

Shutesbury Conservation Commission

Minutes – 03/10/2022

Approved – 3/24/22

Virtual Meeting

Meeting Start: 7:08pm

Commissioners Present: Miriam DeFant, Beth Willson, Mary David

Commissioners Absent: Robin Harrington, Scott Kahan

Other present: Willa Jarnagin, Donna MacNicol, Maria Firstenberg, Penny Jaques, Alice Walter, Amy Hirsch, Arthur Haskins, Carlos Fonte, Charles Yergatian, David Buchanan, Don Wakoluk (SCC Consultant), Eileen Wood, Eric Bachrach, Hena Sussha, Henry Geddes, Ian Buchanan, Jacob Hirsch, James Owen, Jane Costello, Jane Urban, Janice Stone (SCC Consultant), Jean Meister, Jeff Lacy, Jim Plaza, Jane Plaza, Joan Hanson, Joseph Salvador, Julie Rypysc, Julio Neijens, Kathleen Bridgewater, Kenneth Holt, Lenore Bryck, Leslie Cerier, Maria Firstenberg, Marianne Connor, Mary Lou Conca, Michael DeChiara, Mike Lipinski, Nan Dill, Dan Nathan Murphy, Rita Farrell, Robert E. Seletsky, Sharon Weizenbaum, Steve Schmidt, Thomas Matsuda, Anthony Brogno, Ken Lindsay, Paul Lyons, Robert Price, Shane Bajnoci, Emily Stockman (Stockman and Associates, SCC Consultant), Jen Malcolm-Brown, Remy Fernandez-O'Brien, MaryJo Johnson, Eric Donnelly, Dan McLean, and all other unidentified individuals.

Chair's Call to Order at 7:08pm

Meeting is being recorded

Planting plan RDA Follow-up (105 West Pelham Road/Jarnagin Driveway Repaving):

DeFant shares a planting plan provided Jarnagin via screenshare. Willa Jarnagin: needed to find native plants that would do well in shade and sandy soils, also including perennials. She plans to transplant ferns from the property along with Black Eye Susans (native and pollinator friendly). Willson: transplanting ferns from the property is a great idea, wetland ferns are not recommended due to the lack of water (sandy soils). Stone agrees with Willson. **Motion: DeFant moves to approve Jarnagin's planting plan, David seconds. Vote: David-Aye, Willson-Aye, DeFant-Aye. So moved.**

Pratt Corner West ANRAD Re-Submission:

ANRAD was issued in September of 2021, but SCC asked for resubmission due to not having a quorum present; ORAD vote was determined to be invalid. DeFant: advises the Commission to make arrangements to retain Emily Stockman a Third-Party Reviewer; clarifies abutter notification certification requirements under the Bylaw which requires certified mail and return receipts; Bylaw indicates that plans must be sent to abutters. Commission discussed that mailing bulky ANRAD plans to all abutters was problematic; as an alternative, the Commission is posting all of the plans on the town website for public/abutter access. MacNicol: suggest Commissioners consider changing/updating their regulations to make it easier for larger projects as such; as long as abutters are proven notified and have access to plans on website, Commission has met the spirit of the Regulation (abutters unable to access internet can request physical copy

at Town Hall). Firstenberg: TRC's phone number is listed on abutter notification, is willing to send out plans to those who request. **Motion: DeFant moves to approve the proposal to require TRC as the applicant to resubmit abutter notifications for the Pratt Corner West ANRAD using Certified Mail with return receipts and a cover letter of the map. David seconds. Vote: David-Aye, Willson- Aye, DeFant- Aye. So moved.** DeFant: can we vote on Third Party Reviewer now or must we wait? Stockman: based on past reviews, as long as Commission votes during the Public Hearing process they may and if approved, the commission can then vote on the proposal. Jaques: question on certified mail and providing plans to abutters, was that a change in the Bylaw or was this a one-time change? DeFant: now this is one time change but we will look into changing it either in the regulations or Bylaw later. **Motion: DeFant moves approve retaining Emily Stockman for a Third-Party Review of the Pratt Corner West ANRAD resubmission. Willson seconds. Vote: David-Aye, Willson- Aye, DeFant- Aye. So moved.**

Continued Public Hearing for ZD-37/Montague-Carver ANRAD, DEP FILE # 286-0285:

DeFant explained the process for the Hearing and welcomed the public. Hearing estimated to be an hour, will be continued at the request of the applicant, further investigations are needed and will be provided at another time, no decisions will be made tonight. Hearing is to help gather information for decision making process, important for Commissioners to ask questions to applicants, public participation is allowed, will outline approved policy for public participation. Once the Hearing has been voted to continue there is no discussion allowed afterwards. Hearing will include 15 minutes to review updates with our Third-Party Reviewer, applicant, and other consultants, half an hour is designated for public comments. DeFant: Public comment guidelines include respectful comments, raise your hand to be recognized to speak, when called upon please state name and address, if you are on a phone, can unmute and ask to be recognized, 2 minutes is allowed for each public comment, Jaques will be keeping time; second comments not entertained unless there is not any other comments and time remains. Kenneth Holt and Carlos Fontes have asked to have longer presentation times, 5 minutes each, because they are representing other residents. The Chair has agreed to this. DeFant confirms that public comments sent via email have been shared with all the Commissioners, applicant and Third-Party Reviewer, and TRC; they will be added to the official ANRAD Public Hearing file. DeFant: we want to assure the public that we are here because we care about the environment, wetlands, wildlife habitat, water quality and quantity. We are committed to enforcing both the WPA and the Town Wetland Bylaw. DeFant summarized for the public what the ANRAD process is; the role of the SCC is to interpret the regulations and consider scientific evidence about wetland habitats and hydrology; when the applicant meets the standard of proof that a wetland boundary exists, the SCC is statutorily required to approve that delineation; must provide a preponderance of evidence that a boundary is correctly delineated; ANRAD is not a permit for a project; SCC has no application for a project before it, so it is not evaluating any impacts at this time; NOIs will be required at a later date; TRC is currently planning to do further field work. Firstenberg:

At previous meeting the Commission requested that we get access to a portion of the wetland that was outside the site boundaries to properly map the 100 ft butter zone, area includes land not owned by applicant, one of two homeowners answered and allowed land assessment but due to winter weather was unable to do so until the spring (April), also waiting to hear from the other homeowner. DeFant: some wetland boundaries were not delineated; the Commission was not advised to approved these by the Third-Party Reviewer (Stockman). DeFant: based on Stockman

report, some boundaries had not been delineated; she did not advise approval; does TRC have plans for further delineation? Firstenberg: are you referring to flagging that is close to a boundary and we didn't delineate due to concerns about not trespassing? Firstenberg believes Stockman didn't want those areas on the maps because they don't set any buffer zones on the property. DeFant: one is WGR-2 where Stockman stated there was a thicket present and it wasn't reviewed by the TPR. Stockman: area in question is upland wetland boundary associated with the northern extent of WGR2, an area on westerly side with a dense shrub layer, flagging not present during their site visit with Greg Russo, not a clear line of sight to accurately review boundary. On eastly side, sheets 18 and 23, delineated boundary includes long length in-between flag 105 and flag 164 (flags were >100ft apart), not standard delineation flagging, concerns are both unclear line of sight on westerly side and large distance between flags on easterly side. Stockman reports that Russo said on the field visit that he was of opinion that because it was such narrow upland, there was no future use, so omitting from the review and any subsequent approval under the ANRAD was the route TRC would go. Firstenberg: not heard of this before, trying to locate comment in Stockman's report. DeFant states it's in Stockman's 12/22/21 report. DeFant shares Stockman's comments via screenshare. Firstenberg unsure what occurred in the unincluded area, heard the issue of distance between flags, her expectation was that any TRC reviewer would make adjustments to meet Stockman's recommendations. DeFant: this would require TRC doing further delineation and Stockman going out on the site to review the changes. Firstenberg: would request that this area be looked when the land is surveyed for upcoming field review; the new review will be about 1 acre; should have time look at this area with Stockman; don't see any recommendation for further flagging in Stockman's report. Stockman: Firstenberg was not present during that site visit; I offered to review on site together that day and offered TRC could come back on their own time then schedule to meet, was told that those boundaries be struck from the review. This comment reflects she was not called back to the site, was surprised to that the areas was still included on the site plan and wanted to make it clear to the Commission that those portions of the plan have not been reviewed and should not be approved. DeFant: Comment #5 of Stockman's report; discusses stream S-1, Stockman stated lack of delineation; does TRC plan to do any further delineation? Firstenberg: we agree with that comment, does not need to be reviewed; stream is in a large wetland, other than flagging near the culvert, wetland around the stream sets the 100ft boundary not the stream, not a critical boundary. DeFant: Comment #4b about the buffer zone boundary being incorrect, is there a plan to correct it? Firstenberg: will be look at it, when flags are adjusted, using GIS, we must be reconciling the new flags with the old flags not current, buffer zone may have been built off of old flags. DeFant: Comment #2 discussing vernal pool data, would like clarification. Stockman: Comment provided for benefit of applicant and Commission; material provided in the revised ANRAD application presented vernal pool data for four identified vernal pools in study area. Documentation provided does not fulfill certification required under the Massachusetts Natural Heritage and Endangered Species Program; from my understanding, the Commission does not have to authority to require certification by Natural Heritage, but this is a resource area if NOI is later submitted. DeFant: Maria (Firstenberg) do you plan on submitting this information when if submitting an NOI? Firstenberg: not typical to require certification during this process, discussed in the field and provided in the updated/new re-submission is our documentation; landowner not required to submit certification to Natural Heritage; anyone can do it. Stockman: for colored photo certification, the documentation is provided is incomplete and needs landowner approval; if Commission wants to go forward in certification needs missing documentation; hesitant to

have the Commission do it without landowner approval. DeFant: does the Commission want to pursue this? Willson and David want more information. DeFant asked Firstenberg to inquire with the landowner. Firstenberg: applicant has policy of not giving permission to certify vernal pools on their property, will not stop the Commission from collecting data; the land is posted as open to the public; landowner won't give permission, but nothing is stopping you. DeFant:

Commission can discuss how to proceed. Willson: I'd like to visit the areas; Natural Heritage is not cumbersome. David agrees. DeFant: asks Stockman about what info is needed. Stockman has sent the certification guidance to the Commission. DeFant: question about Isolated Land Subject to Flooding calculations, for wetland WGR-16 and WGR-17; it says it was observed outside of wet period, calculation based on leaf staining; how did you arrive at the 6" average depth for WGR-17? How many holes/samples were used? Firstenberg: must get back to the Commission with this information.

DeFant: how do you determine the estimate is conservative when done during a dry period of the year? Firstenberg: it is conservative because leaf staining in land subject to flooding shows where water is staying for a prolonged period of time; so outside of maximum flooding periods leaf staining is used to figure out where the extent of flooding is; leaf staining was not present in the entire wetlands, but for calculation, they included the whole delineated area; included area that they do not believe is subject to flooding in WGR16 and WGR17, as a precautionary protection. DeFant: the report says there was no leaf staining observed, but you are saying there was some leaf staining observed? Firstenberg: there was leaf staining in WGR-16 but not in WGR-17. Stockman: per state regulations on how to determine maximum flooding, during dry months other indicators of hydrology include leaf staining; if there is conflict of opinion in regards of how data was collected, under the WPA regulations, there is an engineering practice that may be used to assess site-specific topography and Hydrocad modeling to provide additional level of detail; Commission can require this if it feels the means and methods are not sufficient; they have provided their methodology; maybe Firstenberg can get more info about how data was collected. Firstenberg: it was collected in July and August of 2020. DeFant: have spoken with Stockman about subsurface streams as a protected resource in the Bylaw. MacNicol confirms this is a resource area under the jurisdiction of the local Bylaw, subsurface and surface streams; if Commission has evidence and is confident of the existence of a subsurface stream in a given area, it reserve jurisdiction to review future projects for any adverse effects. MacNicol: make it clear in the ANRAD that you have not delineated it. DeFant: if resource area exists and needs further investigation, it would be reviewed under a NOI under the Bylaw even if development is outside of the buffer zone, because it is a different resource area than the one being currently delineated. Stockman: agrees with DeFant, if the Commission determines that this resource area is present, it will have to be reviewed under a separate process; though subsurface flow is named as resource area, Bylaw Regulations have no definition is provided about what subsurface is, its boundaries, and method to determine boundary. Willson suggests other towns may have experience in this. Stockman agrees; has no experience with field-based methods for assessing aquifers and subsurface waters; usually done with some modeling and ground-truthing; recommends the Commission investigate other Bylaws and scientific knowledge base; as well what models other agencies requires for this kind of determination. DeFant states she has done some research but more is needed; there are methodologies for assessing subsurface flow; maybe consult a hydrogeologist. Willson informs SCC that the Amherst Water Supply Protection Committee developed a subcommittee looking at effect of large-scale solar on ground, surface

and drinking water; possibly get help from this subgroup; has some hydrogeologists; may be helpful.

Public Comment:

Ken Holt (75 Montague Rd.): Map shows potential impact on water resources and flooding, overall, 200+ million gallons of rainfall a year occurring on the site; site includes deep and steep terrain, stream systems and wetlands. Map shows streams, not subsurface but they are important; water flows to recharge wells on Montage and Carver Rd, water flows down Dudleyville Road and eventually to the Sawmill River; peoples drinking water may be affected. Sedimentation pollution runoff could be collected in beaver ponds located off Roaring Brook; also feeds the aquifer down into Leverett and Amherst. The potential environmental devastation, threat of water supply and flooding of homes, could make Montague Road impassible at certain times of the year; plummeting of property values would make the problems of Williamsburg and Conway look trivial. Shows a photo of large road damage from flooding along with a video of property damage from flooding, both on Montague Road, noting the water is clear. These illustrations clear that we are not talking about some abstract idea involving small streams, this is our water resource's reality. Are there engineering solutions to this? Given the steep terrain and complex streams and wetlands, the same complexity would not only engineering solutions impossible along with impossible mitigation if there was a disaster. Happy with SCC's (Shutesbury Conservation Commission) diligence, investigation, and use of regulations but we ask that the Commission uses all of its regulatory powers in term of this project, we believe it's in the SCC jurisdiction to have hydrogeological and wetland studies be conducted along with environmental and civil engineering studies be conduct all the independent professionals for all parts of Shutesbury, not those who abut, but downstream of the site on the north, south, and east sides.

Carlos Fontes (359 Montague Road): Thank you for time from SCC to speak, and that SCC has considered its subsurface water and its jurisdiction. My understanding is that the Commission has not asked the current ANRAD to identify subsurface water even though it is a water value and subsurface may be connecting wetlands; has not done so because the jurisdiction refers to the idea of activities, Commission can only ask for subsurface to be identified during an NOI, want to argue that the ANRAD is about action; the whole purpose and intent of an ANRAD is to identify the areas that the activity and altering can be done without threat to the water. Nobody does an ANRAD just for the sake of identifying wetlands. The goal of an ANRAD is to identify areas where you can build. If we look at the whole process that we would all agree that and ANRAD is the first stage in application to alter the land. What I am arguing is that the Commission has the discretion to ask the applicant to identify the subsurface water now during this stage, I understand that you may not, due to past practice, but I believe there is a logical reason to argue this. When looking at the Bylaw and Regulations in state law, there is no legal reason that would preclude or limit the Commission to apply its full discretion in the application of the local Wetlands Bylaw. I believe that what is at stake here is the ability of the Commission and local community to see its local regulatory frame implemented. This a legal argument with some merit and would like it to be considered. If you do that, then the ANRAD is in clear violation of the Bylaw and should be rechecked, not approved until its fully done.

Sharon Weizenbaum (712 Pratt Corner Rd): Agree with Carlos and Kenneth, thanks SCC for protective Bylaws. Moved to Shutesbury 5 years ago was looking to dig up trench that turned into a swamp, thought they could do it because I owned the land; received a cease and desist

from Commission; Penny Jaques delineated her wetlands, and she had a steep learning curve; was not allowed to disturb wetland that formed in the ditch. Learn how interconnected she was connected to the ecosystem and her neighbors; water that runs on her land also runs through her land and downhill to many others, I cannot own the water. This applies to TRC's ANRAD. Center of Shutesbury is 1200'; as high as Mount Toby and Mount Tom; Amherst is at 900'; water runs from Shutesbury down to Amherst to supply both towns with drinking water, wells and Atkins reservoir.

Anthony Brogno (Baker Rd.)- Thanking Shutesbury and SCC Bylaws. Focus on water is important and valid; Water running east drains to the Quabbin Reservoir while supplies Boston area. One concern is carbon sequestration from the large forest that would be removed to complete this project. Landowner might have in a Chapter 61 area designated as agriculture for logging, the Cows family is known as a logging corporation. So, if they have been getting huge tax breaks from Chapter 61a, then wondering if the solar project is built, will they have to pay back all those tax break from when it was Chapter 61 land? Or will this continue to impact the town negatively financially?

David Buchanan (541 West Pelham Rd.)- Thank SCC for serve to the community and allow/hear comments. Endorse what Ken and Carlos stated, urge the Commission to exercise the authority for town Bylaws regarding wetlands and preservation of clean water to the fullest. We are a local control state, let's act locally. Enacted Bylaws to preserve watershed not just wetlands in arbitrarily defined areas. Don't forget the forest trees. No doubt strong forces pushing hard on Commission for this project to proceed, I've worked in government for part of his life and understand this. We as a town should not be railroaded into a short-sighted decision sacrifice our wetlands and forests and the clean water they provide. Please stand up for town, its people and the water and land that will be passed down to future generations.

Remy Fernandez-O'Brian (6 Old Egypt Rd.)- Agree with Carlos and Ken and their interpretation of the Bylaws. Planning to drink the water here for the next 50-60 years I would prefer that all the steps of precaution were taken to protect the water. Spoke with some engineers about the methodology that would be used to identify subsurface water, we believe they would have to dig at least 200 wells for an area of this size in order to be compliance.

Thomas Matsuda (93 Cavehill Rd., Leverett)- Thanks everyone for the consideration in the project. Concern being adjacent to Shutesbury, worried about the water and issue with forest cutting for solar.

Robert Price (Pelham Hill Rd.)- Thank the SCC for this meeting, hear a lot of serious talk about subsurface water movement; taking it seriously and planning on studying it. SCC interest in it is important and I applaud it. Thank you to the previous speakers.

Rebecca Rivka Edelson (Pelham Hill Rd.)- Echo what Kenneth and Carols said, important issue. SCC must be under pressure from powerful forces, want the SCC to stand up for our town members.

Marianne Connor (72 Baker Rd.)- Express concern about subsurface water and how it may be affected by the solar array. Committed to cutting trees down for solar project, is counterproductive and non-regenerative approach to our future. We have many other areas for solar, should not be taking out one of our best carbon sinks. This project in this forest will affect rainfall in the microclimate. Think carefully when considering these projects.

DeFant advised the public to focus comments to the ANRAD and remarked that the SCC is currently not yet permitting a proposed solar project.

Charles Yergatian (196 Montague Rd.)- Share concerns presented by Ken and Carlos, seems to be enough evidence to suggest it is wise to investigate further with the subsurface water. Do not know much more about the issue but based what he's read, and all conversations that have been had on Nextdoor, more information is needed before educated decision is made.

Anthony Brogno (second comment)- If this meeting has nothing to do with an application that has not been but one that will be filed later, then we can all agree that we're all talking about something because even though technically not filed, that's what this is about. Are these questions being taken down to be answered at some point by the applicant or SCC? What is this ANRAD and these Bylaws, if there is no projects in the works.

DeFant: ANRAD is separate process than the actual permitting a developmental project; we are not reviewing or approving a development permit in this Public Hearing. We are reviewing the wetland resource areas, defining boundaries and buffers, so that the landowner knows where the SCC believes there are wetlands; it is one step in a planning process; remains to be determined if it is a necessary and intrinsic component of the application process; you have an ANRAD without a project, but you can't have a project without an ANRAD. We need to be careful and get guidance from Town Counsel, we must not get ahead of ourselves because we are not approving or disapproving a solar project, currently defining the lane we are in right now. If a project is proposed, then we will review the impacts of the project they are proposing. We don't know yet what they are proposing.

Jacob Hirsh (Flathills Rd., Amherst)- Has a well and Atkins reservoir is next-door so I agree with Ken's concern with the water flow. Do you inform Amherst about its possible threat to its water shed and what is your responsibility to protect a neighboring town when our drinking water is Shutesbury?

DeFant: Knows that the Town of Amherst Water Dept. was notified of the Pratt Corner South project because located in their watershed. Willson: Amherst is aware of the project, Water Supply and Protection Committee which Willson staffs is looking in their own research. If SCC request an opinion from DPW of Amherst, the Water Supply and Protection Committee and DPW will response with an opinion email.

Cynthia Banfield (760 Pratt Corner Rd.)- Concerned about the water, seems like hair-splitting; maybe no application but clearly something going on about somebody wanting to site a solar farm. To me, it makes no sense to say that's not what we are talking about. We are talking about and doing this for a reason. Why else is the SCC meeting about where water resources? What are we talking about then?

Jaques: someone from Planning Board in the audience that can explain that ANRAD is part of town Solar Bylaw process before a Special Permit can be applied for? No many understand how this ANRAD fits. DeFant: SCC responsible for complying and responding to an application; application's goal to delineate wetlands, not approve a project. Would be inappropriate for us to say we don't believe a solar project should be built on this site without reviewing a project, have no engineering plans, have had no third-party review, and have had no public hearing to review. We shouldn't for any projects make a decision unilaterally until we have reviewed plans and designs. We cannot do that ethically or legally. We are talking about wetland delineations and the ANRAD process that is defined by the state regulations. Applicants and landowners have a right to submit plans to have wetlands delineated. We don't have the right to say unilaterally we won't delineate wetlands delineations on your property, for whatever reason, unless we have compelling scientific evidence from credible sources that meet the burden of proof requirements to show we cannot delineate. If wetland boundary evidence is shown accurate then we have to approve it. If the applicant has not met the required burden proof with a preponderance of evidence that there is at least 50% probability that their delineations are accurate, then we deny an ANRAD or disapprove a particular boundary in the ANRAD. We have not made any decisions about how we are going to handle subsurface streams. Banfield asked for more clarification. DeFant: the SCC asks landowners to consult with us before they begin projects involving ground disturbance; we would expect the same from a solar developer. Delineation is method outline in outlined in environmental science and in state law, that has specific standards and methods for identifying the outer boundaries for all types of wetlands; we are using a scientific methodology.

Remy Fernandez-O'Brian (second comment)- Member of SMART Solar Shutesbury, we oppose solar development in Shutesbury. We agree with Miriam, not the moment to talk about the solar project in general right now, not the most productive time for such. For more strategy, reach out (SMART Solar).

Anthony Brogno (third comment)- Who is the applicant of the ANRAD? Maria Firstenberg, can you state who you work for?
Firstenberg: TRC Companies, environmental consultant representing W.D. Cows, the landowner of this property.

Sharon Weizenbaum (second comment)- Address Jacob Hirsh's concern about Amherst knowing and Beth saying everyone knows. I have gone door to door about this and no one has known about this, there is a difference between the town government knowing and the population knowing about the threat to Amherst water supply.

DeFant: Thank you for the comments, hope you got answers. Not the end of the Public Hearing process, date to be determined and all invited to comment again. For Town Counsel, how can you decouple delineation from project review? MacNicol: Don't really decouple it, agree with some comments. A project in Shutesbury must start with an ANRAD which delineates the wetlands, doesn't have the technical and engineering information that will come later with NOI. They are separate and distinct processes, but they are related. The real issue in the process is the unique local Bylaw that discusses about delineating traditional wetlands, but also has a protected subsurface water resource. That methodology is not clear currently. We have an ANRAD is

using the standard wetlands methodology. Another part of our Bylaw for this ANRAD has to do with the subsurface water. The SCC has some work to do. Willson has given great resources to look into, the SCC must give TRC a methodology and standards to use in that part of the delineation; just because you have a delineation in front of you does not mean it is a final document; SCC is looking seriously what TRC is presenting in terms of traditional wetlands, making sure the flags are done right and agreeing on the methodology. The piece that still needs to be developed is the subsurface water, means part of the ANRAD can go forward but part still needs to be done; SCC in fairness to the applicant, must define subsurface water to TRC, suggest methodologies and come up with experts to review those concerns. That will be the document that addresses concern about subsurface waters and how it's affected. Commission needs a definition, a methodology, and get a consultant on board. DeFant: some of the ORADs have already been issued; some have not; if we develop methodology, regulations to define this resource area, what does this understanding mean for other projects where ORADs were already issued? Would they still be subjected to this resource area even though it was delineated at time of ORAD? MacNicol: Yes, I believe they would, just because you issued an ORAD doesn't mean, when they file the NOI, that you can't say to them: here are the wetlands that have been delineated, but here is this other resource area under the Bylaw that you must still delineate. If they choose to challenge it, so be it. DeFant: in our ORADs, we approved wetlands, but we never determined that there were not subsurface streams, is that correct? MacNicol: yes. Willson: If moving to including subsurface streams, can we can add subsurface streams to the document as another resource area to approve and on the ANRAD itself. DeFant: ORAD is written is broken into two set findings, one under the Wetlands Protection Act and the other under the Bylaw; would be under Findings under the Bylaw. MacNicol: ANRADs going forward need to be clear; need to get information to the applicant. Willson: Bylaws usually define resource areas very specifically as bank or land under water; we must figure out how we would define their locations and edges; DeFant: there are models for defining subsurface flow; we want to know if a project is going to have an adverse or cumulative impact on this resource area. Willson: we would be looking at water quality and quantity impacts on subsurface flow. DeFant: perhaps we should hire our own consultant to assist in developing the regulations; asks Firstenberg about any time frames for an NOI? Firstenberg confirms that she does not, there is consideration in timing aimed at Shutesbury Regulations and the entire Interconnection Study for the area. There are factors influencing the timeline. DeFant: we will work on this; wants TRC and its client to know that, even if a project is designed outside of Buffer Zones, the SCC may still require an NOI due to this protected resource area under the Bylaw; advised TRC to consult with the SCC to make ask for a Determination as to whether an NOI would be required under the Bylaw. Fontes: could the applicant bypass a NOI if they file for a Special Permit with variances? Firstenberg: we cannot bypass the NOI if there is something that the SCC believes is in their jurisdiction; the SP process is independent of each other. DeFant: point of clarification; the SP Zoning Criteria require that the applicant is in compliance with all local, state, and federal laws; must be in compliance with the local Bylaw; PB can add language that requires the applicant be in compliance with the Order of Conditions from the SCC. MacNicol: the Planning Board does not have the authority to waive SCC jurisdiction. SCC asks Firstenberg they have a date to continue Public Hearing. Firstenberg: hopes to have the delineation done at the beginning of April, would have to get plans to the SCC by April 14th to make the April 28th meeting? DeFant confirms. Firstenberg isn't confident therefore requests to continue the hearing for May 12th. SCC and Firstenberg agree for 7:30 pm May 12th. **Motion: DeFant moves to Continue the Public**

Hearing for the Montague/Caver ANRAD to Thursday, May 12, 7:30 pm. Willson seconds. Vote: David-Aye, Willson- Aye, DeFant- Aye. So moved.

Schoolhouse Road Forest Cutting Plan: Cerier: Asking SCC to do a site visit on 40 Schoolhouse Rd., her neighbor Dan McLean, to move his tree cutting plan 100' from the wetlands to the follow the Shutesbury Wetland Bylaws; sent SCC videos of culvert that flows under McLean's driveway, onto her property and under Schoolhouse Rd. Notes concerns of flooding to Schoolhouse Rd., property, and neighbors (including wells). Cerier lives off her property which includes over a dozen gardens. The cutting plan has 88 cords of wood to be removed. She has asked McLean to move back the planned cuts away from the wetlands. Cerier cites the local Bylaw, Sections 2a, 2b, 2c, 3c, 9h,9i, and 13. Cerier indicated she does not believe logging is exempt from the Bylaw jurisdiction. She has spoken with Steven Garabedian and Don Wakoluk for information. She does not believe the abutters were properly noticed. She believes the cutting plan is obsolete as it was originally created in 2013. Wakoluk created a hydric soils map showing that the cutting is occurring in wetlands; suggested the SCC consider getting a 2nd legal opinion. MacNicol: Shutesbury Bylaw cannot state agriculture/forestry are not exempt, case law is very clear that local Bylaws can be passed that are stricter than state WPA statute, but cannot move into other areas of jurisdiction already preempted from other statutes; clear case law and with Attorney General's opinion stating agricultural industries are exempt and a local Wetlands Protection Bylaw cannot regulate agriculture/forestry. DeFant: the Bylaw does not have an exemption for agriculture; has a section that says that any component of the Bylaw that is inconsistent with state law is invalid; historically, the SCC has not asserted any jurisdiction over agriculture and forestry. Willson asks why the SCC was not informed of the tree cutting plan; should be reviewed before signed by a forester; we can provide DCR with comments. MacNicol: states the FCP is an issue for DCR, not the SCC. DeFant: challenge for SCC due to tree cutting plans from DCR come through the drop box without an indication of time received, sent an email to DCR forester Andrew Rawcliffe to get an email to alert the SCC when plans will be arriving; have not received response. Stockman asks if there is a valid approved Forest Cutting Plan? Stone confirms it is signed and was given an extension date of 2023; got this one late due to a clerical glitch with the DCR. DeFant: Forest Cutting Plans are scanned and posted on website for the public. Wakoluk: disagree with opinion that the Bylaw must exempt forestry; disagrees with MacNicol, the Bylaw as worded, (even if incorrect) gives jurisdiction; notes that DCR could submit RDAs but never does; observes that the DCR forester is present at this meeting; Wakoluk sent hydric soils map to DCR; received an email from the DCR Forester asserting that the Bylaw has no jurisdiction; respects MacNicol's legal advice but states she is not an expert on forestry or wetlands delineation, to which MacNicol agrees. He visited the site and saw no wetlands flagging. MacNicol: preemption law means that if an area is thoroughly legislated at the state level, a local Bylaw cannot preempt it. DeFant: the consensus in the wetlands field is that Bylaws are subject to the Attorney General's ruling; SCC can promulgate a Regulation or revise the Bylaw at some point but don't jurisdiction to act. Stockman: agrees with MacNicol; asks Cerier if the DCR Forester conducted an inspection of the logging. Cerier: I don't think there has; believes pages were missing from plans, suggests a resubmission; would like the cuts moved back; disputes the characterization of forestry as an agricultural practice. Stockman: forestry is considered agriculture under state regulations; must adhere to the FCP; exemption is not granted in its fullness if the FCP is not being followed; SCC should be aware of this; advises the Commission to reach out to DCR to accompany them on their visit or if one is

scheduled to be updated after. McLean: is accompanied with his forester, Eric Donnelly and asked him to comment. Donnelly: work is long-term minded forestry, selective harvest to grow the oak and hardwoods, had site visit with Cerier and willing to speak to her again, confirms completed Forest Cutting Plan, was a DCR site visit; SCC and Cerier have received through certified mail, providing certified receipts indicating Cerier was noticed on the abutter mailings; no pages were missing from the plan; the blank pages are extras. Rachel McLean (40 Schoolhouse Rd.) states they don't intend to encroach on the wetlands, has discussed with Cerier agreeing to back up on some trees; we don't intend to encroach on the wetlands; would prefer this discussion be conducted privately. DeFant: ask Commissioners if they want to schedule a site visit with DCR? Willson believes this is a discussion that should be left between the landowners and DCR. McLean: SCC can still comment on the plan. DeFant: if we review it, anything we say is advisory, not regulatory. MacNicol: call DCR if you have questions. McLeans agree to work with Cerier.

Chair recusal and request: DeFant plans to submit an RDA to upgrade her septic system, and therefore submitted a State Ethics Disclosure Forms to the Select Board. She will recuse herself from any consideration of her own application before the SCC. She received permission from the Select Board to ask the SCC to appoint an Acting Chair to function in her place for this RDA. Because there are only 3 Commissioners present, there is not a quorum to vote on a substitute. Willson is willing to take on the role. Will table for another meeting.

Wetlands resource mapping near town roads: Rescheduled Montague Road site visit due to snow to Wednesday, March 16 at 3:30. Road mapping tentatively scheduled for March 26. DeFant has a GPS and Field Maps. Willson has a GIS account. Wakoluk: can do it with a static map. DeFant has a GPS device. DeFant: 2 teams to tackle Cooleyville Road, Wendell Road, and Pratt Corner Road.

Site visits scheduling:

SCC plans to have site visits on March 20th, at noon.

Site Visits needed:

- 585 Wendell Road/Levine
- 26 Lake Drive-TBD
- 387 Locks Pond Road/BPA
- Montague Road Highway Department maintenance

Motion to Adjourn: David moves to adjourn, DeFant seconds. **Vote: David-Aye, Willson-Aye, DeFant- Aye. So moved.**

Meeting Closed: 10:08pm

Documents Used:

- Agenda
- 2022 Pratt Corner West ANRAD Resubmission
- Attorney General Opinion on Town of Medway Wetlands Bylaw, 9/11/1996
- McLean/Schoolhouse Road Forest Cutting Plan
- Montague/Carver ANRAD
- Stockman Third Party Review, 12/22/21

Respectfully submitted by Miriam DeFant, Chair, 3/24/22