

Shutesbury Conservation Commission
Minutes – October 24, 2024
Approved – November 14, 2024
Virtual Meeting

Scheduled Start: 7:00pm

Commissioners Present: Beth Willson, Janice Rowan, Bob Douglas, Scott Kahan

Commissioners Absent: None

Other Staff Present: Matteo Pangallo

Others Present: Mark Wightman, Penny Jaques, Tom Siefert, Tracy McNaughton, Anna Mancibo, Mike Stotz, Joseph Salvador

Chair's Call to Order: 7:04pm

The meeting is being recorded.

Chair's Comments

Grant funding possibilities for culvert projects around town have been much discussed. Fort River Watershed group has indicated FRCOG will be doing culvert assessment for Shutesbury. Nature Conservancy doing large grant for culverts. Need to suggest specific culverts to them. Both are big grants that could cover many culverts.

Welcome to Matteo. This is his first meeting as Land Use Clerk.

Kahan: Per last vote authorizing Charlie to do conservation deed restriction monitoring, checked in with him. Looking into bridge replacements in South Brook Conservation Area. Looking to get estimate for cost on that project. On West Quabbin Conservation Area, speaking with Kestrel Trust and applied for curb cut for 20 x 20 parking lot, but that might not fit; might need to be more narrow, rectangular. Highway Department had some reservations for people pulling in or turning around. Will be researching options.

Willson: We have a line item specifically for Sumner Mountain monitoring.

Kahan: Funding exists to offset the monitoring costs of those restrictions.

Site Visits

Rowan: 70 Lake Drive for pre-construction site visit to look at erosion controls. Sediment curtain in place. Helical piles being drilled tomorrow. Looks good.

292 Pelham Hill Road, with Beth, to evaluate some tree removal. Within 100 feet of wetlands so suggested Small Project Permit.

Lot O-32, with Mary Anne Antonellis and Penny Jacques, to evaluate erosion controls. Looks good, especially around outer perimeter. Some curtains were floppy so made a list of those that

need to be tucked back in. Suggested marking space for plumbing for and marking where dirt should not be dumped. Asked for response when those corrections were made.

Wightman property for CR. Property is pinned on inner and outer edges to mark protected land.

Approval of Minutes

October 10, 2024 minutes. Video not yet posted and there are questions about some details, so not doing these tonight. Will do these and some of older ones on November 14.

Lot H-151 Proposed Conservation Restriction

Wightman: Surveyor came up a couple of weeks ago. Envelope pinned and flagged in the corners. If Commission takes CR, each year during review of property might need to be flagged again as needed. Met with Planning Board and they said they're fine as long as it meets state's requirements. Beth suggested that item H in "Purposes" should be under "Definitions" so will move that item. Item on page 20 for notice and approval for additional provisions for jointly held restrictions should be deleted since this is not jointly held. Interest is that the entire parcel stays on tax rolls so all 18 acres contribute to town's tax revenue, so needs discussion about whether owner of the property will need to allow public access. Should be up to the owner of that property because they're paying taxes on it, plus has wetland up front making access difficult. Section of "Extinguishment" can be removed. With Commission's permission, will make these changes and submit as final request for Commission's decision in November.

Willson: Regarding public access, wondering if owner could create trails.

Wightman: Permitted uses are strict. Requires premises be kept in natural condition. Passive recreation allowed but no alteration to condition. Another reason not to allow public access.

Douglas: State is looking for something that's good for the Commonwealth. Putting this amount of land in restriction would address that by creating sanctuary for wildlife. Is hunting mentioned?

Wightman: Legal hunting is permitted with authorization of Division of Fisheries and Wildlife. I wouldn't allow it. Should be up to the future owner.

Penny Jaques: Is the Commission assessing a fee for holding CR?

Wightman: Town can require a fee to cover the cost of the annual inspection. Makes sense to do that and should match actual amount of time it takes to walk the property.

Jaques: Encourages Commission to look at the fee charged for DiMare property as model. Remember that this is in perpetuity and not just for limited period.

Wightman: Should be required of later owners.

Jaques: I don't think Commission can charge later fee. Needs to be one-time fee.

Wightman: Would be helpful for Commission to investigate that.

Willson: People who buy it didn't put in restriction, developer did, so one-time fee makes sense.

Kahan: Our decision is to accept being custodian of the CR. Whatever money accepted as escrow to offset that cost probably can't be assessed yearly. Appreciates Mark's attention to the property and marking it—has set it up for success. Charlie Eisman is charging around \$350 per walkabout, so that might be good baseline for setting up escrow in perpetuity.

Wightman: Putting it in CR to allow it to be a billable piece of property; future owner would know that and would sign a document to confirm their knowledge of that, including cost of monitoring on a yearly basis. Seems if there's a cost, that should be borne by the owner. There's no way to put enough in escrow to allow it to be covered in perpetuity. Would appreciate more information about how this should work and won't be a burden on the Commission.

Willson: An agreement at the sale would be easiest, but not sure if it's legal.

Lot O-32 Restoration Inspection Report and Mowing Update

Jaques: In 2023 NOI submitted for two wetlands on new library site. BVW 2 on eastern side had large pile of loam placed by previous owner and wetland to east and west. Loam removed and plan submitted for restoration including seeding with wetland seeds from New England Wetland Plants and dozen or so wetland shrubs. Ward Smith visited three times in 2023 and 2024, decided area under loam likely not a wetland. October 2024 report suggested area be re-seeded again. Trees and shrubs thriving but deer browsing. Spring 2025 next monitoring visit. BVW 3, on west side, south of construction, clearly wetland area. Some trash material removed from above grade of soil. Area seeded, but not in the wetland itself because of open water. Shrubs put in at slope along wetland edge; one replaced since but others doing well. Seeded area filling in well.

Willson: Did site visit with Jan and saw both areas. Wetland 3 had no water at the time but clearly did fill in. Wetland 2 had some sparse areas, but not clear from soil cores where actual wetland line is. But even there, good vegetation growth, probably more by spring.

Jaques: Even more starting to come in now. Re-seeded with moist mix in May and put in plugs of other wetland plants; they're doing well and should fill in next year. Next monitoring visit in spring. Welcomes recommendations about what to do before then. Another remediation involves invasive plants. This weekend a dozen people pulled bittersweet, burning bush, buckthorn, autumn olive, multiflora rose, and more. Will continue to work on it and welcomes help.

In summer 2022, Commission issued order to stop mowing. Now full of saplings, especially along woodland edge. Would like to mow this fall before winter plowing season. Highway Department would like to do it in mid-November. Proposing mowing entire field to west of construction area. Now very dry and ground is firm and most plants have already set seed so condition is good for mowing. In spring, high water-table makes mowing less workable. Should be cut to height of five inches. BVW 1 will get more diverse wetland plantings, but easier to do

if field is not as high as it is. Consulting with Franklin County Conservation District for advice and will have ecologist develop plan to present to Commission before doing anything this spring.

Willson: Is this part of the landscaping plan for the library?

Jaques: Landscaping plan from architect is within the limit of work, but we added management of the field, but when presented to Commission there was no resolution about long-term plan. Should perhaps wait until Franklin County Conservation District consultant provides advice.

Willson: Wants to make sure we don't change a plan already approved.

Kahan: Short term mowing plan makes sense given how dry it is and it will help with spring restoration. Good to develop a long-term management plan, especially around the resource areas.

Mary Anne Antonellis: Maintenance plan calls for planting many plugs in BVW 1—50 x 12—but since writing plan we've been consulting with Franklin County Conservation District to improve pollinator meadows and they would help pay for it. We may come back with enhanced plan that includes hiring their recommended ecologist with a better solution. If they will help with cost and plan, we would bring that to the Commission. In the meantime, removed invasive plants per plan. But wanted to come back before mowing because of Commission's previous concerns.

Kahan: Good work on invasives. Short-term plan here seems good. Wants clear long-term plan.

Douglas: Would support late season mowing and this looks good. Mow now if you can. Meadow habitat is in decline and this is a good plan to care for it.

Willson: Agrees that short-term plan looks good. Glad to hear specialist is involved.

Douglas: Outside of limit of work, has there been any tree cutting?

Jaques: A dozen spruces outside of limit of work were cut but stumps left in place. Stump diameters were six inches or less. Remnants of a Christmas tree plantation.

No questions from the public.

Motion to approve mowing O-32 this fall: Rowan; second: Douglas. Approved unanimously.

Regulations Update

Willson: Informational update and discussion of what to accomplish by next meeting.

Kahan: Advice from Town Counsel indicates previous regulations still in place and new bylaw doesn't change that, but should prioritize places where regulations conflict with bylaw. Doesn't see regulations as substantially contradicting bylaw. Wants to take time to do this right and doesn't rush it. Suggests winter might afford more time to take regulations in detail.

Willson: Agrees winter is slower, with more time between meetings to read and consider the regulations section by section. Shouldn't rush.

Rowan: Commission should proceed thoughtfully, especially given opinion from Town Counsel.

Kahan: Perhaps target wrapping this up by May.

Willson: Agrees.

Douglas: Supports moving ahead this winter. Wants to avoid conflicts or regulatory binds.

Willson: If conflict exists between bylaw and regulations, bylaw takes precedence.

Kahan: May might be too soon. We may need more time.

Willson: As a reminder, for November 14 meeting we'll be on docks, piers, and floats, then it's standards for banks and standards for freshwater wetlands.

Rowan: Shared some research about docks, piers, and floats section with rest of Commissioners.

CPA Application Cycle

Willson: Community Preservation Committee's grant cycle open. Determination of Eligibility due December 5. Scott and I met with Lee Halasz from Kestrel Trust about some potential properties and discussed CPA funding as matching money for larger grant Kestrel is seeking.

Douglas: December is close. Suggests action item for November meeting.

Willson: Yes, and will follow-up with Lee about the larger grant's status.

Kahan: Do we have a balance for South Brook and West Quabbin? Do we need additional funding? Also, some new funding at Top-of-the-Lake for land management could be sought.

Matteo Pangallo: Will report what outstanding balances are for existing Commission projects. Also, not required to submit Determination of Eligibility to apply, though recommended.

Unanticipated Business

Douglas: Still need to find fifth Commissioner.

Willson: Shared info at Town Birthday celebration and continuing outreach. Nobody yet.

Public Comment

Tracy McNaughton: Asks that next meeting include discussion of legality of perpetual conditions in Orders of Conditions. Notes questions raised at previous meeting about whether perpetual

conditions are legal or not. States that email from Douglas to rest of Commission constituted violation of Open Meeting Law and there should be open discussion. States other towns use perpetual conditions and the Commission did nothing wrong when it approved such conditions.

Willson: Could be topic to discuss but should be project-specific discussion. The Order of Conditions that brought this up ended up including deed restrictions to preserve most of the conditions. Legally, conservation conditions end after thirty years while deed restrictions can remain in perpetuity. Individual past projects would need to request an amendment to their Order of Conditions and go through legal amendment process.

Rowan: At previous MACC conference, spoke with conservation attorneys who said term “in perpetuity” is inappropriate because it is not enforceable, which is also what Town Counsel said.

Willson: Should this be agenda item at next meeting?

Douglas: After speaking with MACC about this, they decided to include topic in forthcoming publication. Perhaps should wait for that first. Also spoke with DEP and they also said conditions in perpetuity are common. Agrees that putting it in deed language is best way to handle it.

Kahan: Good to have the conversation, but we can only make decisions about specific projects. Not helpful to try to make a general decision.

Willson: Seems by next meeting we won't have more information from MACC. Should continue researching it before having the discussion.

Adjournment

Motion to adjourn: Douglas; second: Kahan. Approved unanimously.

Adjourned: 8:41pm

List of Documents Used:

- Lot H-151 Conservation Restriction draft