Department about the need for additional erosion controls near the wetlands areas. While road repairs are generally exempt from SCC jurisdiction, activities in the rights-of-way in buffer zones and resource areas are not exempt. The SCC agreed with the recommendations laid out in the email. Willson noted that she hoped the highway department could be more conscious when it is working in resource areas. Kahan noted that the stormwater drainage as currently constructed does not shed water away from the road sufficient to reduce road sediment erosion. Permanent conveyance, either armored, or vegetated, would reduce erosion. DeFant asked if adding riprap, perhaps 3" or 4", would be appropriate in this area. Wakoluk noted that the storms this summer and fall have revealed where the problem areas are. He suggested the Highway Department should be using copies of the Open Space Plan maps and other resources so that it had readily available information about where the resource areas are located. This information is publicly available, but more cooperation with the SCC is desirable. He further suggested the use of TRG 3 or 4. Currently, he noted he believes the highway department is using bank run gravel which is insufficient for the location. Stone noted that she would not like to see the Highway Department just add riprap all along the road without a well-considered plan. Kahan noted that it is important that the solution not be worse than the problem. He noted that the Highway Department is currently using material for repairs that has a high sediment content that easily erodes. The use of well-designed detention basins would be desirable in several locations. DeFant noted that there needs to be berms and detention basins at the base of the hill near South Brook. Jaques noted that there has been a history of challenges with obtaining cooperation from the Highway Department, but she urged the SCC to look for ways to cooperate and build a better relationship. She noted that Tim Hunting is retiring in June and it is not clear who will be replacing him. Jaques noted that the SCC has been unsuccessful in the past in persuading the Highway Department and Town Administrator to develop a bundled NOI for jurisdictional road repairs that would allow the SCC to put in place standard conditions. Much work had been done on this in the past, but it never proceeded. It would be the Town's responsibility, not the SCC's, to develop the NOI. They may need to hire an environmental consultant to prepare it. Wakoluk noted that the Highway Department has limited resources and does its best, but he also suggested closer attention to protecting wetlands would not be overly burdensome. She also noted that it would be good to have basic education for highway departments. MACC or FRCOG offered such a training in the past. It is not clear whether Town officials made use of it. There was general agreement that there is both a need for short-term erosion controls/repairs and also a longer-term solution that improves on the design process for stormwater conveyances near jurisdictional wetlands, both on Wendell Road and across town.

DeFant noted that the Town Administrator had suggested a Zoom meeting with her, Penny Jacques, and the Town Administrator to discuss the issue. Jacques stated she felt a site visit first with all of the concerned parties made the most sense. The SCC is not able to make specific recommendations without a joint conversation and look at the problem areas. DeFant agreed with this. Wakoluk noted that the SCC will need to ask the SB first before asking the Highway Department to meet. DeFant noted that she sent the email to the Select Board but received a response from the Town Administrator indicating that the request should have come to the TA as she is in charge of overseeing the Highway Department. DeFant noted she is attempting to cooperate and comply with the guidance she has been given by the SB about how to deal with the Highway Department but is finding the process confusing. DeFant agrees a site visit is necessary but does not want it to be just her involved. She requests the participation of the whole SCC.

The SCC generally agreed that a Zoom meeting would not be the most efficient approach. Rather, a site visit with all parties including the SCC to help move the discussion toward solutions more effectively. A site visit would need to be within working hours for Highway Department availability. The Commission would like to schedule a meeting at 3:15 on a weekday to maximize Commissioner availability. DeFant will reach out to the Town Administrator to arrange it. Jacques will attend if she can.

Updates:

Land Use Clerk: DeFant reported that the applicant for the Land Use Clerk turned down the position. The opening is being reposted.

South Brook Conservation Area: DeFant reported that the SCC received an email from the Historical Commission asking to be allowed to consult on the trail mapping project. The SHC will send data for the SCC to look at. Stone reported that there is new yellow flagging on the conservation property. It is not clear who put it up.

Open Space Forum: Jacques reminded the SCC of the upcoming public forum on open space on December 16 @ 7 pm.

31 Lakeview Road/Salvador NOI: This NOI for a demolition/house rebuild has been submitted but it may not be complete. DEP submitted comments that have not been responded to. A Public Hearing date is reserved for January 13, 2022 @ 7:30.

Montague/Carver ASD ANRAD: Public hearing is scheduled for 12/9, but SCC doesn't have updated maps from TRC and a final review from Stockman and Associates. There is not enough time to review these materials for 12/9 as the Emily Stockman needs 2 weeks and the SCC needs 1 week to review. Emily Stockman also will be traveling for several weeks. DeFant will email TRC for an update.

Meeting adjourned at 9:22 pm.

Documents Used:

- Agenda
- 27 January Hills Road: As-Built Plans, Certificate of Compliance Request, draft Certificate of Compliance, draft Enforcement Order and Addendum
- Pearson Land Acquisition: Overview of proposal budget, draft CPA Determination of Eligibility Form, map of conserved open space in Shutesbury
- Notices of Intent: Amherst AMP Solar NOI Package, Amherst Conservation Commission Draft Proposed Motion, Erin Jacques Pre-Review Comments, Staff Recommendations to Amherst Conservation Commission (11/5/21)
- Emails from Chair to Select Board, 12/1/21, 11/22/21, and 11/29/21

Next Meeting: 12/9/21

Respectfully Submitted by Miriam DeFant, Conservation Commission Chair, 12/9/21