

## **Shutesbury Conservation Commission**

**Minutes – 04/14/2022**

**Approved – (5/12/22)**

***Virtual Meeting***

**Meeting Start:** 7:00pm

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

**Commissioners Absent:** None

**Other present:** Carey Marshall (Land Use Clerk), Bob Douglas (66 Lake Drive), Frank McGinn, Sharon Weizenbaum, Mark Rivers, Chris Stoddard (Engineer), Joseph Salvador (31 Lakeview Road, Applicant), Janice Stone (SCC Consultant), Don Wakoluk (SCC Consultant), Hannah Kowalski, Gary Rehorka, Robert E. Seletsky, Carlos Fontes, Henry Geddes, Jane Plaza, Patrick Garner (Consultant), and all other unidentified individuals.

Chair's Call to Order at 7:00pm

Meeting is being recorded

### **Discussion about 66 Lake Drive/Douglas site visit storm drain issues:**

DeFant: discussion to review site visit on 66 Lake Drive and further discuss his property, mentions that LWAC is having a discussion about Douglas' property at their next meeting.

Douglas: thanks SCC for their time, looking to discuss the increased water runoff that carries silt and sediment that ends up in Lake Wyola – long-term build up is causing change in the topography of the lake bottom and harming the invertebrate layer. The continuous water run-off is also damaging his property. Has come to his attention that a culvert is beside his house that was put in when the house was rebuilt but the culvert was not in part of the construction plan or installation of the septic tank, culvert was not approved by Board of Health or SCC - goal is to remove it with permission from SCC. In the last few years, the character of the road has changed - the LWA roadway has a berm around all its edges, also work done uphill from us, all causing more water to runoff carrying even more sediment/silt to concentrate through his property, destructive to property and the lake. DeFant: not all of the Commissioners were able to attend the site visit, would anyone who attended like to comment? Harrington: was shocked to see the berms on everyone else's property so Douglas property is taking on a lot of the runoff from Lake Drive; thinks this situation needs to be addressed. David: I was present too - the ditch is interesting in what has happened there and the culvert that has no documentation for how it was created. Wakoluk: this is an ongoing problem because as it continues to rain which results in more damage being dealt; continuous discharge that can even cause trees to upend; that in itself is actionable by the SCC. DeFant: glad Douglas has come forward to work with SCC to solve the complex runoff situation that has multiple factors such as runoff from the road, and the construction of the drain. Recommends hiring an engineer or a sanitarian to get guidance on what is and what isn't needed for his septic systems. If no bypass drain is needed to protect the leach field and sand filter, then the easiest solution is to remove it, but we'll have to wait.

DeFant: SCC has received multiple complaints raising concerns about this matter in the past and present but SCC has never officially responded or made decisions – this is an issue that needs to be addressed. Harrington: would like to see a situation that is more fair, with multiple properties sharing runoff from uphill of the lake; Douglas is getting everyone's water and it is not fair. DeFant: don't think it is appropriate to treat #66's problem as an Enforcement issue when landowner is being cooperative; suggests drafting a letter to respond to Douglas to acknowledge the complaints and discuss the next step(s) and have similar discussion with LWA as well. DeFant: Douglas has the right to file a NOI; shares a draft letter; letter to Douglas doesn't include any determination besides wanting an NOI submitted within two months unless Douglas comes to us with a time extension request if needed. Douglas agrees to the timeline and ability to request more time if needed. Kahan: wasn't present at the site visit, wondering what NOI relates to in regards to the Wetlands Protection Act (WPA) – is this within the buffer zone? What is our nexus to the WPA? I understand that storm water management is exempt from the WPA. Willson: was also not in attendance and do not know the exact distance of all the components on the property but Lake Wyola is the Resource Area that is being impacted and damaged - I believe that needs to be addressed; thinks Enforcement would probably relate to the owners of the road, the LWA. Douglas: the drain is within the 100' buffer zone to the bank of the lake. DeFant shares the site visit form for 66 Lake Drive that includes photos via screenshare. Wakoluk: it is not a culvert, it is a sediment trap, a drain with a cover. DeFant: the front of the property has the beginning grate drain with a stone border which allows water to run underground past a bottomless sand filter, then sunlights further down the property before ending at the lake. Someone has created a coffer dam out of brick in the road to slow down runoff. David: suggests talking to LWA because the inlet is on their property (the road). Kahan: so it is creating point source discharge into the lake and collects runoff from the road? DeFant: yes. DeFant: photos show the site is degraded by erosion; best to work through a NOI process; David: the grate is not on his property; we need to talk to LWA. DeFant: if we issued Douglas an OOC, we could not order Douglas to take something off the road because the inlet is on the road – would need to be discussed with LWA, no one should remove the drain, however, without a permit. DeFant screenshared a draft letter to Mr. Douglass with a cc to the LWA.

Tom Siefert (27 South Laurel Dr.): are you confirming there is no record of the installation of that drain? DeFant: there is no record. From the SCC's understanding, there was new septic tank repair in 2013 requested by Douglas' father who owned the property at the time. The drain was not included in the RDA but was installed during the construction. Douglas claims to recall a discussion/suggestion of a drain during a Board of Health meeting but there is no record in the minutes of that discussion. The person who did the construction is either no longer around or in business. Douglas: The general contractor was Don Putnam who has moved to Florida. He likely subbed the work out to someone else at the time which I do not know who.

**Motion: David moves to approve the letter and request a copy be sent to LWAC, Harrington seconds. Vote: David-Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye.**

### **Site Visit Follow-Ups:**

**86 Sand Hill Road/Kalt (geothermal energy system):** DeFant: In Riverfront Area with a steep grade slope into Dean Brook. Trenching area is close to the slope, maybe 15'. Recommends to require a NOI and SCC agrees.

**114 Montague Road/Pollock (deck and outbuilding):** DeFant: slopes and about 75ft from wetland soils. Evidence of trees taken down in that area along with heavy machinery disturbance. Proposed Shed and deck would be approximately 57 ft from the suspected wetlands on the property. SCC agrees to schedule a second site visit with Beth Willson attendance in endure proper identification of wetlands on the property.

**Continue Public Hearing for 31 Lakeview Road/Salvador Notice of Intent for home demolition and rebuild, DEP File# 286-0286:**

DeFant: Salvador is not in attendance but his engineer Chris Stoddard is here to represent him. A site visit was done to review the flagging and how the wetlands had been delineated. Shares revised site plan for property via screenshare and invites comments from Stoddard. Stoddard experiences technical difficulties that remove him from the meeting – SCC waits for him to return. Salvador joins the meeting by phone and informs SCC that he has received a text from Stoddard stating that his computer had crashed and he is working on finding a new way to join the meeting. Salvador will be presenting his project instead of Stoddard. Salvador: After the last meeting, Stoddard revised the plan to reflect the Commission's suggestions and comments; added more trees. DeFant: Along the erosion controls line near the river bank, is there already existing trees or are new trees being planted? Concerned about the slope and space available in that area. Salvador: new trees are planned to be planted in that area; they are next to the erosion controls. I left the planting plans up to the engineer but informed him what is required based on the SCC's comments. DeFant: Are you aware how close the leach field is to the BVW wetland? DeFant doesn't think there was a variance and it is 10ft-15ft from the BVW boundary. Salvador: that runoff stream was already drawn in when it was originally submitted. DeFant didn't see it delineated in the RDA; usually when a leach field is in this close proximity to a wetland, you have to get a variance from the Board of Health. During the RDA, DeFant believes SCC knew about this because the site visit was done in winter. Stoddard re-enters the meeting via his cellphone and apologizes for the technical mishap. Stoddard asks what is being questioned. DeFant: There are trees that are shown to be within the erosion control line – along the bank side. It wasn't clear if these trees already exist or they plan to be planted. Stoddard: There are a 14-inch and 8-inch oak trees that are preexisting in that area but we plan to plant 3 younger trees in that area to promote shade over the brook since it is a Coldwater Fishery. The trees would be planted by hand to avoid using machinery. DeFant: Could you walk us through how you are meeting the Redevelopment Standards required for Riverfront Area? Stoddard: going to recap the whole project quickly and come back to that. The property has an existing leach field with existing plants near/on the area. The original structure on the property that was 890 square ft, which was demoed, and there is a pile of rocks on the property that was once the foundation of the structure. On Lakeview Road, most of the water flows off the road, into a culvert, into the wetlands and ending into the Sawhill River. We are proposing to plant some grasses and shrubs to slow down the flow coming off the road and into the wetland. On the east side of the building, we are proposing some stone walls along with plantings of native shrubs, trees, and grasses to flatten out some of the land and slow the flow of water. To the north of the newly proposed building, we are planning to put native grass and other plants to get the stormwater flow to

interact with plants to remove some of the sediment and nitrites. We are also proposing a dry well that is next to the planned building to catch water from the impervious surface of the roof. Under the Redevelopment Criteria, we proposing to reduce the runoff and the impervious surface of the site by collecting all of the runoff from the roof, reducing runoff rate. Single family house is exempt from the second criteria about stormwater but wanted to provide something for it – including the dry basin and the gravel drip strip (900 square ft of reduced impervious area). The existing structure is approximately 34ft off the high water line of the brook and the existing disturbed area is 18ft from the closest point. The proposed structure is 37ft away and the proposing mitigation (inside the erosion control) is 20ft away. We are not proposing any expansion that is closer to the brook than what was already disturbed, not moving any closer to the brook. The existing degraded area is approximately 4,000sqft out of the total property area which is 32,500 square ft. The total existing degraded area is more than 10%. The proposed project is to impact 3,000sqft (<10%) and whole property is in Riverfront Area. For mitigation, we are proposing to install 1327 square ft of herbaceous and woody species - made up of native grasses, 10 various conifer and deciduous trees, and 9 native shrubs spread through the property to help treat stormwater runoff on both the property and road. The remaining of the 773 square ft of project area will be topsoil that will have a conservation seed mix to stabilize the area using erosion blankets until the seed mixture has been deemed established by SCC. Stoddard: feel we have met all of the criteria for the Redevelopment Standards; feel we have gone above the minimum requirements. DeFant: On the first plan there was spoils piles but not on the existing plan? Stoddard: Everything is being hauled off site and the existing rock piles are going to be used for the retaining walls. Any material that is going to be excavated out will be hauled off site. After the delineation was done by Ward Smith it was clear the area was too sensitive to leave any remaining materials on the site. Stone: The 50 ft buffer line appears to end after the Bordering Vegetated Wetlands (BVW) buffer but it doesn't continue for the buffer to the stream. Stoddard: It ends there because that is where the BVW ends; marked in red is the 100 ft Riverfront buffer that goes through the whole property which is set back further than the 50 ft BVW buffer line. Stone: Banks still have a buffer but I understand what you are doing; I thought you couldn't plant trees too close to a leach field, since the trees are lower than the leach field will that not be a problem? Stoddard: Normally we don't want to plant trees 10 ft from the leach field but because we are planting the trees on the slope lower than the leach field, it's about 20ft away. DeFant: it seems like you can't plant a tree and have an erosion control without them disturbing each other – not enough room. Stoddard: We can pull the trees up the slope a bit which I have done in the past successfully. The trees will further stabilize the slope on the property. DeFant: I do not see any erosion controls around the culvert where proposed plants are but it's close to the parking area and where the heavy machinery need to enter. What are you doing to protect that area? Stoddard: currently there is a straw waddle there but it isn't shown on the map. Stoddard: if SCC votes to approve the plan can there be a condition added to expand the erosion controls up to the border of Lakeview Road pavement and with a revised plan showing that? DeFant: I have some draft conditions and we can add that if we can agree on the language. Willson: in the site plan you have slope installation for some of the erosion control but it's not shown on the plan - where you think of using that? Stoddard: in the notes section it describes that use of slope erosion controls when the slope is greater than 3:1 which is not anticipated – wanted to include a plan if this case arises. Willson: is this area flood zone, Land Subject to Flooding? Stoddard: no. DeFant: what are the dimensions of the parking and materials used to surface it with? Stoddard: There is no proposed changes to the current parking area that is made up of

gravel. Willson: the plantings look good except the ones on the slope might be tricky. DeFant: we discussed in the last hearing about the possibility of perpetual conditions of a no development or no touch zone to address degradation on the site– want to make sure you are aware. Stoddard understands. DeFant: design looks like an improvement in many ways over pre-existing conditions, but it is not practicable to meet all of the requirements of the Riverfront Redevelopment Standards due to the restraints of property's small size, you can't stay 50' from the bank – part of the reasoning for the perpetual conditions. Willson: the SCC can require a no-touch zone, especially because there were some enforcement issues on the site. **Motion: David moves to close the Public Hearing for 31 Lakeview NOI, Willson seconds. Vote: David-Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye.**

DeFant shares a draft of the Order of Conditions (OOC) via screenshare for SCC to review. SCC adds condition number 12 that states the applicant shall install an erosion sock that expands along the A- series BVW to Lakeview Road and will submit photos of those controls to SCC along with adding it to site plan. SCC adds condition 21 that states the applicant will submit documentation to the SCC about the seed mix and the plant species used. DeFant shares the Registry of Deeds Attachment A Map via screenshare for SCC to review. SCC changes the name of the 'No Future Development Allowed' area to 'No Disturbance Area'. DeFant: Originally had the iron rod boundary marking stop at 11 or 12 but received a request from Stone to expand out to property line because the stream and bank on the property moves in - revised it to reflect so. SCC reviews the eDEP online file before submission. **Motion: David moves to approve the OOC as amended for 31 Lakeview Road, Willson seconds. Vote: David-Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye.** SCC will send Salvador the OOC forms via certified mail.

#### **48 Lake Drive Certificate of Compliance Request/Dallmus:**

Harrington: Went on last site visit with Wakoluk and everything looked great having been there several times before. The wall was completed with no sign of erosion. DeFant shares the Certificate of Compliance (COC) via screenshare for the SCC to review. **Motion: Willson moves to issue the COC for 48 Lake Drive, Harrington seconds. Vote: David-Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye.** SCC will send a copy of the COC to Dallmus via certified mail.

#### **Update from Chair and meet with prospective Bylaw consultants:**

SCC, Janice Stone and Don Wakoluk introduce themselves to Patrick Garner, consultant applicant. DeFant: How would you approach this project and what you think we would need to accomplish our goal? Garner: Won't say too much because he and Scott Horsley haven't discussed this in great detail. Horsley and I have extensive background in rivers and hydrology. We have talked about doing research in scientific literature and federal/state legislations, which may come up empty. In the scientific literature we've reviewed there is discussion about underground rivers and intermittent rivers but there isn't any in-depth discussion about subsurface water resource areas, so it will be a unique task formulating proposed regulation that looks at the phenomena and describes the typically area where it occurs – the difficult part being the measuring component. SCC needs in its regulation guidelines for applicants to work with which is the challenge. It would be ideal to come across something similar that is already done but don't believe that will happen - we will have to rely primarily on our backgrounds and what

we've seen in the field. MassDEP gives clear definitions of impacts in the Wetlands Protection Act in terms of stream crossings but it's a question if it can be applied to subsurface streams or not. In my opinion at the moment, I believe it can be applied because when you are crossing subsurface streams, you're excavating loams, levels of soils, and possibly putting in utilities that can be measurable. Kahan: thank you for introducing yourself and explaining what may be difficult of this project. I'm interested in the delineations part of this project as a place to start. Part of our scope of work discusses thresholds, impacts to the resource area, and how to identify and delineate subsurface resource areas in order to inform the SCC to promulgate regulation. Garner: I think you described the challenge really well. I worked for MassDEP Advisory Technical Advisory Committee and we debated about perennial vs intermittent streams for a year and a half which ended up in with the current regulations today. One thing we did was visit 50-60 different streams to collect information/data because we were struggling with what was an intermittent stream – it was the first time I have ever seen the phenomena. You would see the stream end but continue into the woods and hear the river moving under the ground. We began realizing that was an instance of a glacial boulder field where the stones were scattered with enough space to see where the river would enter the ground; over time trees would establish themselves in the top soil. This is something we could go back and investigate for this project. I believe we will conclude that only certain streams go underground and our task is going to be to determine what those are, where they occur and how we will measure them. There may be instances where the stream goes 10ft-15ft underground which is almost immeasurable but there might be some the flow 18 inches under the ground. Another challenge is figuring out what you regulate and what you don't. DeFant: had some conversations with hydrogeologists – spoke with Neal Price and he is working on a project for the town of Wareham's Planning Board that is permitting a solar project by developing a model to investigate the impact of development on groundwater. I wondered if there is a way to reasonably define if we believe a subsurface stream should include an evaluation of groundwater impacts because groundwater is measurable. Garner: Yes you can and we have two types of rivers, which are gaining streams and losing streams. Groundwater rises and falls within the year and depending on the type of soil it can range 3 ft - 5ft or 10ft-15ft which is measurable, but how it relates to subsurface streams is unsure. Looking at large-scale projects is a good start – Scott and I have worked together in the past on large-scale projects where I looked into the wetlands and rivers and he looked into the effect of these projects on groundwater which are usual substantial. Stone: I want to let you know the intention of the current Bylaw regarding subsurface water was directed to subsurface streams and due to the way it reads or is punctuated, it appears the language is unclear. I'm not sure if that that language should be interpreted to mean more than subsurface streams. Garner: I agree and would want to focus on streams for this project. SCC thanks Garner for his time and will be in contact with him.

### **Schoolhouse Road Forest Cutting Plan Follow-Up:**

DeFant: last meeting we discussed the issue on Schoolhouse Road, SCC decided not to do a site visit because Town Counsel, Donna MacNicol, advised SCC that it did not have jurisdiction besides adding comments to Forest Cutting Plans. Cerier: asking the SCC to review the Memorandum of Understanding that allows SCC the power to either deny or adjust the Forest Cutting Plan. Potential stormwater and flooding issues with my well and neighbors' could be an effect of the Cutting Plan. I disagree with Town Counsel and believe the Memorandum of Understanding allows SCC to act on this matter. SCC can and has enforced Bylaw with residents

in Shutesbury such as Sharon Weizenbaum and her neighbor Kevin Weir. Asking SCC to either deny the Cutting Plan or do a site visit. DeFant: will discuss site visit with SCC, but in the past SCC has been advised by Town Counsel and Massachusetts Association of Conservation Commissioners (MACC) that the State Attorney General (AG) has interpreted state law to mean that says you can't regulate agriculture at the local level; therefore, Bylaws cannot be used to regulate agriculture. Also, the state has deemed agriculture to include forestry. Our Bylaw is preempted by the state law. Wakoluk: The Memorandum of Understanding between DEP and DCR explains how a Conservation Commission using its Bylaw can address violations of the Forest Cutting Practices Act with the town's Bylaw. DeFant: does SCC want to do a site visit? Kahan: I appreciate the background of this, what has been laid out by Town Counsel and Wakoluk should be further discussed. I am not sure if a site visit is in order without finding out if we are allowed to do such. Willson agrees and asks if anyone has appealed the Forest Cutting Plan. The plan was not appealed due to receiving the plan after the 10 day window allowed to appeal. Weizenbaum (712 Pratt Corner Rd): Would like to disentangle what happened with my property from this issue because it completely different issue and can't have a bearing on what is occurring behind Cerier's property. Cerier: is SCC willing to do a site visit? DeFant: yes with DCR. Cerier: appreciates the site visit and hopes she would be able to be present for it. DeFant: The site visit would be will DCR, SCC and landowner. It would be up to the landowner discretion if anyone else were to attend. SCC agrees to reach out to DCR about the possible of a site visit.

**11/17/2021 Minutes:** Motion: David moves to approve a draft Attachment to the Select Board meeting minutes from 11/17/2021, Kahan seconds. Vote: David-Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye.

**3/24/22 Minutes:** Harrington had a few grammatical/spelling corrections for the 03/24/22 minutes - DeFant has edited to reflect such. Motion: DeFant moves to approve the 03/24/22 minutes as amended, David seconds. Vote: David-Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye.

**4/4/22 Minutes:** Motion: David moves to approve the 4/04/22 minutes as amended, DeFant seconds. Vote: David-Aye, DeFant-Aye, Harrington-Aye, Kahan-Aye, and Willson-Aye.

**Follow-up regarding culverts reported by Stockman and Associates on Baker Road and Pratt Corner West ANRAD parcels:** DeFant: does SCC want to send a letter to Cowls asking for site visit on the property for Pratt Corner West where there was a culvert? There is also another Stockman found on the Baker Road ANRAD property. David: we should look at it if we haven't looked at them already. DeFant: SCC has not gone back to review with Cowls. Kahan asks if the culvert is bringing in or removing water from the site. DeFant: it is in the middle of the property. Baker Road ANRAD has been withdrawn but there is a culvert built apparently without permit which is not exempt from WPA as it relates to agriculture. Stone: don't think it is exempt; sometimes they are allowed temporary culverts for access but if it is either a permanent culvert or permanent road, then a permit is required. DeFant: will draft an email to Cowls and ask for a site visit – will update SCC with time availability.

**Update on Highway Department Road maintenance coordination and permitting:**

DeFant: at this stage, nothing will happen between now and Town Meeting because the Town is busy getting ready for Town Meeting. Do we want to have a follow up letter about road maintenance coordination and timeline for an NOI? Haven't received any response and worried that the summer will get ahead of us and this will not be resolved for another year. SCC agrees to follow up letter. DeFant suggests asking Select Board to advise the Highway Department and SCC agrees. Kahan: 60 days seems reasonable, would consider longer timeframe if 60 days is not enough. DeFant: Issue with 60 days is that they will not do anything until after Town Meeting, if we give them 90 days from Town Meeting that would put us at the end of summer which means nothing would get done until the next year. David: I think would should give them 60 days and if they want more time then they can ask for an extension. SCC agrees. DeFant will send the Select Board regarding this ongoing situation.

**Follow-up to Montague Road Mapping Project:**

DeFant: do we want to schedule another time to get together? Willson: Sure, I have been meaning to get a map together. DeFant: I took my GPS and uploaded into Arc GIS. We stopped just shy of 114 Montague Road. SCC will wait till next meeting to decide a date for the next meet up.

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

**Meeting Close:** 9:38pm

**Next Meeting:** April 28, 2022

**Documents Used:**

- Agenda
- Draft Certificate of Compliance for 48 Lake Drive
- Site Plan for 31 Lakeview Road NOI
- Draft Order of Conditions for 31 Lakeview Road NOI
- 11/17/21 SB Minutes and Draft Attachment
- Draft Minutes for 3/24/22 and 4/4/22

*Respectfully submitted by Miriam DeFant, Chair, 5/13/22*