

Shutesbury Conservation Commission

Minutes – 03/24/2022

Approved – (04/14/22)

Virtual Meeting

Meeting Start: 7:00pm

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

Commissioners Absent: None

Other present: Maria Firstenberg (TRC Companies), Emily Stockman (Third-Party Reviewer, Stockman & Associates), Anna Mancebo, Janice Stone (SCC Consultant), Don Wakoluk (SCC Consultant), Carlos Fontes, Sharon Weizenbaum, Polly Wagner, Author Huskins, Wm Levine, Liz Scheffey, Eric Bachrach, Leslie Cerier, Charles Yergatian, Steve Schmidt, Robert E. Seletsky, Jill Buchanan, Leslie Smith, Edward Redonnet, Genny Bemmy, Renee Moss, Joe Trapani, Jim Barron, Dave Buchanan, Thomas Matsuda, Nan Dill, Michael DeChiara, Ed Mientka, Anne-Marie Demetz, Dave Posever, Jane Urban, Colleen Chudzik, Ethan Nedeau, Mike Roblee, Ken Lindsay, Sarah Patton, Mike Lipinski, Kathleen Bridgewater, Matt Davidson, Joseph Salvador, David Kilroy, Joyce Braunhut, Sanford Lewis, Jody Shapiro, and all other unidentified individuals.

Chair's Call to Order at 7:00pm

Meeting is being recorded

Approve minutes: 2/10/22, 3/10/22, discuss plan for 11/17/21:

SCC considered minutes from 2/10/22 meeting. No edits. **Motion: Willson moves to approve minutes from February 10th 2022, DeFant seconds. Vote: David- sustain, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye. So Moves.** SCC considered minutes from March 10th 2022. No edits. **Motion: DeFant moves to approve minutes from February 10th 2022, David seconds. Vote: David- sustain, DeFant-Aye, Willson-Aye. So Moves.** DeFant: need to approve minutes for joint SB meeting on 11/17/21. Kahan agreed to draft minutes.

Chair Recusal for RDA septic upgrade:

DeFant reminds Commissioners of her septic project that will be submitted as an RDA to the SCC. She submitted recusal forms to the Select Board. Select Board states that Commissioners need to appoint a temporary Chair during Public Hearing of DeFant's project. Willson volunteers. **Motion: David moves to approve Beth Willson to chair the SCC during DeFant's Public Hearing, Harrington seconds. Vote: David- Aye, DeFant-abstains, Harrington-Aye, Kahan-Aye, and Willson-Aye. So moves.**

Site visits scheduling:

66 Lake Drive- DeFant: received public complaint from a resident on the Lake Wyola over concerns of storm water adding large amount of sedimentation into Lake Wyola along with erosion, videos were also sent to SCC.

26 Lake Drive-TBD per landowner request

No site visits were set, SCC will communicate via email to schedule dates.

Follow-ups to site visits

Montague Road/Highway Department: Willson: Attended with Don Wakoluk, Mary David, and Town Administrator, Tim Hunting did not show up. Saw where the rain was collecting at the end of a driveway. Homeowners contacted DPW and had the last 15 ft of the driveway lifted and cut a trench to drain the water into a nearby wetlands. There is a DPW country drainage area up the road from this specific area. Discussion for future plans to resolve this occurred between the group and the Town Administrator plans to relay discussion to Tim Hunting.

Wendell Road/Highway Department: After 585 Wendell Rd site visit, DeFant visited an area up the road and noted erosion into a nearby stream. Sent site visit form to DPW but have not received response, asked Kahan if he may look since he lives in the area. Kahan agrees.

585 Wendell Road RDA: site of conduit project reviewed.

387 Locks Pond Road BPA: Willson: NOI is needed because of stormwater; homeowner wants a dry well which is close to the bank of the lake. SCC agrees.

71 Leonard Road-BPA: SCC signed building permit; no resource areas noted.

64 Cushman Road-BPA: Geothermal project is in a buffer zone and in a slope in Riverfront Area, NOI is needed. SCC and Stone agrees.

48 Lake Drive OOC post-construction photos: Special conditions required post construction pictures and a site visit; SCC agrees the post construction of the property meets the requirements given. Property owner will be requesting CoC in the near future.

Request for Determination of Applicability (RDA) for 585 Wendell Road/Levine; underground electrical conduit in Riverfront Area:

Levine: After the site visit, phone poles by South Brook are up, still need more put up. Trench will be dug from the terminal pole by South Brook and follow an identified path marked by spray paint, as seen in site visit. Excavator on a track with a bucket 18 inches to 24 inches will be used. Trench will be roughly 18 inches deep or however needed to meet regulation, will be deepest under the driveway of the property that is well outside of the 100 Buffer Zone from South Brook. Will instruct hired professionals to dig and mount of the left side, away from the stream and to eliminate chance of runoff into South Brook (runoff would collect in trench). Trench will be back filled after the conduit is placed. Hay [Straw] bales will be used to stack the right side of the trench as precaution: stack to brook distance is 15 feet and stack to trench distance is 2-5ft. Once trench is backfilled, Hay [Straw] will be recycled and use to stabilize the filled in trench. Next to utility pole is a copper grounding wire along with a wire anchor. Hopes to have the conduit placed within days of trench dug to ensure mount is backfilled quickly. No trees are planned to be taken down, possible one White Pine may need to be taken down if in the way. Stone: wants to clarify if hay or straw is being used, concerned using hay near the wetland due to risk of introducing invasive species. Levine confirms straw will be used. Minor edits to draft Special Conditions reviewed. **Motion: David moves to close the Public Meeting, Harrington seconds. Vote: David- Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye. So moves. Motion: DeFant moves to issue a Negative Determination #3 with Special Conditions as amended, David seconds. Vote: David- Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye. So moves. SCC grants DeFant permission to electronic sign.**

Public Hearing for Abbreviated Notice of Resource Area Delineation (ANRAD) for Pratt Corner West/ZW-6/Cowls, DEP #286-0287:

DeFant: welcomes the public and reviews policy for public comments. ANRAD is a resubmission of a previously approved ANRAD; that ORAD (issued in January 2021) was found to be invalid due to Commissioner turnover and the lack of a qualifying quorum to approve it. Firstenberg: shares maps from the ANRAD via screenshare and reviews the history of the project. Parcel is outlined in black (398 acres) and the area of interest is outlined in red (40 acres). In October of 2019, original map was created; delineation not done at optimal time; original map submitted December of 2019 was compared to a later updated version; original included 4 wetlands and 7 streams; with later review the streams largely did not change; largest change was change from 4 wetlands with some being isolated to 9 wetlands with no isolated wetlands; all wetlands on site are attached to streams; DeFant: asks Firstenberg about 200 ft Riverfront Area delineation. Firstenberg: A stream along the southeast edge of the study area/parcel becomes a perennial stream when two upper streams meet, according to the Stream STATS data; all other streams are intermittent; The first site visit was done during non-optimal conditions in the fall/winter, acknowledged review and more visits were needed; peer review and adjustments took place in May/June of 2020. Stockman: Due to winter conditions limiting resource delineation, certain necessary wetland indicators were not present; site revisit was postponed to Spring 2020; site visit was attended by Maria Firstenberg and Liam Cregan (former SCC commissioner); unmapped BVW and bank boundaries were found, peer review comment letter was sent. TRC added additional flagging, prepared revised site plans. Some field adjustments were made by TRC and received site plans reflecting adjustments; next site visit was in June 2020; a few additional field adjustments were made by TRC; a revised site plan was submitted in November 2020; second set of review comments were sent in December. In response to another peer review letter and comments from SCC, a final site plan was issued late December 2020 and an ORAD was submitted January 16, 2021. DeFant asks Stockman if she believes the adjustments in the maps have been updated correctly. Stockman: yes, December 22, 2020 revised map reflected the comments of the December 3, 2020 peer review letter. DeFant: noticed Stockman had commented early in the mapping that a flagged wetland area was recommended not to be approved, was this corrected? Stockman: yes, original April peer review letter, comments were focused on site plans review that predate the final site plan. DeFant: Were data forms submitted for the 6 new BVWs? Stockman: Typically, the BVW data forms are submitted with an original application to document and support boundaries, later in the process instead of doing paper work review, a site visit was conducted and documented communities of vegetation, soil profiles and hydrology; SCC had determined that new data forms was not necessary; DeFant: first review noted a possible new culvert, was that discussed/ addressed by TRC? Firstenberg: additional data forms were not submitted because the wetland ecology of the larger wetlands were comparable to the ones originally documented; believes culvert is located on the east and is not on the property; under Pratt Corner Rd. Applicant and land owner were not responsible for culvert. Stockman corrects Firstenberg, culvert is in the lower west; near the utility right-of-way; culvert was brought to the SCC to see if any filing existed or whether enforcement was necessary; DeFant believes no NOI was ever submitted for this culvert. DeFant: Recognizing that subsurface streams were not delineated in this ANRAD, any thoughts on subsurface flow or intermittent streams as protected by the local Bylaw in the area? Stockman: notes boundary and methodology for documenting subsurface flow has not been identified; on Sheet 10, her impression is there is continuous flow but it goes subsurface in some

areas in the parcel in SGR-2 and SGR-1; intermittent stream channel with a defined bank that was delineated; overland flow ceased downgradient with hypothesis that it was subsurface flow until it resurfaced; I believe there is continuous flow but it goes subsurface; may also be true for SGR-7; may have subsurface flow with confluence with SGR-6. Willson: asks if the vernal pools earlier discussed are located in Sheet 10? Stockman confirms yes; they are outside the project area; one is certified by state; the other is mapped as a potential vernal pool. Willson: looks like the VPs are encapsulated in the mapped 100-ft buffer. DeFant: notes that study area is part of the Amherst Water Supply area. Willson asks if Stockman can confirm that there is no changes in the resubmission of the ANRAD in comparison to the original submission? Stockman confirms that the resubmission has no changes compared to original submission; current site plan is equivalent to the final site plan dated December 22, 2020, that was previously approved in January, 2021. SCC has no further comments or questions.

Carlos Fontes (359 Montague Rd.): Represents the group SMART Solar Shutesbury. ANRAD site is in Amherst watershed and Shutesbury's Water Supply Protection Overlay District outlined in Shutesbury 2004 Master Plan, sensitive hydrological area. Problematic area because any project would have to cross rivers and wetlands in order to have access roads. Based on Stockman's comments, it seems there is doubt about whether SGR - and SGR-7 are intermittent bodies or water, maybe they are perennial water; this is a major issue; need to be more protections; does SCC know for sure the Stream STATS were accurately applied, and asks if the Commission may add language in the ORAD that states all subsurface water be delineated, that notes the sensitive nature of the study area and that hydrology of the Amherst watershed be delineated.

Stockman: clarifies when speaking of lower reaches of streams, such as SGR-7, SGR-2, and, SGR-1, not stating that these are perennial streams, rather stating they appear subsurface intermittent flow may be associated with those channels. The Stream STATS were provided by TRC, peer reviewed in both paper and by independently performing same Stream STATS analysis.

Sharon Weizenbaum (712 Pratt Corner Rd): Request to screenshare images and is granted, points out 200 ft drop within the site, leading to Nurse Brook. Nurse Brook connected to Dean Brook ending in Atkins Reservoir; points out a 460 ft drop in elevation overall from site to reservoir; keep in mind what could happen in watershed if area is clear-cut; all within Shutesbury's Water Supply Protection Overlay District; points out proximity to Amherst's Atkins Reservoir.

Sanford Lewis and Jody Shapiro (50 Cushman Rd): downstream of the site, Nurse Brook runs through our property. Hydrogeological flow is changing due to climate change, increasing number of whitewater going on for days, resulting in buildup of silt and sand on the banks. Refers to Conway and Williamsburg unanticipated water issues downstream of solar projects.

Charles Yergatian (196 Montague Rd): Share concerns raised by Fontes and Weizenbaum seems there is not enough evidence, further investigation needed.

Liz Scheffey (213 Pratt Corner Rd): concerned about slope of this project, the existing solar project on Pratt Corner has a lot of slope and runoff. Interested in a slope analysis with stormwater, runoff etc. The water systems behind my property have perennial and intermittent streams that are changing from climate change and notes the interconnectedness of these streams. DeFant: Slope analysis and stormwater systems are not reviewed during ANRAD process, we are looking at the delineation of wetlands in the field and on site maps; we are not approving any project; if/when a NOI is submitted the SCC would evaluate development impacts.

Don Wakoluk (215 Leverett Rd): In MACC handbook, ANRAD are mentioned only in a section stating Conservation Commissions, under certain conditions, can reject an ANRAD with conditions involving slope; believes it's when a slope is greater than 60 degrees; can infer slope from the site plan; suspect some areas have slopes greater than 60 degrees. Stockman: not aware of any section of the Regulations that specifically mentions slope as it's related to an ANRAD in an approval or disapproval; cannot speak to the guidance in the MACC Handbook. Stone: not aware of any mention of slope relating to ANRAD process.

Leslie Cerier (58 Schoolhouse Road): agree with all previous comments made by residents. Notes change in stream flow on her property with belief in climate change influence, refers to Sanford's comment. Unclear of Stockman's discussion of subsurface streams.

Jill Buchanan (541 West Pelham Rd.): ensuring full use of Shutesbury's Bylaws to look at surface, groundwater, and whole systems approach to understanding the impact. Supports previous comments made, public depends on water for health and safety; significant issue to all of us; hopes SCC pays attention to full extent of Shutesbury's Bylaws.

Firstenberg (TRC; representing applicant): Perennial stream vs intermittent streams are determined using a set of standards in 310 CMR 10.58, and if it has Riverfront Area in front of it. It has to meet certain requirements to be marked as perennial; perennial has to meet requirements for watershed size and flow minimums, unless mapped by USGS.

Sharon Weizenbaum (second comments): screenshares a map that lays out all current ANRADS sites/current solar farm that have been submitted to SCC for a full visual of total area being analyzed; notes cumulative water flow in larger context; concerned about fragmentation of a contiguous forest.

Leslie Smith and Edward Redonnet (180 Montague Rd): believes that consideration of debate what a watershed is and its reasonable use has to be tempered with the understanding that under a major pollution event there is irreversible damage that influences potable water; lowering home values, and water quality. Agree with previous comments made by the public; concerned about corporate oversight and how things can go wrong.

Thomas Matsuda (39 Cavehill Rd, Leverett): Agree with previous public comment. At the previous meeting, the underground water system was considered but not at this meeting. When will be considered and how will it be considered?

DeFant: At last Public Hearing for the Montague-Carver ANRAD, there was a discussion with Town Counsel about some portions of Shutesbury Wetlands Bylaw that lists resource areas that are not listed by the state statutes; however the Bylaw does not define it. Research needs to be done how to define and regulate it under the Bylaw. Looking into consultants to draft and submit Bylaw Regulation changes to include subsurface water resource; public will have opportunity to comment. Any largescale industrial project near wetlands has to apply to the SCC for a permit; SCC will have authority to review development impacts.

Genny Beemyn (113 West Pelham Rd): Echo Sharon Weizenbaum's concerns; the maps are damning.

Renee Moss (277 Shutesbury Rd, Amherst): Thank Shutesbury for their time, notes Weizenbaum's maps. Shutesbury's watershed influences multiple neighboring towns and cities water supply.

Joe Trapani (692 Pratt Corner Rd): Can anyone speak how or what evidence is looked at for the impacts of a 40-acre area is cleared on underground water or on wetlands? Notes that with increase rainstorms, the roads wash out.

DeFant: Appreciate concerns, SCC is concerned about water quality and water quantity, but we are not making decisions tonight about an impact; cannot speak to forest cutting or development because we don't have the authority at this stage to make decisions about what can or can't be done; .if/when an NOI is submitted then development impacts will be discussed.

Jim Barron (72 Baker Rd.): asks how climate change is included into these decisions, concern about the watershed. Agree with the previous comments made by the public.

DeFant: the SCC is concerned about climate change, but the ANRADs are about the wetland delineation process, need to know where the wetlands are in order to protect them with future development.

Carlos Fontes (Second comment): answers Trapani's question, 3-year study completed by UMASS Lowell about trees trap mercury that can be released into the ground and water when forests are clear cut. Asks if the Commission would comment on his previous requests earlier made.

DeFant: SCC cannot give a definite answer because SCC still needs to deliberate and the ORAD needs to be drafted; can't make decisions about that in the Public Hearing; based on the advice of Town Counsel, we need to address the issue of subsurface streams.

Leslie Cerier (Second comment): Agree with the previous comments made after her last comment. Firstenberg stated that the culvert is not in the property, compares believed similarity with culvert near her property; if trees are cut down uphill, it could flood the road; wonders who will pay for any damages caused by projects.

Stockman: clarifies the discussion about the culvert that Firstenberg pointed out in the east near SGR-4; Stockman is describing observation of a new culvert and inquires if the SCC if it had been permitted or if it is a violation. Firstenberg was pointing to the culvert that is under Pratt Corner Road and discharges flow into the subject parcel into SGR-4. The culvert pointed out is located in the west; is this an enforceable activity? That comment is about an existing impact.

DeFant polls the SCC to determine whether to close hearing. Willson: has enough information.

Firstenberg: request to include notes in the ORAD, similarly in the original ORAD; TRC has no issue with those findings being included so it is clear if a future application comes in for this area.

DeFant: agrees to the note stating that subsurface streams were not reviewed in the ANRAD; doesn't mean that SCC is determining there are no subsurface streams; only means the SCC is not approving any boundaries; streams if they exist are still protected. Stockman: repeats that that once the Public Hearing is closed there cannot be any more comments from the applicant, Commission or the public. Once closed, Commission will deliberate and to review and draft ORAD to conclude findings. In the past, when I drafted ORADs, SCC has requested they receive them a week ahead of time for review. Due to the tight timeline, the draft material were not submitted a week ahead of time; however, but materials were sent prior to the meeting and want to confirm them being received. Acknowledge the comment about the sensitivity about the site and making sure it's documentation in the ORAD. In the past, ORADs do discuss the boundary of land under water and water bodies not being delineated approved. Based on input from Town Counsel, it does discuss the boundaries of subsurface areas not being delineated or approved. ORAD draft acknowledges the Outstanding Resource Area, both offsite proximal, potential and certificated vernal pools; Nurse Brook being a marked cold-water fishery. DeFant: Does the draft conditions have of a notation that the land is a part of the Amherst Watershed Water Supply? Stockman: That is the Outstanding Resource Area, water resource that is mapped by the state and it is related to Atkins Reservoir. Firstenberg: Want everyone to understand that TRC expects such lists to be included in the ORAD as most do, agree it is appropriate to include.

DeFant notes another meeting is needed to deliberate the ORAD draft, SCC agrees to meet April 4th, 2022 at 7:00 pm. **Motion: DeFant moves to approve the ANRAD for Montague/Carver, Willson seconds. Vote: David- Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye. So moves.**

26 Lake Drive OOC Follow-up Discussion:

Landowners Anna Mancebo and Michael Stotz have approached the SCC to amend their 2020 Order of Conditions. DeFant: have shared email communications with the SCC, cannot deliberate or make a decision about the request because request is incomplete; want to update the Commission and see if any questions or concerns about the process; need a formal proposal to amend OOC besides asking in writing; SCC needs a proposal with a revised site plan and narrative that explains rationale and justification for the changes to proceed in the next step. Did you have any questions? Mancebo: did the Commission get to see the letter from Dennis Clark that he shared with her during his site visit and then Charlie Kaniecki and Alan Weiss, our sanitation designer? DeFant: yes, SCC understands the infiltration trench designed by your neighbor, at 32 Lake Drive, is prohibited by the Board of Health because of the proximity to other septic systems; we still need to go through the process outlined in the instructions that were shared with you. Mancebo: I know Dennis made a reference to 32 in that specific infiltration trench design, I think it was overarching, that any infiltration trench will not work in our 80 sq ft; you had suggested an alternate site and there was discussion about Lake Drive having runoff issues. Wondering what would you accomplish with a site visit? DeFant: To amend original OOC, there is a site plan that approved along with the Order of Conditions. As of now, that site plan is the prevailing requirement, however your conditions did not identify the location for an infiltration trench or stormwater feature, and I do not know of any requirements from the Board of Health that would preclude someone from creating a raingarden, or vegetated buffer zone to manage stormwater; you can propose an alternative; we need a site plan of the whole site with the changes being proposed; and explanation of how it is accomplishing what the goal was of the OOC, to protect the lake from runoff; might want a consultation from a wetlands or stormwater person; up to you; don't have to hire a consultant; we have to determine if the proposal accomplishes the same level of protections; if you want to pave your driveway; show us how you are handling runoff and nearby septic systems; your parking area is near #24's leach field; SCC has issued permits for driveway paving with conditions; to remove the perpetual condition, we need a proposal; we'll do a site visit; then make a decision as to whether the proposed change is minor; if a minor change, SCC can amend OOC through a public hearing with public notice; if a major change, need a new NOI. Mancebo: have the list of things to do; what is the timing? DeFant: you were supposed to propose a stormwater features in your OOC; we are leaving it to you to propose something; we can do it in the context of an amendment; want to work with you.

Bylaw Regulation Revision Discussion:

DeFant: Discussed hiring a consultant to develop regulations for subsurface streams, consider a regulation that has thresholds based on site sizes; different requirements based on size of impact. Willson: Agrees, once get more information about delineation methods we can figure out what projects might require the delineation; two people you mentioned are a consultant team? DeFant: Two independent consultants that work together, Patrick Garner works with a hydrologist, Scott Horsley; both know the regulatory world. Stone: knows Patrick, and believes

he would do be excellent but is concerned about funding. DeFant: may have a few accounts that be drawn from. Stone suggestes talking to Select Board for Annual Town Meeting as a line item; can't use the NOI filing fees for Bylaw work. DeFant notes that she has started to draft revised Bylaw Regulations, reviewed other town regulations and noticed more detail such as including performance standards; would be helpful to have uniformity in approach to projects. Kahan agrees and supports the use of consultants for the proposed regulation(s) amendments. Are we only town in the commonwealth that would be regulating subsurface water as a town Bylaw? DeFant: believes Shutesbury's Bylaw is unique. DeFant will reach out to the Select Board; asks Willson if there is anyone that she could reach out to through the Amherst Water Supply Protection Committee? Willson: a few hydrogeologists that we may want to speak to, the Amherst Water Supply Protection Committee has a subcommittee going to look at impacts of large-scale solar projects on drinking water; water quality and quantity; report may help the SCC if we want an opinion from Amherst. DeFant: SCC is facing some big challenges with the Bylaw and needs to work on the Regulations.

Highway Department Road Maintenance:

DeFant: Plan to go out with a notebook and a GPS, mark coordinates with notes to later create a map. Meet together on Saturday March 26th at 9:00 am and group up in pairs to split up on different roads. SCC agrees.

Motion to Adjourn: Willson moves to adjourn, DeFant seconds. Vote: David- Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye. So moves.

Next Meeting: April 4th, 2022

Meeting Close: 10:04 pm

Documents Used:

- Agenda
- Draft Minutes: 2/10/22 and 3/10/22
- Pratt Corner West ANRAD
- 585 Wendell Road RDA
- Site Visit Forms: 585 Wendell Road, 71 Leonard Road; 64 Cushman Road, 387 Locks Pond Road
- Amending Order of Conditions (DEP Policy 85-4)
- Request to Amend an Order of Conditions Handout
- 3/15/22 Email from Chair to 26 Lake Drive landowners regarding amending an Order of Conditions

Respectfully submitted by Miriam DeFant, Chair, 4/15/22