

## Shutesbury Conservation Commission

Minutes – 10/27/22

Approved – (12/9/22)

*Virtual Meeting*

**Meeting Start:** 7:00pm

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

**Commissioners Absent:** Robin Harrington

**Other Staff:** Carey Marshall (Land Use Clerk)

**Other present:** Janice Stone (SCC Consultant), Robert Kibler, Leslie Luchonok, Jamie Burns (Applicant), Jill Marland, Katie Eagan, Mary Lou Conca, Mary Anne Antonellis (Applicant), Penny Jaques, Don Wakoluk (SCC Consultant), Cameron Turner, Sarah Fairfield, Simon Huang (Applicant), and Kenneth Holt, Amanda Alix, Jon Lawless, Alan Weiss (Cold Springs Environmental Consultants), Gail Fleischaker, Chris Stoddard, PE (Stoddard Engineering), Joan Hanson, John Aierstuck, Meryl Mandell, Penelope Kim, April Dorosky, Emily Bayard, Greg Caulton, and Stephen Dallmus, Linda Bills, Katherine A. Powers, Eric Stocker (Select Board), Steven Bressler, Al Werner, Craig Martin, John Buonaccorsi, Leslie Cerier, Lynmarie Thompson, MaryJo Johnson, Arleen Read, Rita Farrell (Select Board), April Stein, and all other unidentified individuals.

Chair's Call to Order at 7:00pm

Meeting is being recorded

### **Continued Public Hearing: 58 Lake Drive NOI/Burns, DEP 286-0296:**

Burns: Part of their retaining wall has collapsed into the lake – looking to repair. They are proposing the work to be done by hand (no heavy machinery) using the stones that fell into the lake and reusing them for the repair. All document and plans have been sent to SCC, MassDEP, and National Heritage and Endangered Species Program. DeFant: the Public Hearing for 58 Lake Drive opened a month ago so to refresh everyone's memory; the project is not changing anything within the Buffer Zone; they are looking to only repair a section of their retaining wall. Burns: correct; only about 35 feet of the retaining wall will be worked on. DeFant: will you be doing the work or have you hired someone. Burns: they hired Grass Roots Landscaping from Leverett. SCC has no further questions. No comments from the public. **Motion: David moves to close the Public Hearing for 58 Lake Dr, Willson seconds. Vote: David- Aye, DeFant- Aye, Kahan- Aye, and Willson- Aye. So moved.** DeFant shares the drafted OOC for 58 Lake Dr for SCC to review via screenshare. Edits are considered. All members of SCC grants DeFant to sign for them electronically. **Motion: David moves to approve and issue the OOC for 58 Lake Dr, Willson seconds. Vote: David- Aye, DeFant- Aye, Kahan- Aye, and Willson- Aye. So moved.**

### **Public Meeting for 35 Weatherwood RDA/Huang-Septic Upgrade:**

Stoddard: there was an Emergency Certification issued for the property to remove a deck that was declared unsafe/hazardous by the Board of Health (BOH) ; Ward Smith delineated the property which he is also using for the site plan. The proposed project is to replace the existing septic system that is currently located at the back of the house; septic tank gravity feeds to a

pump chamber that moves the effluent towards the front of the property to a leach field. They did soil testing area the current leach field because it is the only area that far away enough from both the Resource Area and existing well on the site. They are proposing to replace the current septic tank with a new one but in the same location, save the pumping chamber tank, and keep in the same location and lastly re-pipe up to the newly proposed leach field (next to the old one). There are erosion controls currently on site from the removal of the deck so they are proposing to keep and maintain these for this septic system project. There will be no stockpiling of materials within the 100' Buffer Zone because the old septic tank will be removed and placed into a dump truck to be immediately taken off site for disposal – new one will be placed in same location; all other work will take place outside of 100' Buffer Zone. DeFant: will there be any tree removal? Stoddard: there is no proposed tree removal; septic tank was design to fit in-between trees on the property around the proposed location and they will be using the same pump line for the new system (only replace the current pipes with new one). DeFant: what is the route the trucks will go use for the removal of the existing septic tank? Stoddard: he believes the trucks will go around the home to access the back by entering from the back of the existing driveway (closest to Resource Area) because the land is flatter on that side; left side is narrow due to the existing leach field and pump tank. DeFant: part of the driveway is paved correct? Stoddard: yes the entire driveway is paved. DeFant: how will the surface be stabilized? Stoddard: the contractors are required to stabilize the area regardless of the season; he would seed the areas and then cover the seeds with straw or mulch; areas include over the tank and the new leach field. DeFant: SCC will be recommending a conservation grass seed mix for any reseeding. SCC has no further questions. No further comments from the public. **Motion: David moves to close the Public Hearing for 35 Weatherwood Dr, Willson seconds. Vote: David- Aye, DeFant- Aye, Kahan-Aye, and Willson- Aye. So moved.** DeFant shares the drafted Determination of Applicability (DOA) for 35 Weatherwood Drive for SCC to review via screenshare. Edits are considered. All members of SCC grants DeFant to sign for them electronically. **Motion: David moves to approve and issue the DOA for 35 Weatherwood Dr, Willson seconds. Vote: David- Aye, DeFant- Aye, Kahan- Aye, and Willson- Aye. So moved.**

#### **Public Meeting for 11 Pine Drive RDA/McBride-tight tank installation:**

Weiss: the property is located in a tight spot on a peninsula over by Lake Wyola; Dennis Clark recommends a tight tank for the property and Weiss and BOH agreed. The property has water on both sides with the land be composted of sandy soils. They are proposing to place a 2,000 gallon tight tank. They are not proposing any tree cutting; there will be no incursion into the Resource Area besides placing it in the middle of both Buffer Zones coming from both sides of the lake; it is not the right spot for an area with a leach field as currently exists (in or very close to the water table elevation). DeFant: the existing septic system as failed correct? Weiss: he did not do a Title 5 inspection, so he can't say it has failed, but from his visual interpretation, he believes it is failing in terms of elevation and location. DeFant: what will happen to the old tank? Weiss: the failing tank will be removed and trucked off site for disposal; making room for the new tank – no spoils piles and no tree cutting. DeFant: how far is the tight tank from the Bank? Weiss: the closest Bank on the northwest side is about 28 feet; on the east side it is over 50 feet. DeFant: was there no way of getting the tight tank 50 feet away from each Bank? Weiss: negative; this new location maximizes the distance from the Bank on each side. Willson: will anything happen to the old leach field? Weiss: leach fields today mostly get left in place and disconnect per the state's recommendation. DeFant: SCC will be recommending a conservation grass seed mix for

any reseeded. Weiss agrees. Mary Lou Conca: what is a tight tank and what is it used for? Weiss: most septic systems have a septic tank which allows the solids to either float or settle within the tank while the water goes to leach tank. A tight tank is a conservative approach that consists of just a tank with no outlet that is pumped on a regular bases which is covered by Title 5 and sanitary code. Conca: this is for a house that is on the lake? Weiss: a house that is existing yes. DeFant: is there an alarm system for the septic system? Weiss: yes an alarm and monitoring system which is set at 2/3 volume of the tank to allow for adequate time. DeFant: does BOH require the homeowner have a contract with a pumper? Weiss: yes; that is a part of the BOH approval process. SCC has no further questions. No comments from the public. **Motion: David moves to close the Public Hearing for 11 Pine Dr, Willson seconds. Vote: David- Aye, DeFant- Aye, Kahan- Aye, and Willson- Aye. So moved.** DeFant shares the drafted Determination of Applicability for 11 Pine Drive for SCC to review via screenshare. Edits are considered. All members of SCC grants DeFant to sign for them electronically. **Motion: David moves to approve and issue the DOA for 11 Pine Dr, Willson seconds. Vote: David- Aye, DeFant- Aye, Kahan- Aye, and Willson- Aye. So moved.**

**Continued Public Hearing, ANRAD for 66 Leverett Road/Lot O-32, Town of Shutesbury, 286-0297:**

Public Hearing is being continued because a peer review has not been completed by the 3<sup>rd</sup> Party Reviewer, Emily Stockman. Hearing tonight will not be substantive because review is ongoing. Antonellis (Library Director) is representing the Town. DeFant: site visit to conduct peer review will occur tomorrow October 28, 2022 @ 9:00am with SCC, April Doroski, Emily Stockman, Mary Anne Antonellis, and Penny Jaques. DeFant: she recommends that the Public Hearing be continued to November 17<sup>th</sup> because Stockman needs enough time to provide written comments; SCC has a policy of requiring the report be given to the applicant with enough time for the applicant to provide written comments back. Stockman will then respond in writing to the applicant's comments in her final report, which will then be reviewed at the next meeting. DeFant asks if the applicant has any questions. Antonellis has none. DeFant has spoken with Nancy Dihlmann who lives at 62 Leverett Rd; she has given SCC and the Town permission to visit her property as part of the site visit to view wetlands on her property. Luchonok: what time is the site visit? DeFant: 9:00 a.m. DeFant: propose continuing the Public Hearing to November 17 at 7 p.m.; is that agreeable? SCC usually only meets once in November but will schedule a 2<sup>nd</sup> meeting to accommodate this Hearing at the applicant's request. DeFant: would someone like to make a motion to Continue?

Farrell: about the site visit, on the SCC's standard Site Visit Form, it says who attended with permission from the owner; only people who have been cleared by the Town (property owner) can be present at the site visit – this is not an open site visit for anyone to show up for without getting prior permission from the Town. DeFant: do I have permission? Farrell: yes; SCC should not invite or allow anyone on the site visit who has not gotten permission. DeFant: Nancy Dihlmann has given SCC permission to walk her property which was part of the Scope of Work for the 3<sup>rd</sup> party reviewer and Dihlmann will not be attending the rest of the site visit. Farrell agrees. DeFant: SCC has not invited anyone else and am not aware of anyone else wishing to attend; sounds like Farrell is asking if anyone present from this meeting who has not already gotten permission to either ask for permission or not come to the site visit. Farrell: yes she is asking that anyone who has not gotten permission to attend the site visit not come to the site

visit; site form states permission needs to be granted from landowner. DeFant: want to clarify that the form is documentation for the SCC because SCC must document permission from landowner to do a site visit; we have to document this because we cannot issue determinations without having gained landowner consent for a site visit. Farrell: has spoken to Town Counsel, Donna MacNicol, about this; this is not an open meeting. DeFant: this seems very straightforward; the Select Board is making clear its wishes and SCC's agenda is to ensure the site visit is productive; two paid professionals will be attending and they will need to do their business without distractions. It is okay for SCC, Antonellis, people from the Library Building Committee, etc. to be asking questions, but SCC doesn't want the site visit to be like a public meeting because she believes it would get in the way of what needs to be done. DeFant suggests moving on with the agenda. Puleo: as Chair of the Library Building Committee (LBC), she is requesting to attend the site visit. Farrell: she believes it would become a problem due to the Open Meeting Law if she attended because there are two people on the LBC already attending. Puleo agrees. Luchonok: Rita, are you saying that I, as a 30-year resident, cannot come to the site visit tomorrow morning to observe, not comment? Farrell: Select Board has talked to MacNicol and this is a site visit organized by SCC, where permission is received from the property owner; this is not an open meeting. Luchonok repeats question. Farrell: no this is not a posted meeting; SCC is having this site visit and it should be in accordance with how SCC does its business; ultimately it is up to SCC; it will become problematic if it becomes a public meeting. Luchonok: don't understand Farrell's decision; who is saying he cannot attend as an observer? Farrell: I am telling SCC that they have to have permission from the property owner when they are doing the site visits. Luchonok: you are the landowner, no? Farrell: SCC has not asked that anyone else be given permission to attend other than April Doroski, SCC's Consultant, SCC Chair, Library Director and Penny Jaques; DeFant has told us who will be in attendance, correct? Are you inviting anyone else? DeFant: SCC has not invited anyone else; although we were not aware until just now that both Jaques and Antonellis would be attending. SCC has not requested permission for anyone else to attend, the professionals need to do their work; she asks that participants make sure they do not get in the way of the work - we can ask point things out but need to give them some independence. Farrell: leaving it up to SCC if Luchonok can attend. DeFant: SCC has not invited anyone else. For public, Emily Stockman has been SCC's 3<sup>rd</sup> party review over the past years and has been a 3<sup>rd</sup> party reviewer for many other Conservation Commissions; she is excellent, professional, independent; DeFant has respect and confidence in Stockman. Luchonok: he knows Stockman; he has worked with her and hired her in the past. He knows her work and believes that she is one of the best wetland scientists in the Commonwealth. As a member of public and citizen of the Town, he would like to attend tomorrow as an observer; not to interfere with what is going on or ask any questions. He believes that it is an important role for the public. Alix (60 Lakeview Rd): she is not planning to go to Lot O-32 tomorrow; however, she agrees with Luchonok's comment that it should not be an issue if anyone wanted to attend, not to interfere, but to simply observe. It is public land and as far as owner goes, it is to the Town of Shutesbury which is all of us who live here and pay taxes. We should not be disallowed by anyone to go there if we want to; especially with something this important. DeFant: SCC needs to move on with their agenda because this is not SCC's purview. In this situation the town is acting as the applicant and SCC is not acting as the Town; SCC needs to respect the wishes of the applicant in this situation. Conca: she is in agreement with Luchonok and Alix; she is confused with how this will end up; Select Board Chair Farrell appears to be saying the SCC must decide who can be on the site and the SCC is stating that this

is up to the Town as the applicant; she is interested in going; know how to be quiet and observe without any kind of interference. DeFant: want to make clear that Chair doesn't want to be in the position of making decisions tomorrow if people come to the site visit who were not invited; she believes it is the Town's responsibility to handle; SCC is attending at the courtesy of the Town as an observer; we are not orchestrating this; leave it to Town officials to handle; asks public to be respectful; SCC and the Town are doing their best; we are all trying to act in good faith. DeFant asks SCC if any comments. None offered. **Motion: David moves to continue Public Hearing for the Lot O-32 ANRAD to November 17<sup>th</sup>, 2022 @ 7:00 p.m. Willson seconds. Vote: David- Aye, DeFant- Aye, Kahan- Aye, and Kahan- Aye. So moved.**

### **Site Visits Scheduling**

South Brook Conservation Area – Sunday October 30, 2022 @ 9 a.m. with Penny Jaques and Liam Cregan to review trail mapping.

### **Discuss beaver permitting: dam removal, dam breaching, and trapping**

DeFant: invited Catherine Hilton of the Board of Health to attend for discussion for this topic. Johnson: became concerned about this issue when she heard people were upset about beavers being killed near their residences (down by Lake Wyola due to a recent Town trapping permit). She had done research on her own and discovered different solutions to the issue which include installing equipment to ensure beavers don't block culverts; this will solve a problem that would otherwise be ongoing because it would prevent beavers from coming back to the same spot which results in them being trapped every year. She has observed that beavers do well in the Conservation Area near Fiske Pond; because they do well, this problem will keep coming up. She believes that SCC is responsible for and knowledgeable about this type of equipment. She requests that if there is a way for SCC to, when approached by BOH with an emergency request to exterminate beaver, consult about installing devices that will resolve the problem over a period of years. A suggestion has been made that concerned citizens participate in ensuring that specific area around the culvert stay clear of debris placed by beaver.

DeFant: want to summarize jurisdiction; BOH has the regulatory authority to decide that there is an emergency requiring action regarding beavers; question first goes to the BOH, not SCC. The reason for this is because there can be hazards to public safety and health which is part of BOH's work. There are three possible approaches to manage beaver: trap beaver; breach a dam or install a flow protection device. To breach a dam or install a flow protection device, if ordered by the BOH, activity is also regulated by the SCC to protect the surrounding Resource Area. BOH would issue an order; SCC would issue an Emergency Certification where SCC would stipulate conditions for how the dam can be breached in order to protect the Resources Areas, per our jurisdiction. The second option is installing a flow protection device which BOH would order, and then the SCC would also issue an Emergency Certification with conditions; she is currently in the process of drafting such an Emergency Certification for a similar situation at Dudley Pond. There are best practices for how a protection device is installed; they require maintenance and a sufficient depth of water for the flow to be effective in deterring beavers. The third option is trapping beavers; her understanding is that SCC doesn't have a role when this option is chosen – only the BOH and the State. Hilton: this role on beaver dams was given to BOH only about 15 – 20 years ago. When there is an emergency situation, anyone who wants to trap beavers outside of their hunting season has to get consent from BOH. The applicant can be either a private resident

or government entity – BOH hasn't received any requests from a private resident. Applicants only approach BOH when there is an emergency where infrastructure is threatened. DeFant: is there any process that BOH would take with an applicant applying to explore any alternatives besides trapping? For example, breaching the dam and then placing a flow protection device? Hilton: it has been discussed informally. Tim Hunting, Head of the Highway Department, will approach BOH about beavers. For example, at the Fiske Brook culvert; the first best option would be a flow protection device but as stated, it requires a specific water elevation to work properly which is not present at this brook – the area is very flat. The only applicants BOH has had requesting these certifications are Hunting, and the Amherst Water department; beavers get into the Atkins Reservoir intake. David: confused because when she had asked LWAC if there was any new beaver news at their last meeting she was told there wasn't; she was a part of the site visit looking at all of the beaver dams last spring. Her concern is that she didn't see any evidence of beaver activity that would constitute an emergency that would prevent looking at alternatives. Hilton: where the beavers are building is located on the floor of the culvert itself; culvert that goes under Lakeview Road. It would be fairly easy for beavers to completely block that culvert which proves 83% of the water flow into Lake Wyola. The upstream consequences if this culvert were to be blocked is flooding, and risk of erosion around the culvert; downstream consequences would be tremendous. DeFant: what is the depth upstream? Hilton: it's very shallow; especially shallow now that the lake is low. It is deep enough in the summer time for a kayak to be used. DeFant: she has had a few conversations with a few contractors that have installed flow protection devices because of the situation at Dudley Pond; seems that an expert needs to come and evaluate the situation because there are different kinds of flow protection devices; some of which are better suited for low flow or shallow areas. Hilton: another issue is that this culvert is right on the Town line. It is possible that the device that Mike Callahan suggested for Dudley Pond could be installed there but it would be in Wendell; BOH doesn't have jurisdiction there and the options that BOH has there are limited due to this closeness in Town lines. She agrees that a professional would be helpful and could result in finding a different alternative – before this she knows that in other years they have been interested in building there. DeFant: she has concerns about residents maintaining this culvert; someone had called her whom lives in that neighborhood and said in the past Howard Kinder (Dam Keeper) did that and then, according to her, he would leave the debris in the water which would then wash up on her property. The best practice in this situation is to have debris removed and then placed outside of the Buffer Zone of this Resource Area. Hilton: she agrees; that part of it is a SCC issue – BOH has a very limited role; they do not manage beavers, manage their habitat or even in overseeing what happens after the permit is issued. BOH's role is to consent to breaching, trapping or any other mitigation presented.

DeFant: there are best management practices and discussion that could be made in advance in the future when this problem arises again. From SCC's perspective, she would like to ensure that whoever is removing debris is not leaving it within the Buffer Zone of this Resource Area and that there is an understanding that no Town employee should be removing beaver dam material in the area because that would technically be a violation of Wetlands Protection Act (WPA) and the local Bylaw. If this is a problematic location and it is on the town line with Wendell, should there be a discussion between both Towns about trying to come up with some sort of solution where it meets the needs of both communities ahead of time – maybe proceed with the evaluation. Another problem is that there are so many beavers in that area she is not sure that

trapping would be an effective solution – trapping is a short term emergency solution. Hilton agrees. DeFant: there are beavers upstream on Fiske Brook providing beneficial services to communities and residents because they create storage capacity and stormwater resilience. Hilton: she agrees but when they come downstream and threaten communal infrastructure and the ecosystem of Lake Wyola then that's an emergency. DeFant: she is willing to reach out to the Wendell Conservation Commission to schedule a future meeting with Shutesbury and their Town officials about this matter. Hilton: it would be interesting to try and get ahead of the problem instead of being approached with an immediate emergency; try to predict where the next interaction with beaver will be and try to defend it off before entering the emergency stage. DeFant: she agrees and that in terms of emergencies, there are other options than trapping; if the need is to remove a dam that is flooding the infrastructure, the turnaround time for an Emergency Certification could be 24 hours which is faster than getting a professional licensed trapper out to the site. If it is an emergency there are other non-lethal solutions that would result in a faster outcome; that may be an education piece. Hilton: she agrees; when it comes to breaching the dams that is a matter more suited for SCC. BOH has and can give permits for that but that seems to be more of SCC province. DeFant: SCC would need to have an order from another agency to issue an Emergency Certification; could be as simple as Hilton stating there is an emergency then SCC could issue so.

David: her understanding is that the beavers were trapped, but nothing was done to the dam they were creating; is that what happened? Her request would be that if this came in as an emergency, would it be possible--before they trapped the beavers--could they have a consultation with SCC to explore another solution? Hilton agrees that could happen. Conca: found disturbing that shooting with a pellet gun happened; occurred on Indigenous People's Day which she found to be disrespectful. She is wondering if SCC could write a letter to DPW because she believes that it seems Hunting is the person going to BOH applying for these permits; letter to ask Hunting to talk to SCC before going to BOH to get permits to trap the beavers. DeFant thanks Conca for her comment and asks SCC if they wish for her to draft a letter to send to DPW and BOH. David: she believes a letter isn't necessary as long as Hilton agrees to contact SCC to discuss alternatives before issuing an order. DeFant: if it is an emergency that Hilton can personally call her.

DeFant: she will reach out to Wendell Conservation Commission to schedule a future site visit with Shutesbury and their Town about this matter. What she heard was a bit different because there was desire to keep this culvert open to due to Pine Brook Camp launching their kayaks and going under the culvert; desire to not place a flow protection device in this spot. Hilton: she doesn't believe a flow protection device could work; they are suggesting that it may work if placed further upstream – she has kayaked up there and it is very low all the way up to the next beaver dam which is at the rim of a large marshy area.

Johnson: she isn't clear on how the education piece is going to happen; seems to be a complicated topic. She is looking for clarification on who is going to educate about what. DeFant is unsure. Johnson: wondering if she should follow that up in some way because she has seen some great resources; wonders if the Town would like to have a policy to not have trapping to be the first option. Hilton clarifies that trapping is not the first response; the first response is do nothing as long as they are not bothering anyone and the second option is to find non-lethal way

on solving the situation – for example on Baker Rd beaver had to be trapped out after several flow protection devices were tried and failed; lethal means are not adopted automatically. DeFant: she recommends that this matter could be presented to the Select Board and believes the Select Board could play a role for setting a standard for process (setting the tone for the community). Johnson thanks SCC and BOH.

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

**57 Lake Drive BPA** – DeFant: she and David visited the site (across from 66 Lake Drive) to review a building permit that includes placing a large addition to the home and new septic system (along the road); property is at a high elevation off the road with a steep slope going towards the lake. The property is outside of the 100' Buffer Zone of the lake and no other wetlands in the area – no jurisdiction. The homeowner has property across the street on the lake where there is a boat house; small sliver of land (40' wide) with steep slopes. He has a proposed plan of removing all trees on the lot, raising the whole lot up to the street grade, placing a retaining wall and a 30' parking area and then adding stone steps down to the Bank of the lake. She believes this project will need to be an NOI and recommends he have an engineer examine the stormwater issues around the project. She suggested having each project be a different permit so that way SCC could sign off on the house addition since there is no jurisdiction; focus on the lower parcel. SCC agree.

Janice Rowan (55 Lake Drive): is the property considered one or two properties? DeFant: two parcels so it could be two applications. Rowan: for the house, there is no onsite parking; as the abutting landowner, we have an easement between the two homes; shouldn't be considered a parking area; 57 Lake Drive using it as parking; each home is zoned to have two parking spots so those landowners shouldn't be using the easement as such. DeFant: she will reach out to Jeff Lacy, Chair of the Zoning Board of Appeals (ZBA) about the parking spots and if the permit has included both projects since it is considered one property made up for two parcels.

**375 Locks Pond Road BPA** – DeFant: BPA for a new garage; an intermittent stream was identified by both herself and Willson. SCC agrees landowner should apply for RDA.

**31 Lakeview Road OOC** – DeFant: herself and David visited the site and observed there is no vegetation growing on the slopes yet; told landowner to touch up their erosion controls; landowners have placed more straw down.

**Resident concern on Great Pine Extension** – DeFant: property next to Johnson has had a flood issue because the house is built on a hillside with a bowl-shaped hill surrounding the property; resulting in slopes and a low point where the parking area is which has a dry well in the center with a grate that clogs up. She and David went to look at the property after speaking to Johnson – didn't receive consent from property owner, so they stayed on Johnson's property to observe. DeFant spoke with property owner, Amanda Nash, who doesn't live at the property currently; she stated they have done work in the past to improve the drain. In the past the Fire Department has been called to pump flood water from the driveway in the winter; they pumped the water over the hill which resulted in the water going into South Brook Conservation Area near a wetland. She spoke with Lenny Czerwonka, Fire Chief, who stated that it was considered an emergency because it was flooding a home such that water could have reached the electrical



supply resulting in a hazard – he also stated that there was 6-12” of standing work both outside and in the home that was pumped out. David: there was also concern over the septic system/leach field being flooded; BOH had looked at in the past. DeFant: she visited the site where the water was being drained to; BVW that drains into Lake Wyola; concerns about discharging into a Resource Area; understands that Fire Department doesn’t have many options of moving the water – wanted to ask SCC for options/solutions. David: when the house is sold, does the septic system have to be inspected? Hilton: yes, but a Title 5 inspection is good for 2 years so landowner may be exempt. DeFant understands that the property passed a Title 5 recently. Willson: how often does this occur? DeFant: has occurred multiple times but roughly once a year. Willson: there is no other place they can pump the water? DeFant: Fire Chief stated that they can pump up to 200’ which she believes is not far enough to move away from wetlands; area is heavily residential so there is no other discharge location. Ultimately the Town could rule that is the landowner’s responsibility to handle. David recommends the landowner to hire a company that could pump the water into a tank truck to then be move elsewhere. Willson agrees and states that companies that clean up catch basins could be an option. DeFant will reach out to Fire Chief to discuss alternatives. Matter to be revisited.

**SCC Consultant change:** DeFant notified the SCC that Janice Stone will no longer be able to attend meetings due to a schedule conflict, but will remain involved when able.

**Winter Delineation Policy:** SCC interested in establishing a published policy to advise applicants. Willson to draft language.

### **Consider draft minutes for 9/8/22**

SCC has reviewed the 09/08/2022 draft minutes; no comments. **Motion: David moves to approve the 09/08/2022 minutes, Willson seconds. Vote: David- Aye, DeFant- Aye, Kahan- Abstain, and Willson- Aye. So moved**

### **CPC Representation**

- DeFant: Linda Scott is retiring and was the SCC’s CPC Representative; Scott recommended SCC find a new representative. No SCC members expressed an interest. DeFant: she has one person in mind, Leslie Luchonok, whom was a land use professional with DCR. SCC will reach out to him.

### **Review financials and budget**

DeFant: SCC has fallen behind on paying their dues to Massachusetts Society of Municipal Conservation Professional (MSMCP); it is \$20 to allow Land Use Clerk or any commissions to their trains and brown bags. **Motion: David moves to approve the \$20 to be paid to MSMCP out of the Conservation Commission Expense account, Willson seconds. Vote: David- Aye, DeFant- Aye, Kahan- Aye, and Willson- Aye. So moved**

DeFant: been reviewing the various SCC financial accounts; screenshares budget accounting details; One of them is the ongoing expense account which is allocated at Town Meeting and has been leveled funded at \$1,164. There is an account for the Local Bylaw fees for payments when applicants apply for projects within the Local Bylaws. Lastly, there is an account for NOI fees because payments for Bylaw and WPA fees can’t mix. There is also a Conservation Trust Fund

for land acquisition in which they received money each year to add to the account. There are also little accounts for specific things such as Sumner Mountain CR monitoring – for example, when SCC hired Charlie Eiseman, he was paid using this account. To give an idea of expenses, SCC used all of the funds within that expense account for FY21; for FY22, there was only \$186.02 left. Expense account is used mainly to administer the office (office supplies, MACC dues, MSMCP dues, and postage for sending out permits, etc.); once zeroed out then SCC uses funds from the Bylaw account. Postage for certified mail can cost between \$7-\$8 and sometimes multiple copies need to be sent out. Currently in this fiscal year SCC has spent \$417.50 (mostly MACC dues), leaving SCC with \$746.50 for the remaining fiscal year. The cost of postage has been increasing over the past few years – in the past 2 years there has been a 7% increase. As a reminder, SCC has hired consultants to help with regulatory work revising where the town as allocated \$5,000 toward that; SCC later agreed that if going past the \$5,000 was needed, then the remaining costs would come out of the Local Bylaw account. SCC has also earmarked some funds from the Trust Fund account for the Pearson Acquisition that has yet to come out of the account. Willson: what can SCC use the Wetland Protection Act (WPA) fee account for? DeFant: she went on the MACC website to look for information and found a Department of Revenue document about WPA fees; some Towns use this account for funding consultants or positions – has to be used for the administration or enforcement of the WPA. For example, if SCC wanted to buy into a shared Conservation Agent, then SCC could use funds from the WPA towards that Agent’s salary. Willson: can SCC use it for educational purposes? DeFant: yes and the Local Bylaw Fee account can be used for that too. Local Bylaw fee account could be used to pay for any conferences or trainings for any Commissioner. For this fiscal year (FY23), SCC has spent \$151 out of the Local Bylaw fee account which is how Land Use Clerk, Carey Marshall, has been paying for postage since July of this year. She has sent a letter to the Finance Committee asking for a modest expense budget increase (10%) mainly due to the increase in postage costs. SCC agrees.

### **Review draft of Old Peach Orchard Conservation Restriction Monitoring Report**

*Discussion postponed*

### **Bylaw Regulation Revisions:**

DeFant: SCC was supposed to get back to the consultants about their thoughts on what would be the most appropriate distance for possible regulations. Willson: she believe it would make sense to have these distances similar to intermittent streams; even though they are below ground they should have same protection. DeFant: it would then have a 100’ Buffer Zone. How far can it be between inlet and outlet before they lose protection? The safest idea was to go with a 200’ distance; that way the inlet and outlet would both have a 100’ Buffer Zone that would touch; covering the area above the subsurface intermittent stream. It might be useful because if it is currently characterized as an isolated wetland and is under 1,000 s.f., it would not be protected at all; if it is an intermittent stream, then it might add a layer of protection. The farther apart the lengths are, then the harder they will be to verify with any kind of methodology; consultants will have to give SCC a way of proving connectivity; might be only able to be assessed at certain times of year; another aspect discussed last time SCC met with the consultants was that these streams might only be able to be tested during certain times of the year; consultants wanted more information about intermittent streams in Town; site visits were prevented due to drought; exemplars were noted on the PCR West ANRAD map; SCC agrees with 200’ distance limit.

DeFant: in the last few trainings she has attended, learned it is important to have clearly stated regulations to rely upon for clarity when making decisions; SCC does not have clear regulations. A lot of communities that have Bylaws have been adopting dense regulations with performance standards, preambles, and presumptions for each Resource Area – locking into regulations the scientific rationale that would be used for conditions/decisions. She recommends that SCC move towards making clearer regulations; she has taken several regulations from several towns and putting together a draft that she will send to Commissioners via email to review and discuss at a further time. Willson: she agrees with DeFant’s suggestion in updating their regulations for more clarity and performance standards. She had worked with Amherst Conservation Commission Chair to do the same work for their regulations for the same reasons; Amherst regulations are good. DeFant: it adds to predictability and consistency; our membership can change but the general analytical approach would not change. SCC is allowed to have bylaw be more protective than the WPA but if the regulations don’t clearly state why, it is important to be more protective, than our decisions could be thrown out; this has happened in the courts; have to be more explicit or risk losing Home Rule authority. She plans to continue drafting updated regulations and once they are complete she will send it out to the Commissioners.

**South Brook Conservation Area CPC project**

*Discussion postponed*

**Dudley Pond Dam**

*Discussion postponed*

**Unanticipated Business:**

DeFant: Select Board has confirmed creating a Lake Wyola Dam Study Committee due to the problems of public access on the dam. An abutter to the dam has discovered that the access to the dam was on their property and they have blocked off the access; placing no trespassing signs. Due to this, people are now walking through the Sawmill River to get to the dam. The committee will be formed to develop a policy that will include the chief of police, members of the Select Board and some members of the public; she offered to have a Commissioner from SCC represent SCC because one of the issues is the integrity of the wetlands. Mary David offers to be the representative – SCC agrees.

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

**Meeting Close: 9:30pm**

**Next Meeting: Thursday, November 10th, @ 7 pm**

**Documents Used:**

- Agenda
- Draft 9/8/22 Minutes
- 58 Lake Dr NOI
- 58 Lake Dr NOI Site Plan
- 58 Lake Dr OOC Draft

- 35 Weatherwood Dr RDA
- 35 Weatherwood Dr RDA Site Plan
- 35 Weatherwood Dr Wetland Delineation Report
- 35 Weatherwood Dr DOA + Special Conditions Draft
- 11 Pine Dr RDA
- 11 Pine Dr RDA Site Plan
- 11 Pine Dr DOA + Special Conditions Draft
- 66 Leverett Rd ANRAD
- Emails from MaryJo Johnson (resident) regarding beaver management at Lake Wyola

*Respectfully submitted by Miriam DeFant, Commissioner, 12/8/22*